

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



Supreme Court of the United States
Washington, D. C. 20542

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,

W.B.

Mr. Justice Marshall

Copies to the Conference

1
Cir
1/6/72

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-47

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

[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

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.

[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, 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

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

12/22

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 27, 1971

ES

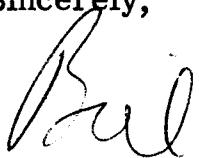
RE: No. 70-47 - Diffenderfer v. Central
Baptist Church of Miami

ted
for
of

Dear Thurgood:

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

Sincerely,



hat
nd-
as
ed,
nc-
ess
ght
ere
teir
ap-
cial
the
ree
urt
eld
rty
in-
We
. S.

Mr. Justice Marshall

cc: The Conference

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

Copies to the Conference

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

Copies to Conference



Missing Doc

70-47 Dec 71 Wm Dofar

12/22

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-47

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

[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.

B
1
SUPREME COURT OF THE UNITED STATES
REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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.

[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 on February 28, 1971, 401 U. S. 934.

Wm Douglas
Oct 71

70-17

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