

# The Burger Court Opinion Writing Database

*United States v. Locke*

471 U.S. 84 (1985)

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



6

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

CHAMBERS OF  
THE CHIEF JUSTICE

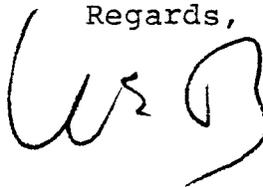
March 28, 1985

RE: 83-1394 - United States v. Locke

Dear Thurgood:

I join.

Regards,



Justice Marshall

Copies to the Conference

W

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

February 25, 1985

No. 83-1394

United States, et al.  
v. Locke, et al.

Dear John,

Please join me.

Sincerely,

*Bill*

Justice Stevens

Copies to the Conference

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

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 12, 1985

83-1394 - United States v. Locke

---

Dear Thurgood,

For the moment, I shall await John's  
separate writing.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Byron R. White".

Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 26, 1985

83-1294 - United States v. Locke

Dear Thurgood,

Please join me in your third draft  
circulated on March 22.

Sincerely yours,



Justice Marshall

Copies to the Conference

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

From: Justice Marshall

Circulated: JAN 24 1985

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 83-1394

UNITED STATES ET AL. *v.* MADISON D. LOCKE  
ET AL.

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

[January —, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

The primary question presented by this appeal is whether the Constitution prevents Congress from providing that holders of unpatented mining claims who fail to comply with the annual filing requirements of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U. S. C. § 1744, shall forfeit their claims.

### I

From the enactment of the general mining laws in the nineteenth century until 1976, those who sought to make their living by locating and developing minerals on federal lands were virtually unconstrained by the fetters of federal control. The general mining laws, 30 U. S. C. § 22 *et seq.*, still in effect today, allow United States citizens to go onto unappropriated, unreserved public land to prospect for and develop certain minerals. "Discovery" of a mineral deposit, followed by the minimal procedures required to formally "locate" the deposit, gives an individual the right of exclusive possession of the land for mining purposes, 30 U. S. C. § 26; as long as \$100 of assessment work is performed annually, the individual may continue to extract and sell minerals from the claim without paying any royalty to the United States, 30 U. S. C. § 28. For a nominal sum, and after certain statutory conditions are fulfilled, an individual may patent the claim,

Pp 13, 21  
In 16 omitted

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

From: Justice Marshall

Circulated: \_\_\_\_\_

Recirculated: JAN 29 1985

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1394

UNITED STATES, ET AL., APPELLANTS *v.* MADISON  
D. LOCKE ET AL.

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

[January —, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

The primary question presented by this appeal is whether the Constitution prevents Congress from providing that holders of unpatented mining claims who fail to comply with the annual filing requirements of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U. S. C. § 1744, shall forfeit their claims.

I

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 29, 1985

Re: No. 83-1394-United States v. Locke

Dear Bill:

I have already circulated a new draft.

Sincerely,

*J.M.*

T.M.

Justice Rehnquist

cc: The Conference

3, 4, 5, 10, 11, 12, 14,  
17, 18, 19, 20, 21,  
22, 23

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

From: Justice Marshall

Circulated: \_\_\_\_\_

Recirculated: MAR 22 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1394

UNITED STATES, ET AL., APPELLANTS *v.*  
MADISON D. LOCKE ET AL.

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

[March —, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

The primary question presented by this appeal is whether the Constitution prevents Congress from providing that holders of unpatented mining claims who fail to comply with the annual filing requirements of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U. S. C. § 1744, shall forfeit their claims.

I

From the enactment of the general mining laws in the nineteenth century until 1976, those who sought to make their living by locating and developing minerals on federal lands were virtually unconstrained by the fetters of federal control. The general mining laws, 30 U. S. C. § 22 *et seq.*, still in effect today, allow United States citizens to go onto unappropriated, unreserved public land to prospect for and develop certain minerals. "Discovery" of a mineral deposit, followed by the minimal procedures required to formally "locate" the deposit, gives an individual the right of exclusive possession of the land for mining purposes, 30 U. S. C. § 26; as long as \$100 of assessment work is performed annually, the individual may continue to extract and sell minerals from the claim without paying any royalty to the United States, 30 U. S. C. § 28. For a nominal sum, and after certain statutory conditions are fulfilled, an individual may patent the claim,

3,4  
omission p18

MAR 29 1985

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

### SUPREME COURT OF THE UNITED STATES

No. 83-1394

UNITED STATES, ET AL., APPELLANTS *v.*  
MADISON D. LOCKE ET AL.

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

[April 1, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

The primary question presented by this appeal is whether the Constitution prevents Congress from providing that holders of unpatented mining claims who fail to comply with the annual filing requirements of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U. S. C. § 1744, shall forfeit their claims.

#### I

From the enactment of the general mining laws in the nineteenth century until 1976, those who sought to make their living by locating and developing minerals on federal lands were virtually unconstrained by the fetters of federal control. The general mining laws, 30 U. S. C. § 22 *et seq.*, still in effect today, allow United States citizens to go onto unappropriated, unreserved public land to prospect for and develop certain minerals. "Discovery" of a mineral deposit, followed by the minimal procedures required to formally "locate" the deposit, gives an individual the right of exclusive possession of the land for mining purposes, 30 U. S. C. § 26; as long as \$100 of assessment work is performed annually, the individual may continue to extract and sell minerals from the claim without paying any royalty to the United States, 30 U. S. C. § 28. For a nominal sum, and after certain statutory conditions are fulfilled, an individual may patent the claim,

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 28, 1985

Re: No. 83-1394 - United States v. Locke

Dear Thurgood:

Would you consider eliminating footnote 16 on page 21? If you see your way clear to make this change, you have my joinder.

Sincerely,

*H. A. B.*

Justice Marshall

cc: The Conference

*1/28 Agree  
with mika etc  
change*

①

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 30, 1985

Re: No. 83-1394 - United States v. Locke

Dear Thurgood:

I am glad to join your recirculation of January 29.

Sincerely,



Justice Marshall

cc: The Conference

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

November 15, 1984

83-1394 United States v. Locke

Dear John:

As you and I voted to affirm in this case, I would appreciate your writing a dissent along the lines that persuaded me to agree with you.

As you know, I also think there is a serious procedural due process issue - a view that Sandra shares. Her vote, however, was tentatively to reverse. If she should conclude to write on the due process issue and affirm on that basis, I may also join her or say that if it were necessary to reach the constitutional issue I would agree. I do not think, however, that it is necessary to make a constitutional decision.

Sincerely,

Justice Stevens

lfp/ss

cc: Justice O'Connor

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 19, 1985

83-1394 UNITED STATES v. LOCKE

Dear Thurgood:

I will await John's dissent.

Sincerely,

L.F.P. ldro

Justice Marshall

Copies to the Conference

LFP/vde

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 22, 1985

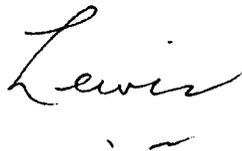
83-1394 United States v. Locke

Dear Thurgood:

Although I agree with much of John's dissent, I find that my view of the case differs in some respects.

I therefore will write a separate dissent emphasizing my due process concern.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

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03/20

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

From: Justice Powell

Circulated: MAR 20 1985

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 83-1394

UNITED STATES, ET AL., APPELLANTS *v.* MADISON  
D. LOCKE ET AL.

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

[March —, 1985]

JUSTICE POWELL, dissenting.

I agree with much of JUSTICE STEVENS's dissent. I write separately only because under the special circumstances of this case I do not believe it necessary to decide what Congress actually intended. Even if the Court is correct in believing that Congress intended to require filings on or before the next-to-the-last day of the year, rather than, more reasonably, by the end of the calendar year itself, the statutory deadline is too uncertain to satisfy constitutional requirements. It simply fails to give property holders clear and definite notice of what they must do to protect their existing property interests.

