

The Burger Court Opinion Writing Database

Capital Cities Media, Inc. v. Crisp

467 U.S. 691 (1984)

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

September 29, 1983

Re: No. 82-1795 - Capital Cities Cable, Inc. v. Crisp

Dear Bill:

I agree with your memo of September 27, 1983.

Regards,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 3, 1984

Re: No. 82-1795 - Capital Cities Cable, Inc. v. Crisp

MEMORANDUM TO THE CONFERENCE:

I overlooked advising as to my vote following the first week conferences.

Depending on how it is written I may "go along" but to preserve my options I will ask Bill Brennan to take on the assignment.

Regards,



P.S. Bill advised he would
take this case himself.
Normally written I
may go along

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

CHAMBERS OF
THE CHIEF JUSTICE

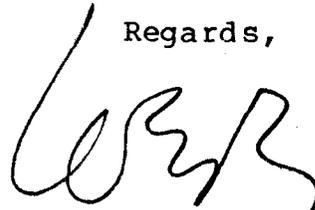
June 13, 1984

RE: 82-1795 - Capital Cities Cable, Inc. v. Crisp

Dear Bill:

I abandon my separate writing and I join.

Regards,

A handwritten signature in black ink, appearing to be 'WB', with a long, sweeping line extending downwards and to the left from the bottom of the signature.

Justice Brennan

copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

September 27, 1983

Re: Capital Cities Cable, Inc. v. Crisp, No. 82-1795

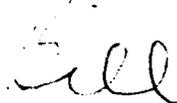
MEMORANDUM TO THE CONFERENCE

I suggest that the following be addressed to the parties in the above-entitled case:

In addition to the Questions Presented by the petitioners, the parties are directed to brief and argue the following question:

Whether the state's regulation of liquor advertising, as applied to out-of-state broadcast signals, is valid in light of existing federal regulation of cable broadcasting.

Sincerely,



WJB, Jr.

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

From: **Justice Brennan**

Circulated: 5/4/84

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1795

CAPITAL CITIES CABLE, INC., ET AL., PETITIONERS
v. RICHARD A. CRISP, DIRECTOR, OKLAHOMA
ALCOHOLIC BEVERAGE CONTROL BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

[June —, 1984]

JUSTICE BRENNAN delivered the opinion of the Court.

The question presented in this case is whether Oklahoma may require cable television operators in that State to delete all advertisements for alcoholic beverages contained in the out-of-state signals that they retransmit by cable to their subscribers. Petitioners contend that Oklahoma's requirement abridges their rights under the First and Fourteenth Amendments and is pre-empted by federal law. Because we conclude that this state regulation is pre-empted, we reverse the judgment of the Court of Appeals for the Tenth Circuit and do not reach the First Amendment question.

I

Since 1959, it has been lawful to sell and consume alcoholic beverages in Oklahoma. The state Constitution, however, as well as implementing statutes, prohibit the advertising of such beverages, except by means of strictly regulated on-premises signs.¹ For several years, pursuant to this author-

¹The Oklahoma Constitution provides in pertinent part:

"It shall be unlawful for any person, firm or corporation to advertise the sale of alcoholic beverage within the State of Oklahoma, except one sign at the retail outlet bearing the words 'Retail Alcoholic Liquor Store.'" Okla. Const., Art. XXVII, § 5.

The Oklahoma Alcoholic Beverage Control Act similarly prohibits advertising "any alcoholic beverages or the sale of same" except by on-

STYLISTIC CHANGES THROUGHOUT
SEE PAGES

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

From: Justice Brennan

Circulated: _____

Recirculated: 6/15/84

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. 82-1795

CAPITAL CITIES CABLE, INC., ET AL., PETITIONERS
v. RICHARD A. CRISP, DIRECTOR, OKLAHOMA
ALCOHOLIC BEVERAGE CONTROL BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

[June 18, 1984]

JUSTICE BRENNAN delivered the opinion of the Court.

The question presented in this case is whether Oklahoma may require cable television operators in that State to delete all advertisements for alcoholic beverages contained in the out-of-state signals that they retransmit by cable to their subscribers. Petitioners contend that Oklahoma's requirement abridges their rights under the First and Fourteenth Amendments and is pre-empted by federal law. Because we conclude that this state regulation is pre-empted, we reverse the judgment of the Court of Appeals for the Tenth Circuit and do not reach the First Amendment question.

