

# The Burger Court Opinion Writing Database

*Holt Civic Club v. Tuscaloosa*  
439 U.S. 60 (1978)

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

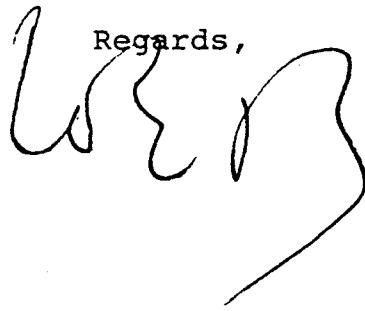
November 15, 1978

Dear Bill:

Re: 77-515 Holt Civic Club v. City of Tuscaloosa

I join.

Regards,

A handwritten signature consisting of the letters 'W' and 'B' joined together in a cursive style.

Mr. Justice Rehnquist

cc: The Conference

For: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Brennan

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1st DRAFT

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## SUPREME COURT OF THE UNITED STATES

No. 77-515

Holt Civic Club, Etc., et al., On Appeal from the United  
Appellants, } States District Court for  
v. } the Northern District of  
City of Tuscaloosa, Etc., et al. Alabama.

[November —, 1978]

MR. JUSTICE BRENNAN, dissenting.

Alabama creates by statute an area of "police jurisdiction" encompassing all adjoining territory within three miles of the corporate limits of cities with a population of 6,000 or more. Within this police jurisdiction Alabama law provides that "[o]rdinances of a city . . . enforcing police or sanitary regulations and prescribing fines and penalties thereof shall have force and effect . . ." Ala. Code § 11-40-10 (1975).<sup>1</sup> Alabama law provides in addition that a city "may fix and collect licenses for any business, trade or profession done within the police jurisdiction of such city . . . provided, that the amount of such licenses shall not be more than one half the amount charged and collected as a license for like business, trade or profession done within the corporate limits of such city . . ." Ala. Code § 11-51-91 (1975).<sup>2</sup> At the time this lawsuit commenced on August 7, 1973, Alabama vested jurisdiction of the prosecution of breaches of municipal ordinances occurring within a police jurisdiction in a recorders' court.<sup>3</sup>

<sup>1</sup> At the time this lawsuit commenced, this statute was codified at Ala. Code Tit. 37, § 9 (1958).

<sup>2</sup> At the time appellants filed their complaint, this statute was found at Ala. Code Tit. 37, § 733 (1958). Minor changes in wording were effected during recodification.

<sup>3</sup> Ala. Code Tit. 37, § 585 (1958) provided:

"It shall be the duty of the recorder to keep an office in the city, and hear and determine all cases for the breach of the ordinances and by-laws of

1,2,4-8,9,10

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Brennan

No. 77-515

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Holt Civic Club, Etc., et al., | On Appeal from the United  
Appellants, | States District Court for  
v. | the Northern District of  
City of Tuscaloosa, Etc., et al. | Alabama.

[November —, 1978]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE WHITE  
and MR. JUSTICE MARSHALL join, dissenting.

Alabama creates by statute an area of "police jurisdiction" encompassing all adjoining territory within three miles of the corporate limits of cities with a population of 6,000 or more. Within this police jurisdiction Alabama law provides that "[o]rdinances of a city . . . enforcing police or sanitary regulations and prescribing fines and penalties thereof shall have force and effect . . ." Ala. Code § 11-40-10 (1975).<sup>1</sup> Alabama law provides in addition that a city "may fix and collect licenses for any business, trade or profession done within the police jurisdiction of such city . . . provided, that the amount of such licenses shall not be more than one half the amount charged and collected as a license for like business, trade or profession done within the corporate limits of such city . . ." Ala. Code § 11-51-91 (1975).<sup>2</sup> At the time this lawsuit commenced on August 7, 1973, Alabama vested jurisdiction of the prosecution of breaches of municipal ordinances occurring within a police jurisdiction in a recorders' court,<sup>3</sup>

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 2, 1978

Re: No. 77-515, Holt Civic Club v. Tuscaloosa

Dear Bill,

I am glad to join your opinion for the  
Court.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 4, 1978

Re: No. 77-515 - Holt Civic Club v.  
City of Tuscaloosa

Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Brennan  
Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 3, 1978

Re: No. 77-515 - Holt Civic Club v. Tuscaloosa

Dear Bill:

I await the dissent.

