

# The Burger Court Opinion Writing Database

## *Heath v. Alabama*

474 U.S. 82 (1985)

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



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

From: **Justice Brennan**

Circulated: FEB 4 1985

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

LARRY GENE HEATH *v.* ALABAMA

ON PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ALABAMA

No. 84-5555. Decided February —, 1985

JUSTICE BRENNAN, dissenting from denial of certiorari.

The Fifth Amendment requires that no person "be subject for the same offense to be twice put in jeopardy of life or limb." Petitioner Larry Gene Heath was put in jeopardy of his life by the State of Georgia when he was indicted for murder. He pleaded guilty and was sentenced to life imprisonment. Three months later, Heath was again put in jeopardy of his life by the State of Alabama when he was indicted for the same murder.<sup>1</sup> Despite his repeated pleas of former jeopardy under the Alabama and Federal Constitutions, he was convicted after a full trial and was sentenced to death.

On appeal, Heath again argued former jeopardy. Because each of Heath's convictions was procured by a different State, however, the Alabama Supreme Court justified the apparent violation of the Double Jeopardy Clause by invoking the so-called "dual sovereignty" doctrine. *Ex Parte Heath*, — So. 2d — (1984). As consistently applied by this Court, the doctrine permits successive prosecutions of an individual where one prosecution is undertaken by a State and the other by the Federal Government. This Court has never ruled on the applicability of the dual sovereignty doctrine where each of two or more successive prosecutions is undertaken by a different State. Because the federalism-based justifications for the dual sovereignty doctrine fail to support

<sup>1</sup> Heath and his wife lived in Alabama. His convictions were based on allegations that he hired others to kidnap and murder his wife. On August 31, 1981, Heath's wife was kidnapped from the family's home and later that day her body was found in the back seat of a car on the side of a road in Georgia.

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

HAB

p. 1

From: Justice Brennan

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

Recirculated: \_\_\_\_\_ FEB 13 1985

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

LARRY GENE HEATH *v.* ALABAMA

ON PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ALABAMA

No. 84-5555. Decided February —, 1985

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins  
dissenting from denial of certiorari.

The Fifth Amendment requires that no person “be subject for the same offense to be twice put in jeopardy of life or limb.” Petitioner Larry Gene Heath was put in jeopardy of his life by the State of Georgia when he was indicted for murder. He pleaded guilty and was sentenced to life imprisonment. Three months later, Heath was again put in jeopardy of his life by the State of Alabama when he was indicted for the same murder.<sup>1</sup> Despite his repeated pleas of former jeopardy under the Alabama and Federal Constitutions, he was convicted after a full trial and was sentenced to death.

On appeal, Heath again argued former jeopardy. Because each of Heath’s convictions was procured by a different State, however, the Alabama Supreme Court justified the apparent violation of the Double Jeopardy Clause by invoking the so-called “dual sovereignty” doctrine. *Ex Parte Heath*, — So. 2d — (1984). As consistently applied by this Court, the doctrine permits successive prosecutions of an individual where one prosecution is undertaken by a State and the other by the Federal Government. This Court has never ruled on the applicability of the dual sovereignty doctrine where each of two or more successive prosecutions is undertaken by a different State. Because the federalism-based

<sup>1</sup>Heath and his wife lived in Alabama. His convictions were based on allegations that he hired others to kidnap and murder his wife. On August 31, 1981, Heath’s wife was kidnapped from the family’s home and later that day her body was found in the back seat of a car on the side of a road in Georgia.

Reproduced from the Collections of the Manuscript Division, Library of Congress

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES:

omissions on 6, 8, + 9

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

From: **Justice Brennan**

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

Recirculated: FEB 21 1985

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

LARRY GENE HEATH *v.* ALABAMA

ON PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ALABAMA

No. 84-5555. Decided February —, 1985

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins dissenting.

The Fifth Amendment requires that no person "subject for the same offence to be twice put in jeopardy of life or limb." Petitioner Larry Gene Heath was put in jeopardy of his life by the State of Georgia when he was indicted for murder. He pleaded guilty and was sentenced to life imprisonment. Three months later, Heath was again put in jeopardy of his life by the State of Alabama when he was indicted for the same murder.<sup>1</sup> Despite his repeated pleas of former jeopardy under the Alabama and Federal Constitutions, he was convicted after a full trial and was sentenced to death.

On appeal, Heath again argued former jeopardy. Because each of Heath's convictions was procured by a different State, however, the Alabama Supreme Court justified the apparent violation of the Double Jeopardy Clause by invoking the so-called "dual sovereignty" doctrine. *Ex Parte Heath*, 455 So. 2d 905 (1984). As consistently applied by this Court, the doctrine permits successive prosecutions of an individual where one prosecution is undertaken by a State and the other by the Federal Government. This Court has never ruled on the applicability of the dual sovereignty doctrine where each of two or more successive prosecutions is undertaken by a different State. Because the federalism-based justifications

<sup>1</sup> Heath and his wife lived in Alabama. His convictions were based on allegations that he hired others to kidnap and murder his wife. On August 31, 1981, Heath's wife was kidnapped from the family's home and later that day her body was found in the back seat of a car on the side of a road in Georgia.

FAB

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 22, 1985

No. 84-5555

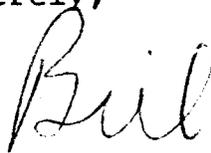
Heath v. Alabama

Dear Chief,

May I ask that announcement of the grant in the above be laid over until next week's Order List. I'd like to circulate a memorandum suggesting that we limit the grant to Question 2 in Heath's petition and request the parties to address the question of the application, if any, of the dual sovereignty doctrine to successive state prosecutions.

I initially suggested this in the first draft of my dissent and Byron made a similar suggestion at Conference. I think that's what we should do.

Sincerely,



The Chief Justice  
Copies to the Conference  
Copy to Al Stevas, Clerk

Reproduced from the Collections of the Manuscript Division, Library of Congress

HAC

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

February 26, 1985

No. 84-5555

Heath v. Alabama

MEMORANDUM TO THE CONFERENCE

I suggest that we limit the grant of certiorari in this case to Question II: "Does the concept of dual sovereignty permit the State of Alabama to try and convict an individual for the same conduct for which he had already been convicted and sentenced by the State of Georgia, when the conduct is not legally distinguishable and serves identical purposes under both capital murder statutes, and does this action by the State of Alabama conflict with this Court's rationale in Brown v. Ohio, 432 U.S. 161 (1977)?" In addition, I suggest that we request the parties to address the question of the application, if any, of the dual sovereignty doctrine to successive state prosecutions.

Sincerely,

Reproduced from the Collections of the Manuscript Division, Library of Congress

11AB

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

February 28, 1985

MEMORANDUM TO THE CONFERENCE

No. 84-5555

Heath v. Alabama

u  
The question I suggested in my memorandum the other day may be somewhat ambiguous. I would therefore suggest instead that we ask the parties to address the following question: "What is the applicability, if any, of the dual sovereignty doctrine to successive prosecutions by two different states?"

Sincerely,

Bue

Reproduced from the Collections of the Manuscript Division, Library of Congress

7/11

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 4, 1985

Re: No. 84-5555-Heath v. Alabama

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Justice Brennan

cc: The Conference