

# The Burger Court Opinion Writing Database

*Linmark Associates, Inc. v. Willingboro*

431 U.S. 85 (1977)

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

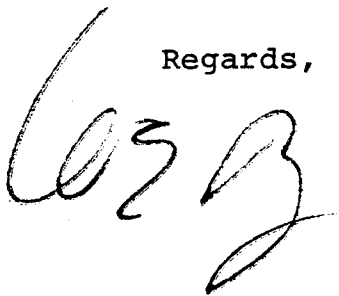
April 28, 1977

Re: 76-357 Linmark Assoc., Inc. v. Township of Willingboro

Dear Thurgood:

I join.

Regards,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

April 25, 1977

RE: No. 76-357 Linmark ASSociates v. Township of  
Willingboro, et al.

Dear Thurgood:

I agree.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 15, 1977

76-357, Linmark Associates, Inc. v. Willingboro

Dear Thurgood,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

P.S.  
1.

Mr. Justice Marshall

Copies to the Conference

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

(5)

✓

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 21, 1977

Re: No. 76-357 - Linmark Associates, Inc. v.  
Willingboro

Dear Thurgood:

Please join me.

Sincerely,

*Byrne*

Mr. Justice Marshall

Copies to Conference

P. 11

✓

APR 11 1977

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-357

Linmark Associates, Inc. and  
William Mellman,  
Petitioners,  
v.  
Township of Willingboro and  
Gerald Daly.

On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Third Circuit.

[April —, 1977]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the question whether the First Amendment permits a municipality to prohibit the posting of "For Sale" or "Sold" signs when the municipality acts to stem what it perceives as the flight of white homeowners from a racially integrated community.

Petitioner Linmark Associates, a New Jersey corporation, owned a piece of realty in the Township of Willingboro, N. J. Petitioner decided to sell its property, and on March 26, 1974, listed it with petitioner Mellman, a real estate agent. To attract interest in the property, petitioners desired to place a "For Sale" sign on the lawn. Willingboro, however, narrowly limits the types of signs that can be erected on land in the township. Although prior to March of 1974 "For Sale" and "Sold" signs were permitted subject to certain restrictions not at issue here, on March 18, 1974, the Township Council enacted Ordinance 5-1974, repealing the statutory authorization for such signs on all but model homes. Petitioners brought this action against both the township and the building inspector charged with enforcing the ban on "For Sale"

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 13, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 76-357, Linmark Associates, Inc. v. Township of  
Willingboro

I have substantially revised my opinion to address the concern John has raised as well as other concerns that have been communicated to me informally. The new draft is at the Printer, and will be circulating, I hope, by the end of the week.

*J.M.*  
T. M.

6-13 + footnotes deleted  
and renumbered

APR 14 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-357

Linmark Associates, Inc. and  
William Mellman,  
Petitioners,  
v.  
Township of Willingboro and  
Gerald Daly.

On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Third Circuit.

[April —, 1977]

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8 6 ✓  
STYLISTIC CHANGES THROUGHOUT

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

From: Mr. Justice Marshall

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

Recirculated: APR 19 1977

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-357

Linmark Associates, Inc. and  
William Mellman,  
Petitioners,  
v.  
Township of Willingboro and  
Gerald Daly.

On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Third Circuit.

[April —, 1977]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the question whether the First Amendment permits a municipality to prohibit the posting of "For Sale" or "Sold" signs when the municipality acts to stem what it perceives as the flight of white homeowners from a racially integrated community.

Petitioner Linmark Associates, a New Jersey corporation, owned a piece of realty in the Township of Willingboro, N. J. Petitioner decided to sell its property, and on March 26, 1974, listed it with petitioner Mellman, a real estate agent. To attract interest in the property, petitioners desired to place a "For Sale" sign on the lawn. Willingboro, however, narrowly limits the types of signs that can be erected on land in the township. Although prior to March of 1974 "For Sale" and "Sold" signs were permitted subject to certain restrictions not at issue here, on March 18, 1974, the Township Council enacted Ordinance 5-1974, repealing the statutory authorization for such signs on all but model homes. Petitioners brought this action against both the township and the building inspector charged with enforcing the ban on "For Sale"

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 21, 1977

Re: No. 76-357, Linmark Associates, Inc. v. Township of  
Willingboro

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Dear Bill and Harry,

Like you, I find this a most difficult area, and do not wish to write an opinion one whit broader than is necessary. I am reluctant, however, to make the change you suggest for fear that it would fatally weaken my opinion.

In my view, the only distinction between Virginia Pharmacy and this case is that here the Township has closed down only one means of communication. My opinion rejects this distinction for two reasons: (1) the alternative methods of communication left open are "far from satisfactory" making the case similar to one in which all methods are prohibited (p. 8); and (2) a purpose which Virginia Pharmacy says is impermissible does not become permissible when used to justify a ban on only one means of communication (pp. 8-10). Your suggestion, as I understand it, is to drop this second argument and treat this case just like one in which all media are foreclosed.