Sincerely,

*T.M.*  
T.M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 6, 1978

Re: No. 77-515 - Holt Civic Club v. Tuscaloosa

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 15, 1978

Re: No. 77-515 - Holt Civic Club v. City of  
Tuscaloosa

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

November 8, 1978

No. 77-515 Holt Civic Club v. Tuscaloosa

Dear Bill:

As I indicate in a separate note, I am glad to join your second draft.

The addition made to footnote 8 meets a concern that I had planned to mention.

As to new footnote 7, I have thought that Cornman was distinguishable primarily because of the pervasiveness there of state regulation, including the fact that NIH residents were subject to various forms of Maryland taxation. Some reference to these differences might strengthen the footnote.

One other comment about your opinion: you quote the language from McGowan (p. 11) that I have never liked. This is not simply a "lower tier" standard; it is virtually no standard at all. But the language has been repeated from time to time and is not much different from your quotation from Salyer Land Co. (p. 14). Although I will join you, I lay claim to some reciprocity when I rely - as I will - on a rational basis standard that allows some latitude for judicial review.

I am reminded of our extended exchanges in Murqia!

Sincerely,

Mr. Justice Rehnquist

1fp/ss

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 8, 1978

No. 77-515 Holt Civic Club v. Tuscaloosa

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

lfp/ss

*G. S.*  
*W. R.*  
*10/10/78*

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

From: Mr. Justice F.

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**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 77-515

Holt Civic Club, Etc., et al., On Appeal from the United  
Appellants, } States District Court for  
v. } the Northern District of  
City of Tuscaloosa, Etc., et al., Alabama.

[November —, 1978]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Holt is a small, largely rural, unincorporated community located on the northeastern outskirts of Tuscaloosa, the fifth largest city in Alabama. Because the community is within the three-mile police jurisdiction circumscribing Tuscaloosa's corporate limits, its residents are subject to the city's "police and sanitary regulations." Ala. Code § 11-40-10 (1975).<sup>1</sup> Holt residents are also subject to the criminal jurisdiction of the city's court, Ala. Code § 12-14-10 (1975),<sup>2</sup> and to the city's power to license businesses, trades, and professions, Ala. Code

The full text of § 11-40-10 provides:

The police jurisdiction in cities having 6,000 or more inhabitants shall cover all adjoining territory within three miles of the corporate limits, and in cities having less than 6,000 inhabitants and in towns, such police jurisdiction shall extend also to the adjoining territory within a mile and a half of the corporate limits of such city or town.

Ordinances of a city or town enforcing police or sanitary regulations and prescribing fines and penalties for violations thereof shall have force and effect in the limits of the city or town and in the police jurisdiction thereof and on any property or rights-of-way belonging to the city or town. (Code 1907, § 1230, Code 1923, § 1954, Code 1940, T. 37, § 9.)<sup>3</sup>

The municipal court shall have jurisdiction of all prosecutions for the breach of the ordinances of the municipality within its police jurisdiction. (Ala. Code § 12-14-1 (b) (1975).)

*3, Q-13415*

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

From: Mr. Justice Rehnquist

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**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 77-515**

Holt Civic Club, Etc., et al., On Appeal from the United  
Appellants, States District Court for  
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City of Tuscaloosa, Etc., et al., Alabama.

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<sup>2</sup> "The municipal court shall have jurisdiction of all prosecutions for the breach of the ordinances of the municipality within its police jurisdiction." Ala. Code § 12-14-1 (b) (1975).

