

# The Burger Court Opinion Writing Database

*Pittsburgh v. Alco Parking Corp.*

417 U.S. 369 (1974)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



  
CHAMBERS OF  
THE CHIEF JUSTICE

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

May 2, 1974

Re: Reassignment of Opinions  
73 - 582 - Pittsburgh v. Alco Parking Corp.  
73-831 - Warden v. Marrero

MEMORANDUM TO THE CONFERENCE:

With respect to the above cases, a need for reassignment has developed:

73-582 - Pittsburgh v. Alco Parking Corporation is re-assigned to Byron with the full approval of Harry Blackmun. When I made this assignment I overlooked the fact that Byron had a substantial investment of time and, essentially, an opinion drafted in this case. Originally his dissent from the denial of cert, which you may recall, was what persuaded many of us to the granting of the writ.

73-831 As to Marrero, in view of Thurgood's memorandum of May 1, it is being reassigned to Bill Brennan with his full approval.

Regards,

WEB  
MD

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 29, 1974

Re: 73-582 - Pittsburgh v. Alco Parking Corporation

Dear Byron:

Please join me.

Regards,

WJB

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 14, 1973

Dear Byron:

In 73-582, Pittsburgh v. Alco Parking  
Corp. please join me in your dissent.

WOD  
by sp

WILLIAM O. DOUGLAS

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

May 23, 1974

Dear Byron:

In 73-582, Pittsburgh v. Alco  
Parking Corp. please join me in your  
opinion.

WW

William O. Douglas

Mr. Justice White

cc: The Conference

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 23, 1974

RE: No. 73-582 City of Pittsburgh v. Alco  
Parking Corp.

Dear Byron:

I agree.

Sincerely,

But

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 14, 1973

No. 73-582, Pittsburgh v. Alco  
Parking Corporation

Dear Byron,

The dissenting opinion you have  
circulated persuades me, and I join it.  
Since at least one of our colleagues has indi-  
cated a disposition to "join three," I suggest  
that the case be re-listed.

Sincerely yours,

*PS*

Mr. Justice White

Copies to the Conference

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

MEMBERS OF  
JUSTICE POTTER STEWART

May 23, 1974

NO. 73-582 - Pittsburgh v. Alco Parking

~~Dear~~ Byron,

I am glad to join the opinion you have  
~~written~~ written for the Court in this case.

Sincerely yours,

*P.S.*

~~Mr.~~ Justice White

Copies to the Conference



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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: 12-19-73

CITY OF PITTSBURGH v. ALCO PARKING  
CORPORATION ET AL.

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

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME  
COURT OF PENNSYLVANIA, WESTERN DISTRICT

No. 73-582. Decided December —, 1973

MR. JUSTICE WHITE, dissenting:

Pursuant to Pennsylvania's Local Tax Enabling Act, 53 P. S. §§ 6901 *et seq.* (1965), the petitioner City of Pittsburgh, through an ordinance passed by the City Council to be effective February 1, 1970, imposed, for general revenue purposes, a 20% gross receipts tax on all operators of nonresidential, *i. e.*, commercial, parking places within the city. The ordinance replaced a similar one enacted in 1968 establishing a rate of 15% of gross receipts, which had in turn replaced a 1962 ordinance levying a 10% tax. Respondents, a group of operators and owners of nearly 71% of the available commercial parking facilities in Pittsburgh, sued to enjoin enforcement of the ordinance and obtain refunds of taxes paid under it,<sup>1</sup> claiming that the tax confiscated their property and, by separately taxing commercial parking operations, violated the uniformity clause of the Pennsylvania Constitution and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

Respondent's position was wholly rebuffed in the state trial and intermediate appellate courts, and the Supreme Court of Pennsylvania expressly rejected the claim of

<sup>1</sup> A new ordinance, effective April 1, 1973, was enacted while the respondents' appeal was pending before the Pennsylvania Supreme Court, and it imposes a 20% tax on the amounts paid by patrons of the commercial parking facilities, to be collected by the operators, instead of a direct tax on the operators' gross receipts.

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

From: White, J.

1st DRAFT

Circulated: 5-23-74

**SUPREME COURT OF THE UNITED STATES**

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

No. 73-582

City of Pittsburgh,  
Petitioner,  
v.  
Alco Parking Corporation  
et al. } On Writ of Certiorari to the  
Supreme Court of Pennsylv-  
ania for the Western Dis-  
trict.

[May —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is the validity under the Federal Constitution of Ordinance No. 704, which was enacted by the Pittsburgh, Pennsylvania, City Council in December 1969, and which placed a 20% tax on the gross receipts obtained from all transactions involving the parking or storing of a motor vehicle at a nonresidential parking place in return for a consideration.<sup>1</sup> The ordinance

<sup>1</sup> The ordinance defined a nonresidential parking place as follows:

"(c) 'Non-Residential Parking Place' or 'Parking Place'—any place within the City, whether wholly or partially enclosed or open, at which motor vehicles are parked or stored for any period of time in return for a consideration not including:

"(i) any parking area or garage to the extent that it is provided or leased to the occupants of a residence on the same or other premises for use only in connection with, and as accessory to, the occupancy of such residence; and (ii) any parking area or garage operated exclusively by an owner or lessee of a hotel, an apartment hotel, tourist court or trailer park, to the extent that the parking area or garage is provided to guests or tenants of such hotel, tourist court or trailer park for no additional consideration.

"As used herein, the term 'residence' includes (i) any building designed and used for family living or sleeping purposes other than

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES:

*Brew*  
*Please join me*  
*MH*

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

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

No. 73-582

Recirculated: 5/28/74

City of Pittsburgh,  
Petitioner,  
v.  
Alco Parking Corporation  
et al.

On Writ of Certiorari to the  
Supreme Court of Pennsylv-  
ania for the Western Dis-  
trict.

[May —, 1974]

MR. JUSTICE WHITE delivered the opinion of the  
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"(c) 'Non-Residential Parking Place' or 'Parking Place'—any place  
within the City, whether wholly or partially enclosed or open, at  
which motor vehicles are parked or stored for any period of time in  
return for a consideration not including:

"(i) any parking area or garage to the extent that it is provided  
or leased to the occupants of a residence on the same or other prem-  
ises for use only in connection with, and as accessory to, the  
occupancy of such residence, and (ii) any parking area or garage  
operated exclusively by an owner or lessee of a hotel, an apartment  
hotel, tourist court or trailer park, to the extent that the parking  
area or garage is provided to guests or tenants of such hotel, tourist  
court or trailer park for no additional consideration.

"As used herein, the term 'residence' includes (i) any building  
designed and used for family living or sleeping purposes other than

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 20, 1973

Re: No. 73-582 -- City of Pittsburgh v. Alco Parking  
Corporation et al.

Dear Byron:

Please join me in your dissent.

Sincerely,

*TM*  
T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 29, 1974

Re: No. 73-582 -- City of Pittsburgh v. Alco Parking  
Corporation

Dear Byron:

Please join me.

Sincerely,

*T.M.*

T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 24, 1974

Dear Byron:

Re: No. 73-582 - Pittsburgh v. Alco Parking

Please join me.

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 20, 1973

No. 73-582 City of Pittsburgh v. Alco  
Parking Corporation, et al

Dear Byron:

Upon further consideration, I have been persuaded by your  
dissenting opinion as circulated on December 13. Please join me.

Sincerely,

*Lewis*

Mr. Justice White

cc: The Conference

lfp/ss

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 2, 1974

No. 73-582 Pittsburgh v. Alco Parking

Dear Byron:

Please join me in your opinion for the Court.

As I have indicated to you, I may add a brief concurrence.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference



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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-582

Circulated: JUN 6 1974

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

City of Pittsburgh,  
Petitioner,  
v.  
Alco Parking Corporation  
et al.

On Writ of Certiorari to the  
Supreme Court of Pennsyl-  
vania for the Western Dis-  
trict.

[June —, 1974]

MR. JUSTICE POWELL, concurring.

The opinion of the Court fully explicates the issue presented here, and I am in accord with its resolution. I write briefly only to emphasize my understanding that today's decision does not foreclose the possibility that some combination of unreasonably burdensome taxation and direct competition by the taxing authority might amount to a taking of property without just compensation in violation of the Fifth and Fourteenth Amendments.

To some extent, private business is inevitably handicapped by direct governmental competition, but the opinion of the Court makes plain that the legitimate exercise of the taxing power is not to be restrained on this account. It is conceivable, however, that heavy taxation of a private industry and direct economic competition through a governmental entity enjoying special competitive advantages would effectively expropriate a private business for public profit. Such a combination of unreasonably burdensome taxation and public competition would be the functional equivalent of a governmental taking of private property for public use and would be subject to the constitutional requirement of just compensation. As the opinion of the Court clearly reveals, *ante*, at 8-9, no such circumstance has been shown to exist in the instant case.

*Punitive*

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 28, 1974

Re: No. 73-582 - Pittsburgh v. Alco Parking

Dear Byron:

Please join me in the opinion for the Court you have prepared in this case.

Sincerely,



Mr. Justice White

Copies to the Conference

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