My problem with the suggestion is that the argument concerning the inadequacy of the alternative forum is, in my judgment, too weak a reed on which to rest the opinion. I attempted to draft the paragraph that makes the argument rather tentatively (e.g. "serious questions can be raised"), because the record is silent as to the adequacy of the alternatives. While I find the reasons for questioning the alternative to be sensible, they are speculative and not necessarily correct. Thus, I think it is necessary to treat this case as if the alternatives were satisfactory, and to decide whether the State can prohibit the use of one media in a paternalistic effort to restrict an individual's ability to acquire truthful information.

In reviewing my opinion, I think I can answer this latter question somewhat more narrowly than I have done, by stressing the particular facts of this case such as the importance of the information to homeowners and the extent to which the Township has acted to promote its own self-interest rather than to protect the would-be-recipients of the information. This would entail some revisions of the paragraph running from pages 11-12, and would result in our leaving open the possibility of upholding a more justifiable "paternalistic" restriction on speech. I also think that in explaining why this ordinance is not a time, place or manner regulation, I can revise the opinion to leave somewhat more latitude for laws that genuinely are concerned with the form of the speech. In any event, I will try my hand at these changes in the hope that they will alleviate your concerns.

Sincerely,



T.M.

Mr. Justice Brennan  
Mr. Justice Blackmun

8, 9, 11, 12

APR 22 1977

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-357

Linmark Associates, Inc. and William Mellman, Petitioners, v. Township of Willingboro and Gerald Daly.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Third Circuit.
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[April —, 1977]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the question whether the First Amendment permits a municipality to prohibit the posting of "For Sale" or "Sold" signs when the municipality acts to stem what it perceives as the flight of white homeowners from a racially integrated community.

Petitioner Linmark Associates, a New Jersey corporation, owned a piece of realty in the Township of Willingboro, N. J. Petitioner decided to sell its property, and on March 26, 1974, listed it with petitioner Mellman, a real estate agent. To attract interest in the property, petitioners desired to place a "For Sale" sign on the lawn. Willingboro, however, narrowly limits the types of signs that can be erected on land in the township. Although prior to March of 1974 "For Sale" and "Sold" signs were permitted subject to certain restrictions not at issue here, on March 18, 1974, the Township Council enacted Ordinance 5-1974, repealing the statutory authorization for such signs on all but model homes. Petitioners brought this action against both the township and the building inspector charged with enforcing the ban on "For Sale"

APR 28 1977

5th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-357

Linmark Associates, Inc. and  
William Mellman,  
Petitioners,  
v.  
Township of Willingboro and  
Gerald Daly.

On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Third Circuit.

[April —, 1977]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the question whether the First Amendment permits a municipality to prohibit the posting of "For Sale" or "Sold" signs when the municipality acts to stem what it perceives as the flight of white homeowners from a racially integrated community.

Petitioner Linmark Associates, a New Jersey corporation, owned a piece of realty in the Township of Willingboro, N. J. Petitioner decided to sell its property, and on March 26, 1974, listed it with petitioner Mellman, a real estate agent. To attract interest in the property, petitioners desired to place a "For Sale" sign on the lawn. Willingboro, however, narrowly limits the types of signs that can be erected on land in the township. Although prior to March of 1974 "For Sale" and "Sold" signs were permitted subject to certain restrictions not at issue here, on March 18, 1974, the Township Council enacted Ordinance 5-1974, repealing the statutory authorization for such signs on all but model homes. Petitioners brought this action against both the township and the building inspector charged with enforcing the ban on "For Sale"

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 11, 1977

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 76-357, Linmark Associates v. Township of Willingboro.

No. 76-507, Leipzig v. Baldwin is the only case that was held for Linmark. This case involves the constitutionality of an ordinance regulating the posting of "temporary signs" insofar as the ordinance applies to "political campaign signs." The Court of Appeals upheld those portions of the ordinance that limit signs to 16 square feet each and the aggregate area of signs on a single parcel to 80 square feet. The court invalidated, however, the sections of the law which (a) restricts the aggregate area of all signs on behalf of a single candidate to 64 square feet (four signs); (b) requires persons wishing to post signs to file lengthy applications, and pay a \$1.00 inspection fee and deposit a \$5.00 removal charge for each sign; (c) excludes temporary signs from residential neighborhoods; and (d) authorizes summary removal of signs posted in violation of the ordinance.

Our decision in Linmark has very little bearing on the issues presented by petitioners. On the one hand, the ordinance at issue here is much more content neutral than the ban on "For Sale" signs we invalidated in Linmark. On the other hand, the applications of the ordinance at issue here involve "core" political speech, rather than commercial speech. To the extent that Linmark rests on our finding that no wholly satisfactory methods of communication were left open to speakers by the prohibition of signs, our decision supports the Court of Appeals' conclusion here.