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 10, 1977

Re: No. 77-515 Holt Civic Club v. Tuscaloosa

Dear Lewis:

I will be happy to refer to the extensive powers to levy taxes which Congress had permitted Maryland to exercise in the Cornman case. I think it would fit a little more logically into footnote 8, where we respond to the dissent by pointing out the powers which the City of Tuscaloosa did not have here; I would simply add in that footnote that the State of Maryland did possess authority to levy income, sales, use, and gasoline taxes in that case.

I do not regard your joining of this opinion as any sort of an accord and satisfaction of the well-remembered Murgia dispute, and I will try to indulge the same latitude in joining an opinion which expresses your side of that argument as you have in joining my opinion in this case.

Sincerely,

Mr. Justice Powell

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

9.13

From: Mr. Justice Rehnquist

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-515

Holt Civic Club, Etc., et al., | On Appeal from the United  
Appellants, | States District Court for  
v. | the Northern District of  
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[November —, 1978]

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

77-515

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 9, 1979

MEMORANDUM TO THE CONFERENCE

Re: Case held for Holt Civic Club v. City of Tuscaloosa

(77-515)

Only one case, Cantwell v. Hudnut, No. 77-1651, was held for Holt, and if anyone wondered what we could do for an encore after deciding Holt, the answer is clear: We could grant certiorari in this case. It is actually the "flip" side of Holt: In Holt, nonresidents of Tuscaloosa argued that they were entitled to vote in municipal elections. Here, in contrast residents of a political subdivision contend that their votes are unconstitutionally diluted by the voting participation on the subdivision's governing body of officers of a larger governmental body which includes the political subdivision in question but other areas as well.

The Court of Appeals for the Seventh Circuit (Tone and Wood; Fairchild, Chief Judge, dissenting) upheld each of the three statutory provisions in question. Those provisions allowed for city-county councilmen elected at large from the "Uni-Gov area" (a consolidation of the local governments of Indianapolis and Marion County) to sit on the councils of special police and fire districts, which are less than co-extensive with the Uni-Gov area, to vote at Uni-Gov council meetings on the business of those special districts, and to vote on the issue of the confirmation of the Uni-Gov Director of Public Safety, whose principal duties relate to the special service districts. Residents of the special service districts challenge these provisions of Indiana law on the ground that the provisions unconstitutionally dilute their voting rights.

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

From: Mr. Justice Stevens  
NOV 14 1978  
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## SUPREME COURT OF THE UNITED STATES

No. 77-515

Holt Civic Club, Etc., et al., On Appeal from the United  
Appellants. } States District Court for  
v. } the Northern District of  
City of Tuscaloosa, Etc., et al. Alabama.

[November —, 1978]

MR. JUSTICE STEVENS, concurring.

The Court today holds that the Alabama statutes providing for the extraterritorial exercise of certain limited powers by municipalities are not unconstitutional. While I join the opinion of the Court, I write separately to emphasize that this holding does not make all exercises of extraterritorial authority by a municipality immune from attack under the Equal Protection Clause of the Constitution.

The Alabama Legislature, which is elected by all of the citizens of the State including appellants, has prescribed a statewide program pursuant to which residents of police jurisdictions are subject to limited regulation by, and receive certain services from, adjacent cities. In return, those residents who are engaged in business are charged license fees equal to one-half those charged to city businesses. In my view, there is nothing necessarily unconstitutional about such a system. Certainly there is nothing in the Federal Constitution to prevent a suburb from contracting with a nearby city to provide municipal services for its residents, even though those residents have no voice in the election of the city's officials or in the formulation of the city's rules. That is essentially what Alabama has accomplished here, through the elected representatives of all its citizens in the state legislature.<sup>1</sup>

<sup>1</sup> I recognize that there is a difference between a suburb's decision to contract with a nearby city and a decision by the state legislature requir-

— P.4

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

From: Mr. Justice Stevens

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-515

Holt Civic Club, Etc., et al., On Appeal from the United  
Appellants, } States District Court for  
v. } the Northern District of  
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[November —, 1978]

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<sup>1</sup> I recognize that there is a difference between a suburb's decision to contract with a nearby city and a decision by the state legislature requir-