I

Since 1959, it has been lawful to sell and consume alcoholic beverages in Oklahoma. The state Constitution, however, as well as implementing statutes, prohibit the advertising of such beverages, except by means of strictly regulated on-premises signs.¹ For several years, pursuant to this author-

¹The Oklahoma Constitution provides in pertinent part:

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The Oklahoma Alcoholic Beverage Control Act similarly prohibits advertising "any alcoholic beverages or the sale of same" except by on-

HAB

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 18, 1984

No. 82-1795
Capital Cities Cable, Inc. v. Crisp

MEMORANDUM TO THE CONFERENCE:

There are two holds for No. 82-1795.

(1) Dunagin v. City of Oxford, No. 83-1221. In this case, the Court of Appeals for the Fifth Circuit, sitting en banc, upheld certain liquor advertising restrictions in Mississippi's Local Option Alcoholic Beverage Control Law. The Mississippi law permits each county in the state to determine whether it wishes to permit liquor to be sold within its borders or to comply with the general prohibition on liquor sales that otherwise applies throughout the state. Regulations promulgated pursuant to this statute provide that "[n]o person, firm or corporation shall originate advertisement in this State, dealing with alcoholic beverages by any means whatsoever, including but not limited to newspapers, radio, television, circular, dodger, word of mouth, signs, billboards, displays or any other advertising media," except for specified on-premises signs at licensed retail package stores. As the Court of Appeals noted, however, "[t]he state has interpreted its law to mean that advertisements must originate within the state to be subject to its regulation. Hence, television and radio stations in other states broadcast liquor commercials that reach in-state viewers and listeners. Newspapers and magazines containing liquor advertisements from other states are mailed into the state, and newsstands in Mississippi are allowed to sell such publications. ... The state has also interpreted federal regulations to prohibit it from interrupting or deleting wine commercials in cable television transmissions sent from outside the state." App. to Pet. for Cert. 16 (emphasis added).

The Court of Appeals began its analysis by noting that the challenged liquor advertising ban had been adopted pursuant to the state's power under §2 of the Twenty-first Amendment. It also observed that this Court's decisions in California v. LaRue, 409 U.S. 109 (1972), and New York State Liquor Authority v. Bellanca, 452 U.S. 714 (1981), appeared to apply a test that "is less strict than that applied in Central Hudson." App. to Pet. for Cert. 34. Nevertheless, the court went on to apply the four-part test set forth in Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557 (1980), and found (a) that liquor advertising in Mississippi is protected commercial speech, (b) that the state's interest in restricting such

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

September 28, 1983

Re: 82-1795 -

Capital Cities Cable, Inc. v. Crisp

Dear Bill,

I agree.

Sincerely,



Justice Brennan

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 6, 1984

Re: 82-1795 -
Capital Cities Cable, Inc. v. Crisp

Dear Bill,

I agree.

Sincerely yours,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 4, 1983

Re: Capital Cities Cable, Inc. v. Crisp, No. 82-1795

Dear Bill:

I agree with your proposal in this one.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 4, 1984

Re: No. 82-1795-Capital Cities Cable v. Crisp

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

September 28, 1983

Re: No. 82-1795 - Capital Cities Cable, Inc. v. Crisp

Dear Bill:

I go along with the proposed direction you have formulated.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 6, 1984

Re: No. 82-1795 - Capital Cities Cable, Inc. v. Crisp

Dear Bill:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

September 29, 1983

82-1795 Capital Cities Cable, Inc. v. Crisp

Dear Bill:

I agree with your suggested additional question.

Sincerely,



Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 5, 1984

82-1795 Capital Cities Cable, Inc. v. Crisp

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

September 28, 1983

Re: No. 82-1795 Capital Cities Cable, Inc.
v. Crisp

Dear Bill:

I go along with the proposed direction you have
formulated.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

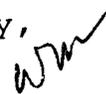
June 5, 1984

Re: 82-1795 Capital Cities Cable v. Crisp

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

September 28, 1983

Re: 82-1795 - Capital Cities Cable v. Crisp

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 5, 1984

Re: 82-1795 - Capital Cities Cable v. Crisp

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

September 28, 1983

Re: Capital Cities Cable, Inc. v. Crisp, No. 82-1795

Dear Bill,

I agree with your proposed order.

Sincerely,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 5, 1984

No. 82-1795 Capital Cities Cable Inc. v.
Crisp

Dear Bill,

For the present I will see what other
writing emerges in this case.

Sincerely,

Sandra

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 6, 1984

No. 82-1795 Capital Cities Cable, Inc. v. Crisp

Dear Bill,

It appears that you have been so persuasive in this case that no further writing will emerge after all. I yield to your wisdom and that of my colleagues and join your opinion.

Sincerely,



Justice Brennan

Copies to the Conference