As the Court acknowledges, *ante*, at 1-2, the Government since the nineteenth century has encouraged its citizens to discover and develop certain minerals on the public lands. Under the general mining laws, 30 U. S. C. §22 *et seq.*, an individual who locates a mining claim has the right of exclusive possession of the land for mining purposes and may extract and sell minerals he finds there without paying a royalty to the federal government. *Id.* §26. After making a valuable mineral discovery, the claimant may hold the claim so long as he performs \$100 worth of assessment work each year. *Id.* §28. If he performs certain additional conditions, the claimant may patent the claim for a nominal sum and thereby obtain further rights over the land and minerals.

03/27

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

From: Justice Powell

Circulated: \_\_\_\_\_

Recirculated: MAR 28 1985

changes:  
4-6

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1394

UNITED STATES, ET AL., APPELLANTS *v.* MADISON  
D. LOCKE ET AL.

ON APPEAL FROM THE UNITED STATES COURT FOR THE DIS-  
TRICT OF NEVADA

[March —, 1985]

JUSTICE POWELL, dissenting.

I agree with much of JUSTICE STEVENS's dissent. I write separately only because under the special circumstances of this case I do not believe it necessary to decide what Congress actually intended. Even if the Court is correct in believing that Congress intended to require filings on or before the next-to-the-last day of the year, rather than, more reasonably, by the end of the calendar year itself, the statutory deadline is too uncertain to satisfy constitutional requirements. It simply fails to give property holders clear and definite notice of what they must do to protect their existing property interests.

As the Court acknowledges, *ante*, at 1-2, the Government since the nineteenth century has encouraged its citizens to discover and develop certain minerals on the public lands. Under the general mining laws, 30 U. S. C. §22 *et seq.*, an individual who locates a mining claim has the right of exclusive possession of the land for mining purposes and may extract and sell minerals he finds there without paying a royalty to the federal government. *Id.* §26. After making a valuable mineral discovery, the claimant may hold the claim so long as he performs \$100 worth of assessment work each year. *Id.* §28. If he performs certain additional conditions, the claimant may patent the claim for a nominal sum and thereby obtain further rights over the land and minerals.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 25, 1985

Re: No. 83-1394 United States v. Locke.

Dear Thurgood,

I agree with most of your opinion and of course with the result, but I do not agree with the manner in which you have treated our "irrebuttable presumption" cases in your footnote 16, and I have some reservation about the sweep of your footnote 12 discussing the rather complicated subject of property rights. I will probably write separately on these points.

Sincerely,

*Wm*

Justice Marshall

cc: The Conference

84 101 32 01 31

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

From: Justice Rehnquist

Circulated: 1/29/85

Recirculated: \_\_\_\_\_

P. 2

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 83-1394

UNITED STATES, ET AL., APPELLANTS *v.* MADISON  
D. LOCKE ET AL.

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

[January —, 1985]

JUSTICE REHNQUIST concurring.

I agree with parts I, II, and III of the Court's opinion, and with its judgment. I agree with much that is said in part IV, but I do not agree that the Court's wide ranging discussion of Fifth Amendment "property," a discussion principally contained in a footnote, is necessary to this case. Nor do I agree with the Court's discussion of our "irrebuttable presumption" cases, a discussion again confined almost entirely to a footnote. I therefore write separately.

"Property" for purposes of the Due Process Clause of the Fifth Amendment does not exist *in vacuo*, and it is not necessary in order to decide this case to discourse at large on the nature of property in general. Respondents in this case were owners of unpatented mining claims on the public domain, and as such the "property interest" that they possessed was by no means identical to the other types of property with which this Court was concerned in the various cases which the Court discusses in footnote 12. An unpatented mining claim is a "unique form of property," *Best v. Humboldt Placer Mining Co.*, 371 U. S. 334 (1963), "a possessory interest in land that is 'mineral in character' and as respects which discovery 'within the limits of the claim' has been made. *Cameron v. United States*, 252 U. S. 450, 456." *Ibid.*

"A mining location which has not gone to patent is of no higher quality and no more immune from attack and



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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 29, 1985

Re: No. 83-1394 United States v. Locke

Dear Thurgood,

If you could see fit to accommodate some of the ideas in the separate concurrence I circulated this morning, I would be happy to withdraw it and join your opinion in toto.

Sincerely,

*WHR*

Justice Marshall

cc: The Conference

~~Dear Bill~~

I have already circulated a new draft

*WHR*

cc Calame

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

From: Justice Rehnquist

Circulated: \_\_\_\_\_

Recirculated: 2/5/85

Pp 1-4

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1394

UNITED STATES, ET AL., APPELLANTS *v.* MADISON  
D. LOCKE ET AL.

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

[February —, 1985]

JUSTICE REHNQUIST, concurring.

I agree with parts I, II, and III of the Court's opinion, and with its judgment. I agree with much that is said in part IV, but I do not agree that the Court's wide ranging discussion of Fifth Amendment "property," a discussion principally contained in a footnote, is necessary to this case. Nor do I understand how the Court can reverse without dealing with the "irrebuttable presumption" basis of the District Court's decision. I therefore write separately.

"Property" for purposes of the Due Process Clause of the Fifth Amendment does not exist *in vacuo*, and it is not necessary in order to decide this case to discourse at large on the nature of property in general. Respondents in this case were owners of unpatented mining claims on the public domain, and as such the "property interest" that they possessed was by no means identical to the other types of property with which this Court was concerned in the various cases which the Court discusses in footnote 12. An unpatented mining claim is a "unique form of property," *Best v. Humboldt Placer Mining Co.*, 371 U. S. 334 (1963), "a possessory interest in land that is 'mineral in character' and as respects which discovery 'within the limits of the claim' has been made. *Cameron v. United States*, 252 U. S. 450, 456." *Ibid.*

"A mining location which has not gone to patent is of no higher quality and no more immune from attack and

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3

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 25, 1985

Re: No. 83-1394 United States v. Locke

Dear Thurgood,

Please join me.

Sincerely,

*Wm*  
*P.S. I withdraw my concurrence*

Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS



November 15, 1984

Re: 83-1394 - United States v. Locke

Dear Lewis:

I will be happy to prepare a dissent on the  
statutory question.

Respectfully,

A handwritten signature in cursive script, appearing to read "John P. Stevens", is written below the word "Respectfully,".

Justice Powell

cc: Justice O'Connor

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 28, 1985

Re: 83-1394 - United States v. Locke

Dear Thurgood:

As soon as I can get to it I will try my hand at  
a dissent.

Respectfully,

A handwritten signature in dark ink, appearing to be 'J.M.' with a flourish, and the initials 'J.M.' written in smaller letters below it.

Justice Marshall

Copies to the Conference

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

From: Justice Stevens

Circulated: FEB 21 1985

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1394

UNITED STATES, ET AL., APPELLANTS *v.*  
MADISON D. LOCKE ET AL.

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

[February —, 1985]

JUSTICE STEVENS, dissenting.

The Court's opinion is contrary to the intent of Congress, engages in unnecessary constitutional adjudication, and unjustly creates a trap for unwary property owners. First, the choice of the language "prior to December 31" when read in context in 43 U. S. C. § 1744(a)<sup>1</sup> is, at least, ambiguous,

<sup>1</sup> The full text of 43 U. S. C. § 1744, which the Court does not deem necessary to quote, reads as follows:

"Recordation of Mining Claims

"(a) Filing requirements

"The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976 and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after October 21, 1976 shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

"(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by section 28-1 of title 30, relating thereto.

"(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to para-

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

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES 1, 3, 4, 8, 9

From: **Justice Stevens**

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

FEB 26 1985

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 83-1394

UNITED STATES, ET AL., APPELLANTS *v.*  
MADISON D. LOCKE ET AL.

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

[March —, 1985]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins,  
dissenting.

The Court's opinion is contrary to the intent of Congress, engages in unnecessary constitutional adjudication, and unjustly creates a trap for unwary property owners. First, the choice of the language "prior to December 31" when read in context in 43 U. S. C. § 1744(a)<sup>1</sup> is, at least, ambiguous, and,

<sup>1</sup> The full text of 43 U. S. C. § 1744, which the Court does not deem necessary to quote, reads as follows:

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"(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by section 28-1 of title 30, relating thereto.

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*Footnotes renumbered 8-27  
" 8 deleted*

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

From: **Justice Stevens**

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES:

*1, 4, 6, 8, 9-10*

Circulated: \_\_\_\_\_

Recirculated: MAR 27 1985

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1394

UNITED STATES, ET AL., APPELLANTS *v.*  
MADISON D. LOCKE ET AL.

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

[March —, 1985]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins,  
dissenting.

The Court's opinion is contrary to the intent of Congress,  
engages in unnecessary constitutional adjudication, and un-  
justly creates a trap for unwary property owners. First, the  
choice of the language "prior to December 31" when read in  
context in 43 U. S. C. § 1744(a)<sup>1</sup> is, at least, ambiguous, and,

*Footnote 1*

<sup>1</sup>The full text of 43 U. S. C. § 1744 reads as follows:

"Recordation of Mining Claims

"(a) Filing requirements

"The owner of an unpatented lode or placer mining claim located prior to  
October 21, 1976, shall, within the three-year period following October 21,  
1976 and prior to December 31 of each year thereafter, file the instruments  
required by paragraphs (1) and (2) of this subsection. The owner of an  
unpatented lode or placer mining claim located after October 21, 1976 shall,  
prior to December 31 of each year following the calendar year in which the  
said claim was located, file the instruments required by paragraphs (1) and  
(2) of this subsection:

"(1) File for record in the office where the location notice or certificate is  
recorded either a notice of intention to hold the mining claim (including but  
not limited to such notices as are provided by law to be filed when there has  
been a suspension or deferment of annual assessment work), an affidavit of  
assessment work performed thereon, on a detailed report provided by sec-  
tion 28-1 of title 30, relating thereto.

"(2) File in the office of the Bureau designated by the Secretary a copy  
of the official record of the instrument filed or recorded pursuant to para-

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

January 25, 1985

re: 83-1394 United States et al. v. Madison D. Locke, et al.

Dear Thurgood,

For the present I will await further writing  
in this case.

Sincerely,



Justice Marshall

Copies to the Conference



CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

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

February 22, 1985

Re: 83-1394 United States v. Locke

Dear Thurgood,

I will wait for Lewis' dissent.

Sincerely,

Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR



March 26, 1985

Re: 83-1394, United States v. Locke

Dear Lewis,

I have struggled with this case since it was first argued. I had planned to dissent but am reluctant to join John's unusual interpretation and am also concerned about joining your excellent opinion which would say a constitutional error was made. I have decided, rather unhappily, to join the majority but write separately on the estoppel ground which is open on remand. It is one of those cases for which there is no good solution.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra", is written below the word "Sincerely,".

Justice Powell



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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 27, 1985

No. 83-1394 United States v. Locke

Dear Thurgood,

Please join me in your opinion. I will be circulating a brief concurrence.

Sincerely,

Justice Marshall

Copies to the Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: **Justice O'Connor**

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Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1394

UNITED STATES, ET AL., APPELLANTS *v.* MADISON  
D. LOCKE ET AL.

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

[March —, 1985]

JUSTICE O'CONNOR, concurring.

I agree that the District Court erred in holding that § 314(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U. S. C. § 1744(c), violates due process by creating an "irrebuttable presumption" of abandonment. Whatever the force of *Vlandis v. Kline*, 412 U. S. 441 (1973), beyond the facts underlying that case, I believe that § 314(c) comports with due process under the analysis of our later decision in *Weinberger v. Salfi*, 422 U. S. 749 (1975). Because I also believe that the statute does not otherwise violate the Fifth Amendment and that the District Court erred in its alternative holding that substantial compliance satisfies the filing requirements of § 314 and corresponding regulations, I agree that the judgment below must be reversed. Nonetheless, I share many of the concerns expressed in the dissenting opinions of JUSTICE POWELL and JUSTICE STEVENS. If the facts are as alleged by appellees, allowing the Bureau of Land Management (BLM) to extinguish active mining claims that appellees have owned and worked for more than 20 years would seem both unfair and inconsistent with the purposes underlying FLPMA.

The Government has not disputed that appellees sought in good faith to comply with the statutory deadline. Appellees contend that in order to meet the requirements of § 314, they contacted the BLM and were informed by agency personnel

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