

# The Burger Court Opinion Writing Database

## *City of Lockhart v. United States*

460 U.S. 125 (1983)

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

December 20, 1982

RE: 81-802 - City of Lockhart v. United States

Dear Lewis:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'C. Powell', written in a cursive style. The signature is positioned to the right of the typed name 'Justice Powell'.

Justice Powell

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

December 16, 1982

RE: No. 81-802 City of Lockhart v. United States  
and Cano

Dear Lewis:

I agree.

Sincerely,



Justice Powell

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

'82 DEC 16 A10:17

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 4, 1983

Re: 81-802 - City of Lockhart  
v. United States and Alfred Cano

---

Dear Lewis,

Please note at the foot of your opinion  
in this case that Justice White dissents.

Sincerely,



Justice Powell

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cpm

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Marshall

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-802

CITY OF LOCKHART, APPELLANT *v.* UNITED STATES AND ALFRED CANO

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[February —, 1983]

JUSTICE MARSHALL, concurring in part and dissenting in part.

I disagree fundamentally with the Court's view that § 5 of the Voting Rights Act permits jurisdictions with a history of voting discrimination to adopt new voting schemes which perpetuate that discrimination. Congress intended the pre-clearance requirement to be a powerful measure for advancing the goals of the Fifteenth Amendment, and specifically reaffirmed that intention when it reenacted the Voting Rights Act in 1982. By holding that § 5 forbids only electoral changes that *increase* discrimination, the Court reduces § 5 to a means of maintaining the status quo. Because the Court's interpretation of § 5 is flatly inconsistent with both the language and the purpose of that provision and is not supported by the decision in *Beer v. United States*, 425 U. S. 130 (1975), I dissent from Parts III and IV of the Court's opinion.

I would affirm the judgment below on the basis of the District Court's conclusion, which this Court in no way questions, that the City of Lockhart's "imposition of the numbered-post and staggered term provisions has clearly had and *will continue to have*" a discriminatory effect on Mexican-American voters. (Emphasis added.)<sup>1</sup> Indeed, it bears re-

<sup>1</sup>I also agree with JUSTICE BLACKMUN that the decision below should be

pp. 7-8

Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Marshall

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# SUPREME COURT OF THE UNITED STATES

No. 81-802

CITY OF LOCKHART, APPELLANT *v.* UNITED STATES AND ALFRED CANO

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[February 23, 1983]

JUSTICE MARSHALL, concurring in part and dissenting in part.

I disagree fundamentally with the Court's view that § 5 of the Voting Rights Act permits jurisdictions with a history of voting discrimination to adopt new voting schemes which perpetuate that discrimination. Congress intended the pre-clearance requirement to be a powerful measure for advancing the goals of the Fifteenth Amendment, and specifically reaffirmed that intention when it reenacted the Voting Rights Act in 1982. By holding that § 5 forbids only electoral changes that *increase* discrimination, the Court reduces § 5 to a means of maintaining the status quo. Because the Court's interpretation of § 5 is flatly inconsistent with both the language and the purpose of that provision and is not supported by the decision in *Beer v. United States*, 425 U. S. 130 (1975), I dissent from Parts III and IV of the Court's opinion.

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<sup>1</sup> I also agree with JUSTICE BLACKMUN that the decision below should be

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 20, 1982

Re: No. 81-802 - City of Lockhart v. United States

Dear Lewis:

I shall await any further writing that is forthcoming in this case. As of now, I could join Part II of your opinion and, if the last sentence of Part I were omitted, I could also join Part I. That sentence, after all, is merely an anticipatory pronouncement of what is set forth in Part IV.

Sincerely,



Justice Powell

cc: The Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Blackmun**

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-802

**CITY OF LOCKHART, APPELLANT v. UNITED STATES AND ALFRED CANO**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

[January —, 1983]

JUSTICE BLACKMUN, concurring in part and dissenting in part.

I join Parts I and II of the Court's opinion, but I dissent from Parts III and IV. My review of the record convinces me that the three-judge District Court's factual finding that the electoral changes introduced in 1973 had a retrogressive effect on the voting rights of Mexican-Americans in the city of Lockhart is not clearly erroneous. I therefore would affirm the judgment of the District Court. At the very least, I would remand the case to that court for it to determine whether the Voting Rights Act Amendments of 1982, Pub. L. 97-205, 96 Stat. 131, have altered the applicable standard under § 5.

DEC 16 1982

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Powell

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-802

**CITY OF LOCKHART, APPELLANT v. UNITED STATES AND ALFRED CANO**

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[December —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

This case requires us to consider the application of § 5 of the Voting Rights Act to the election plan adopted by appellant City of Lockhart in 1973.

I

The City of Lockhart is a community of just under 8,000 people in Caldwell County, Texas, thirty miles south of Austin. According to the most recent census figures, almost 47% of the City's population are Mexican-American. As of 1977, however, fewer than 30% of the City's registered voters were Mexican-American.

Before 1973, Lockhart was a "general law" city. Under Texas law, general-law cities have only those powers that the State specifically permits them to possess. As authorized by State law, Lockhart was governed by a commission consisting of a mayor and two commissioners, all serving the same two-year terms. These offices were filled in April of even-numbered years through at-large elections using a "numbered post" system. Under this system, the two commissioner posts were designated by number, and each candidate for commissioner specified the post for which he or she sought election. Thus each race was effectively a separate election for a separate office.<sup>1</sup>

<sup>1</sup>This numbered-post system may be contrasted with a system in which

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

DEC 10 1982

p. 5 and  
spelling corrections  
on pp. 4, 8

From: Justice Powell

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-802

**CITY OF LOCKHART, APPELLANT v. UNITED STATES AND ALFRED CANO**

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[December —, 1982]

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*in Block*

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 21, 1982

81-802 City of Lockhart v. United States

Dear Harry:

I certainly have no objection to omitting the last sentence in Part I, and will do so on a subsequent draft.

Sincerely,



Justice Blackmun

Copies to the Conference

LFP/vde

PP. 5, 10  
JAN 5 1983

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Powell

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-802

CITY OF LOCKHART, APPELLANT v. UNITED STATES AND ALFRED CANO

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[January —, 1983]

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<sup>1</sup>This numbered-post system may be contrasted with a system in which all of the candidates for the two commissioner posts run in a single election,

NO

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PP. 8-9

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Powell

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4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-802

**CITY OF LOCKHART, APPELLANT v. UNITED STATES AND ALFRED CANO**

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[February —, 1983]

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<sup>1</sup>This numbered-post system may be contrasted with a system in which all of the candidates for the two commissioner posts run in a single election,

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 16, 1982

Re: No. 81-802 City of Lockhart v. United States

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

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JUSTICE MARSHALL

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

December 15, 1982

Re: 81-802 - City of Lockhart v.  
United States

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

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JUSTICE MARSHALL

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CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

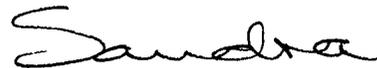
December 15, 1982

Re: No. 81-802 City of Lockhart v. United States  
and Alfred Cano

Dear Lewis,

I have joined your excellent opinion in this case and am well satisfied with it. As a suggestion, however, please consider deleting the phrase "By introducing a new system of government" at the beginning of the last paragraph on page 5. The Solicitor General urged a broad test of that kind to trigger section 5 review, but your rationale appears to be on a narrow, and I think better, ground. To avoid a broader interpretation, perhaps the opening phrase can just be eliminated.

Sincerely,



Justice Powell

SO'C/sd

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JUSTICE SANDRA DAY O'CONNOR

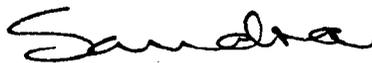
December 15, 1982

Re: No. 81-802 City of Lockhart v. United States  
and Alfred Cano

Dear Lewis,

Please join me in your opinion.

Sincerely,



Justice Powell

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SO'C/sd