In my view, the Court of Appeals correctly decided that the parts of the ordinance it held unconstitutional unduly restrict the ability of voters to communicate their political preferences.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 20, 1977

Re: No. 76-357 - Linmark Associates v. Willingboro

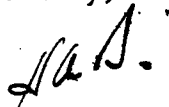
Dear Thurgood:

It seems to me that you have gone right down the line in this case with Virginia Pharmacy. I am therefore pleased to join your opinion in what I think is presently a difficult area.

I share with Bill Brennan a very mild reservation about some material on page 8, but I shall abide by your decision to leave it in or to eliminate it.

I hope that the opinion in Bates will be out very promptly after the close of the current argument session. After you have seen my attempt in that case we might discuss whether the two cases should be announced at the same time.

Sincerely,



Mr. Justice Marshall

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

(H)

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

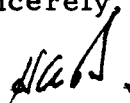
April 20, 1977

Re: No. 76-357 - Linmark Associates v. Willingboro

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 25, 1977

Re: No. 76-357 - Linmark Associates v. Township of  
Willingboro

Dear Thurgood:

I am still with you.

Sincerely,

*H. G. S.*

Mr. Justice Marshall

cc: Mr. Justice Brennan

November 4, 1976

No. 76-357 Linmark Associates, Inc., and William  
Mellman v. Township of Willingboro and Gerald Daly

Dear John:

Please join me in your dissenting opinion.

Sincerely,

Mr. Justice Stevens

cc: The Conference

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

(2)

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 18, 1977

No. 76-357 Linmark Associates v. Township  
of Williamsboro

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Dear Thurgood:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

Circulated: 11/4/76

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

LINMARK ASSOCIATES, INC., AND WILLIAM MELL-  
MAN v. TOWNSHIP OF WILLINGBORO  
AND GERALD DALY

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

No. 76-357. Decided November —, 1976

MR. JUSTICE STEVENS, dissenting.

This case presents the question whether an ordinance of the Township of Willingboro prohibiting a property owner from placing a "for sale" sign in front of his house violates the First Amendment. In deciding that question, Judge Markey for the majority, and Judge Gibbons in dissent, assumed that advertising is a form of communication protected by the First Amendment. That assumption was consistent with this Court's subsequent holding in *Virginia Pharmacy Board v. Virginia Consumer Council*, — U. S. —, 44 U. S. L. W. 4686 (May 24, 1976). Those judges also assumed that some forms of advertising may nevertheless be regulated or prohibited in appropriate circumstances. Again, that assumption was consistent with not only the holding but also the dicta in *Virginia Pharmacy Board*, *supra*. The Court of Appeals judges disagreed on the question whether the circumstances in the Township of Willingboro justified the restriction on the use of "for sale" signs. That is a question on which this Court's opinion in *Virginia Pharmacy Board* sheds no light whatsoever.

There are, therefore, two reasons why the Court's action today is objectionable. First, it will require three Court of Appeals judges—who are just as busy as we are—to spend valuable time trying to decipher an incomprehensible cryptogram. Second, like the action taken last week in *Scott v. Kentucky Parole Board*, No. 74-6438 (Nov. 2, 1976), it

Join  
LJP

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 12, 1977

Re: 76-357 - Linmark Associates v. Township  
of Willingboro

Dear Thurgood:

For the reasons stated in my opinion in Young v. American Mini Theatres, 427 U.S. 50, 64-69, I do not believe the quotation from Mosley that you included in your draft at pages 9-10 can appropriately be applied in all cases involving protected speech. More specifically, I think it would give entirely too much protection in the area of commercial speech.

Accordingly, although I agree completely with the result, and think you have made an excellent presentation of the facts, and find the argument on pages 12-13 particularly compelling, I am not prepared to join the opinion in its present form. In fact, I have some feeling that perhaps this disposition should be coordinated with the opinion concerning advertisement by lawyers.

Respectfully,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

Personal

April 18, 1977

Re: 76-357 - Linmark Associates v. Township  
of Williamsboro

Dear Thurgood:

If you would change the last sentence on  
page 8 of your second draft to read as follows,  
I will be happy to join:

"Restrictions which have been upheld  
under this rubric have applied to all  
speech occurring at a particular time  
or place, or in a particular manner,  
and have been 'justified without reference  
to the content of the regulated speech.'"  
Virginia State Board of Pharmacy v.  
Virginia Citizens Consumer Council, Inc.,  
supra, 425 U.S., at 771.

In its present form, I am afraid the opinion  
would invalidate an ordinance prohibiting small  
commercial signs (such as "attorney at law") on  
lawns in front of residences.

Except for this flyspeck, I think the opinion  
is excellent.

Respectfully,



Mr. Justice Marshall

✓

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

(B) ✓

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 19, 1977

Re: 76-357 - Linmark Associates v. Township  
of Williamsboro

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference