

# The Burger Court Opinion Writing Database

## *Diffenderfer v. Central Baptist Church of Miami, Inc.*

404 U.S. 412 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

December 28, 1971

CHAMBERS OF  
THE CHIEF JUSTICE

No. 70-47 -- Diffenderfer and Paul v. Central Baptist  
Church of Miami, Florida, Inc.

Dear Thurgood:

Please join me.

Regards,

WRB

Mr. Justice Marshall

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-47

Florence Diffenderfer and Nishan Paul, Appellants, v. Central Baptist Church of Miami, Florida, Inc., et al.	}	On Appeal from the United States District Court for the Southern District of Florida.
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[January —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

The extent to which a State may constitutionally authorize a tax exemption for church-owned property used primarily for commercial purposes is a question of substantial national importance, and is squarely presented by appellants' challenge to Fla. Stat. § 192.06 (4) in this case. The Court says, however, that the controversy over the exemption awarded appellee Church is moot, appellants having asked only for declaratory relief as to the unconstitutionality of § 192.06 (4), which section was replaced by new legislation, effective December 31, 1971, substantially narrowing the authorized exemption. Fla. Stat. § 196.192.

I am not as eager as the Court, ~~however~~, to moot a case on appeal justiciable in every respect save for an intervening change in the underlying law. It does not necessarily follow that there is no longer a live controversy between these parties, even if we assume, *arguendo*, that the new statute satisfies all of appellants' constitutional objections to the old one. Here, appellants argue that should their appeal prevail, the Church will be liable for three years' back property taxes, pursuant

Wm Douglas

Oct 71  
70-47

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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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-47

1/7/72

Florence Diffenderfer and Nishan Paul, Appellants, v. Central Baptist Church of Miami, Florida, Inc., et al.	}	On Appeal from the United States District Court for the Southern District of Florida.
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[January —, 1972]

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The extent to which a State may constitutionally authorize a tax exemption for church-owned property used primarily for commercial purposes is a question of substantial national importance, and is squarely presented by appellants' challenge to Fla. Stat. § 192.06 (4) in this case. The Court says, however, that the controversy over the exemption awarded appellee Church is moot, appellants having asked only for declaratory relief as to the unconstitutionality of § 192.06 (4), which section was replaced by new legislation, effective December 31, 1971, that substantially narrowed the authorized exemption. Fla. Stat. § 196.192.

I am not as eager as is the Court to moot a case on appeal which is justiciable in every respect save for an intervening change in the underlying law. It does not necessarily follow that there is no longer a live controversy between these parties, even if we assume, *arguendo*, that the new statute satisfies all of appellants' constitutional objections to the old one. Here, appellants argue that should their appeal prevail, the Church will

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U.S. SUPREME COURT RECORDS

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 27, 1971

RE: No. 70-47 - Diffenderfer v. Central  
Baptist Church of Miami

Dear Thurgood:

I agree with the Per Curiam you have  
prepared in the above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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U.S. SUPREME COURT MANUSCRIPT COLLECTION

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 28, 1971

70-47 - Diffenderfer v. Baptist Church

Dear Thurgood,

I am glad to join the Per Curiam you have  
circulated in this case.

Sincerely yours,

P.S.  
/

Mr. Justice Marshall

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U.S. SUPREME COURT MANUSCRIPTS

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 23, 1971

Re: No. 70-47 - Diffenderfer v.  
Central Baptist Church of  
Miami, Florida, Inc.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

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70-47

Oct 71

Wm Douglas

12/22

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 70-47

Florence Diffenderfer and Nishan Paul, Appellants, v. Central Baptist Church of Miami, Florida, Inc., et al.	}	On Appeal from the United States District Court for the Southern District of Florida.
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[January —, 1972]

## PER CURIAM.

This is an action for a declaratory judgment that Florida Statutes § 192.06 (4) violates the First Amendment to the Constitution of the United States insofar as it authorizes a tax exemption for church property used, *inter alia*, as a commercial parking lot, and for an injunction requiring appropriate state and local officials to assess and collect taxes against such property. It is brought by citizens and taxpayers of Dade County, Florida, where the property in question is located. The crux of their complaint is that state aid in the form of a tax exemption for church property used primarily for commercial purposes amounts not only to an establishment of the one religion aided, but also to an inhibition on the free exercise of other religions. A three-judge District Court convened pursuant to 28 U. S. C. §§ 2281, 2284, upheld the validity of the statute as applied to the property involved herein, 316 F. Supp. 1116 (1970), and plaintiffs appealed to this Court. 28 U. S. C. § 1253. We noted probable jurisdiction February 28, 1971, 401 U. S. 934.



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STANDARD CHARGES THROUGHOUT.

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun

2nd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

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

No. 70-47

Recirculated: 12/29/71

Florence Diffenderfer and Nishan Paul, Appellants, v. Central Baptist Church of Miami, Florida, Inc., et al.	}	On Appeal from the United States District Court for the Southern District of Florida.
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[January —, 1972]

PER CURIAM.

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Wm Douglas  
Oct 71  
70-17

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 6, 1972

Re: No. 70-47 - Diffenderfer, et al. v.  
Central Baptist Church

Dear Thurgood:

Please join me in the Per Curiam you have  
prepared for this case.

Sincerely,

*H. A. B.*

Mr. Justice Marshall

cc: The Conference

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U.S. SUPREME COURT RECORDS