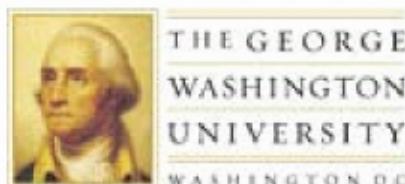


The Burger Court Opinion Writing Database

Usery v. Turner Elkhorn Mining Co.
428 U.S. 1 (1976)

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 16, 1976

Re: (74-1302 - Usery v. Turner Elkhorn Mining Co.
(74-1316 - Turner Elkhorn Mining Co. v. Usery

Dear Thurgood:

As of now I will concur in the judgment.

Regards,

WESB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 2, 1976

JD

RE: Nos. 74-1302 and 74-1316 W.J. Usery v. Turner Elkhorn
Mining Company, et al.

Dear Thurgood:

I agree.

Sincerely,

Brennan

Mr. Justice Marshall

cc: The Conference

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

From: Mr. Justice Stewart

Circulated: 6/16/76

Recirculated: 6/16/76

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-1302 AND 74-1316

W. J. Usery, Jr., Secretary
of the United States De-
partment of Labor,
et al., Appellants,

74-1302 v.

Turner Elkhorn Mining
Company et al.

Turner Elkhorn Mining
Company et al.,
Appellants,

74-1316 v.

W. J. Usery, Jr., Secretary
of the United States De-
partment of Labor,
et al.

On Appeals from the United
States District Court for
the Eastern District of
Kentucky.

[June —, 1976]

MR. JUSTICE STEWART, concurring in part and dissent-
ing in part.

Although I agree with much of the Court's opinion, I
cannot join that opinion for at least two reasons.

A

In upholding the constitutional validity of the irre-
buttable presumption contained in § 411 (c)(3) of the
Act now before us, the Court's opinion does not so much
as mention the decision of this Court that seems to me
wholly dispositive. I refer to *Weinberger v. Salfi*, 422
U. S. 749, decided less than a year ago. The Court in
that case, relying *inter alia* on *Dandridge v. Williams*,
397 U. S. 471, and *Richardson v. Belcher*, 404 U. S. 78,

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 16, 1976

Nos. 74-1302 & 74-1316
Usery v. Turner Elkhorn Mining Co.

Dear Thurgood,

In response to your recirculation of today, I have decided to delete Part A of my separate opinion. Bill Rehnquist agrees with this decision.

Sincerely yours,

P. S.

Mr. Justice Marshall

Copies to the Conference

To: The Clerk of the Court
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated:

1976-06-16

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-1302 AND 74-1316

W. J. Usery, Jr., Secretary
of the United States De-
partment of Labor,
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Turner Elkhorn Mining
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74-1316 v.

W. J. Usery, Jr., Secretary
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partment of Labor,
et al.

On Appeals from the United
States District Court for
the Eastern District of
Kentucky.

[June —, 1976]

MR. JUSTICE STEWART, with whom MR. JUSTICE REHN-
QUIST joins, concurring in part and dissenting in part.

While in all other respects joining the opinion and judgment of the Court, I cannot accept the Court's conclusion, *ante*, at 32-34, that the limitation on rebuttal evidence in § 411 (c)(4), 30 U. S. C. § 921 (c)(4) (1970 ed., Supp. IV), is inapplicable to "transition" determinations under § 415 insofar as those determinations bind operators. Section 415 (a)(5), 30 U. S. C. § 925 (a)(5), provides that an "operator . . . shall be bound by the determinations of the Secretary of Labor [on a transition] claim as if the claim had been filed pursuant to part C of this subchapter and section 932 of this title had

omission

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

52

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 9, 1976

Re: Nos. 74-1302 & 74-1316 - Usery v. Turner
Elkhorn Mining Co.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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

From: Mr. Justice Marshall
Circulated: APR 1 1976

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-1302 AND 74-1316

W. J. Usery, Jr., Secretary
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74-1302 v.

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Turner Elkhorn Mining
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W. J. Usery, Jr., Secretary
of the United States De-
partment of Labor,
et al.

On Appeals from the United
States District Court for
the Eastern District of
Kentucky.

[April —, 1976]

MR. JUSTICE MARSHALL delivered the opinion of the
Court.

Twenty-two coal mine operators (the "Operators") brought this suit to test the constitutionality of certain aspects of Title IV of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 792, as amended by the Black Lung Benefits Act of 1972, 86 Stat. 150, 30 U. S. C. § 901 *et seq.* (1970 ed. and Supp. IV). The Operators, potentially liable under the amended Act to compensate certain miners, former miners, and their survivors for death or total disability due to pneumoconiosis arising out of employment in coal mines, sought declaratory and in-

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

18-20
From: Mr. Justice Marshall

Circulated: _____

Recirculated: JUN 16 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-1302 AND 74-1316

W. J. Usery, Jr., Secretary
of the United States De-
partment of Labor,
et al., Appellants,
74-1302 v.

Turner Elkhorn Mining
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Turner Elkhorn Mining
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74-1316 v.

W. J. Usery, Jr., Secretary
of the United States De-
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On Appeals from the United
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[April —, 1976]

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Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 23, 1976

MEMORANDUM TO THE CONFERENCE

Re: Case being held for 74-1302, Usery v. Turner Elkhorn Mining Co., and 74-1316, Turner Elkhorn Mining Co. v. Usery

No. 74-1623, Slone v. Deskins Branch Coal Company.

This is an appeal from a 3-judge court from the Eastern District of Kentucky, which declined to hold a coal worker's pneumoconiosis exclusion in the Kentucky workers' compensation statute unconstitutional on equal protection grounds. Kentucky has a general coverage workers' compensation law. In 1972 the compensation level of \$63/week was raised to \$81 and other benefits were increased for all recipients, except those eligible for benefits under the Federal Coal Mine Health and Safety Act, as amended. Appellants, persons eligible for benefits under the FCMH&SA, contend the Kentucky law denies them equal protection because they are denied the increased benefits which persons disabled for similar causes, e.g., stonemason's pneumoconiosis, would receive. Appellants say that the exclusion in the 1972 Kentucky law may not be upheld as an "equalizing" provision, because in many (though not all) cases federal compensation levels are less than the elevated state levels and double recovery is precluded by the federal law, and because coal workers are denied the increased state benefits if considered in the state proceedings to be eligible for the federal program, even though ultimately denied relief thereunder.

Turner Elkhorn holds the federal program constitutional, a proposition assumed by the parties and the court below. It does not address the type of equal protection attack made here. In my view, this case is controlled by Dandridge v. Williams and Williamson v. Lee Optical, and I will vote to affirm.

TM

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

(3)

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 7, 1976

Re: No. 74-1302 - Usery v. Turner Elkhorn Mining Co.
No. 74-1316 - Turner Elkhorn Mining Co. v. Usery

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 LEWIS F. POWELL, JR.

April 7, 1976

No. 74-1302 and 74-1316 Usery v. Turner,
Elkhorn Mining Co., etc.

Dear Thurgood:

In due time I will circulate a dissent to Part IV of your opinion for the Court. This is the portion of your opinion that sustains provisions of the Act that compel mine operators to compensate former employees, and the survivors of such employees, who terminated their employment before the Act was passed.

My present disposition is to join Part V of your opinion, in which you sustain the presumptions and evidentiary rules.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

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

From: Mr. Justice Powell
 ✓ JUN 26 1976
 Circulated: _____

First
 ██████████ DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 74-1302 AND 74-1316

W. J. Usery, Jr., Secretary
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Turner Elkhorn Mining
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Turner Elkhorn Mining
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W. J. Usery, Jr., Secretary
 of the United States De-
 partment of Labor,
 et al.

On Appeals from the United
 States District Court for
 the Eastern District of
 Kentucky.

June
 [redacted], 1976]

MR. JUSTICE POWELL, concurring.

Appellants in No. 74-1316, the Operators, challenge as unconstitutional the retroactive obligations imposed on them by the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 792, as amended by the Black Lung Benefits Act of 1972, 86 Stat. 150, 30 U. S. C. § 901 *et seq.* (Act). The Court rejects their contention in Part IV of its opinion. I disent from Part IV, but concur in other portions of the opinion not inconsistent with the views herein expressed.

I

Coal miner's pneumoconiosis was not recognized in the United States until the 1950's, and there was no federal

concur in the judgment as to Part IV, and

5,6,8

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

2nd DRAFT

From: Mr. Justice Powell

SUPREME COURT OF THE UNITED STATES

Circulated:

Nos. 74-1302 AND 74-1316

Recirculated: 6/30/76

W. J. Usery, Jr., Secretary
 of the United States De-
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Turner Elkhorn Mining
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Turner Elkhorn Mining
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74-1316 v.

W. J. Usery, Jr., Secretary
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 partment of Labor,
 et al.

On Appeals from the United
 States District Court for
 the Eastern District of
 Kentucky.

[June —, 1976]

MR. JUSTICE POWELL, concurring.

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I

Coal miner's pneumoconiosis was not recognized in the United States until the 1950's, and there was no federal

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May
June 25, 1976

Re: No. 74-1302 and 74-1316 - Usery v. Turner, et al.

Dear Potter:

Please join me in your concurring opinion.

Sincerely,

Wm

Mr. Justice Stewart

Copies to the Conference