

# The Burger Court Opinion Writing Database

## *Kleppe v. Delta Mining, Inc.*

423 U.S. 403 (1976)

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



Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun  
Mr. Justice Rehnquist

DEC 8 1975

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-521

Thomas S. Kleppe, Secretary of the Interior,  
Petitioner,  
v.  
Delta Mining, Inc., et al.

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

[December —, 1975]

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

We granted certiorari in this case and consolidated it for argument with *National Independent Coal Operator's Assn. v. Kleppe*, No. 73-2066, 161 U. S. App. D. C. 68, 494 F. 2d 987 (1974), decided today, to resolve an apparent conflict between the two Circuits.

In 1971 inspectors from the Bureau of Mines entered and inspected the coal mines owned respectively by Delta Mining, Inc., G. M. W. Coal Company, Inc., and a partnership of Edward Mears and others known as the M. Y. Coal Company. The inspectors detected a number of violations of the Act or regulations and served each mine operator with notices of the infractions.<sup>1</sup> Each notice stated that the violations were to be abated by a specified date. The inspectors returned on that date and

<sup>1</sup> The operators protest that these notices are not part of the record below. Since the issue before this Court is the validity of the regulations, not whether the regulations were properly complied with, for purposes of this case we will assume the notices were properly served. We note, however, that the mine operators do not contend that they were not given ample notice of the violations charged by the mine inspectors.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
THE CHIEF JUSTICE

January 8, 1976

Re: 73-2066 - Natl. Ind. Coal Operator's Assoc. v. Kleppe  
74-521 - Kleppe v. Delta Mining, Inc.

MEMORANDUM TO THE CONFERENCE:

Enclosed is second draft of the above with revised parts of 73-2066, National Independent Coal Operator's Association v. Kleppe, which eliminates what some thought dicta. It confirms Judge Sanborn's thesis that "all judges are against dicta in other judges' opinions."!

I had thought it useful to deal with both routes of review even though only one was presented.

I trust the revisions will satisfy everyone.

Regards,

MB13

P. S. -- The final version of these opinions will, of course, carry the notation that Mr. Justice Stevens took no part.

pp 4/6

2nd DRAFT

Recirculated:

JAN 1 1975

# SUPREME COURT OF THE UNITED STATES

No. 74-521

Thomas S. Kleppe, Secretary of the Interior,  
Petitioner,  
v.  
Delta Mining, Inc., et al.

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

[December —, 1975]

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

We granted certiorari in this case and consolidated it for argument with *National Independent Coal Operator's Assn. v. Kleppe*, No. 73-2066, 161 U. S. App. D. C. 68, 494 F. 2d 987 (1974), decided today, to resolve an apparent conflict between the two Circuits.

In 1971 inspectors from the Bureau of Mines entered and inspected the coal mines owned respectively by Delta Mining, Inc., G. M. W. Coal Company, Inc., and a partnership of Edward Mears and others known as the M. Y. Coal Company. The inspectors detected a number of violations of the Act or regulations and served each mine operator with notices of the infractions.<sup>1</sup> Each notice stated that the violations were to be abated by a specified date. The inspectors returned on that date and

<sup>1</sup> The operators protest that these notices are not part of the record below. Since the issue before this Court is the validity of the regulations, not whether the regulations were properly complied with, for purposes of this case we will assume the notices were properly served. We note, however, that the mine operators do not contend that they were not given ample notice of the violations charged by the mine inspectors.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 22, 1976

RE: No. 74-521 Kleppe v. Delta Mining

Dear Chief:

I agree.

Sincerely,

*Brennan*

The Chief Justice

cc: The Conference

8-191

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 8, 1976

Re: No. 74-521, Kleppe v. Delta Mining, Inc.

Dear Chief,

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

Sincerely yours,

The Chief Justice

Copies to the Conference

2.5  
1.5

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

✓  
JAN 23 1976  
JAN 23 1976

January 22, 1976

Re: No. 74-521 - Kiyomasa Y. Doherty, Minister, India

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

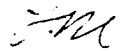
January 14, 1976

Re: No. 74-521 -- Kleppe v. Delta Mining, Inc.

Dear Chief:

Please join me.

Sincerely,

  
T.M.

The Chief Justice

cc: The Conference



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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

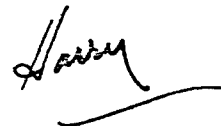
January 9, 1976

Re: No. 74-521 - Kleppe v. Delta Mining, Inc.

Dear Chief:

Please join me in your circulation of January 8.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

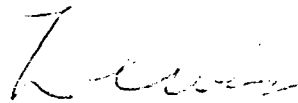
January 9, 1976

No. 74-521 Kleppe v. Delta Mining, Inc.

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference