

The Burger Court Opinion Writing Database

Diamond v. Charles

476 U.S. 54 (1986)

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

November 27, 1985

RE: 84-1378⁹ - Diamond v. Charles

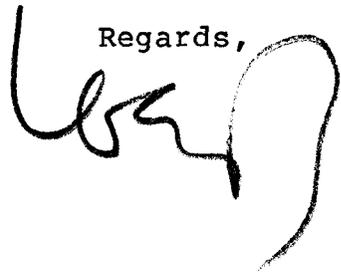
memo to rat

Dear Harry:

Your memo to Bettina Guerre has been handed to me. My notes at Conference indicated that this was indeed to be a per curiam on the narrow issue of standing on a vote of 8-1. The assignment was to be by Bill Brennan because he was to assign 84-1378⁹ - Diamond v. Charles.

When a case is listed as a per curiam the final decision on the form is up to the writer. Here, Bettina did exactly what she was instructed on the basis of the conference discussion and the apparent likelihood that an 8-1 vote on standing did not seem to call for an opinion. If you conclude a per curiam is not appropriate, that is "your call"; that is always up to the author.

Regards,



Justice Blackmun

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

CHAMBERS OF
THE CHIEF JUSTICE

November 29, 1985

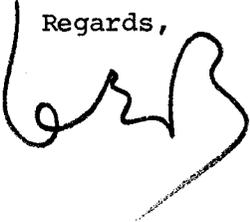
PERSONAL

Re: 84-1379 - Diamond v. Charles

Dear Harry:

7
i I doubt it is of any real importance to review the details, but you know that the Assignment Sheet listed this case as a Per Curiam and no one, including Bill Brennan, by whom the assignment was to be made, questioned that. My notes show a cryptic "PC" but even when there is a consensus on that score, no one is bound. ?

It has been a long-standing "rule" that the writer decides this issue in the end.

Regards,


Justice Blackmun

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

CHAMBERS OF
THE CHIEF JUSTICE

April 24, 1986

Re: No. 84-1379 - Diamond v. Charles

Dear Sandra,

I join your draft of April 16, 1986.

Regards,



Justice O'Connor 1

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 20, 1985

No. 84-1379

Diamond v. Charles

Dear Chief,

Harry has agreed to do the opinion
for the Court in the above.

Sincerely,,



The Chief Justice
Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 18, 1986

No. 84-1379

Diamond v. Charles, et al.

Dear Harry,

I agree.

Sincerely,

Bill

Justice Blackmun

Copies to the Conference

82 15 1145

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 15, 1986

84-1379 - Diamond and Williams v. Charles

Dear Harry,

Please note at the foot of your opinion
that I concur in the judgment.

Sincerely yours,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 14, 1986

Re: No. 84-1379 - Diamond and Williams v. Charles

Dear Harry:

Please join me.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

November 27, 1985

Re: No. 84-1379, Diamond v. Charles

Dear Chief:

I am not sure I understand the last sentence of the first paragraph of your note of this afternoon.

In any event, my conference notes, which I like to believe are fairly complete, contain no reference whatsoever to a per curiam disposition. Perhaps I am wrong. In any event, I am pleased to know that this is my "call." As of now, the opinion probably will be more than a brief two paragraph per curiam, but, of course, I may change my mind.

Sincerely,

HAB

The Chief Justice

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

From: **Justice Blackmun**

Circulated: FEB 14 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1379

**EUGENE F. DIAMOND AND JASPER F. WILLIAMS,
APPELLANTS v. ALLAN G. CHARLES ET AL.**

**ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

[February —, 1986]

JUSTICE BLACKMUN delivered the opinion of the Court.

Appellant Eugene F. Diamond is a pediatrician engaged in private practice in Illinois. He seeks to defend before this Court the constitutionality of four sections of the Illinois Abortion Law of 1975, as amended.¹ These sections impose criminal liability for the performance of an abortion under certain circumstances, and, under other circumstances, require that the woman be provided with particular abortion-related information. The State of Illinois has chosen to absent itself from this appeal, despite the fact that its statute is at stake. Because a private party whose own conduct is neither implicated nor threatened by a criminal statute has no judicially cognizable interest in the statute's defense, we dismiss the appeal for want of jurisdiction.

I

On October 30, 1979, over gubernatorial veto, the Illinois Legislature amended the State's 1975 abortion law to provide for increased regulation. 1979 Ill. Laws, Pub. Act 81-1078. That very day appellees, four physicians who provide obstet-

¹ 1975 Ill. Laws, Pub. Act 79-1126, as amended, now codified as Ill. Rev. Stat. ch. 38, §§ 81-21 to 81-34 (1983). The 1975 Act was passed over the Governor's veto. Substantial portions of it already have been ruled to be unconstitutional. See, e. g., *Wynn v. Scott*, 449 F. Supp. 1302 (ND Ill. 1978), *aff'd sub nom. Wynn v. Carey*, 599 F. 2d 193 (CA7 1979).

Stylistic Changes
—Pages: 7, 8, 11, 12

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: MAR 13 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1379

EUGENE F. DIAMOND AND JASPER F. WILLIAMS,
APPELLANTS *v.* ALLAN G. CHARLES ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[March —, 1986]

JUSTICE BLACKMUN delivered the opinion of the Court.

Appellant Eugene F. Diamond is a pediatrician engaged in private practice in Illinois. He seeks to defend before this Court the constitutionality of four sections of the Illinois Abortion Law of 1975, as amended.¹ These sections impose criminal liability for the performance of an abortion under certain circumstances, and, under other circumstances, require that the woman be provided with particular abortion-related information. The State of Illinois has chosen to absent itself from this appeal, despite the fact that its statute is at stake. Because a private party whose own conduct is neither implicated nor threatened by a criminal statute has no judicially cognizable interest in the statute's defense, we dismiss the appeal for want of jurisdiction.

I

On October 30, 1979, over gubernatorial veto, the Illinois Legislature amended the State's 1975 abortion law to provide for increased regulation. 1979 Ill. Laws, Pub. Act 81-1078. That very day appellees, four physicians who provide obstet-

¹ 1975 Ill. Laws, Pub. Act 79-1126, as amended, now codified as Ill. Rev. Stat. ch. 38, §§ 81-21 to 81-34 (1983). The 1975 Act was passed over the Governor's veto. Substantial portions of it already have been held to be unconstitutional. See, *e. g.*, *Wynn v. Scott*, 449 F. Supp. 1302 (ND Ill. 1978), *aff'd sub nom. Wynn v. Carey*, 599 F. 2d 193 (CA7 1979).

STYLISTIC CHANGES

+ P. 7

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: APR 25 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1379

**EUGENE F. DIAMOND AND JASPER F. WILLIAMS,
APPELLANTS v. ALLAN G. CHARLES ET AL.**

**ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

[April —, 1986]

JUSTICE BLACKMUN delivered the opinion of the Court.

Appellant Eugene F. Diamond is a pediatrician engaged in private practice in Illinois. He seeks to defend before this Court the constitutionality of four sections of the Illinois Abortion Law of 1975, as amended.¹ These sections impose criminal liability for the performance of an abortion under certain circumstances, and, under other circumstances, require that the woman be provided with particular abortion-related information. The State of Illinois has chosen to absent itself from this appeal, despite the fact that its statute is at stake. Because a private party whose own conduct is neither implicated nor threatened by a criminal statute has no judicially cognizable interest in the statute's defense, we dismiss the appeal for want of jurisdiction.

I

On October 30, 1979, over gubernatorial veto, the Illinois Legislature amended the State's 1975 abortion law to provide for increased regulation. 1979 Ill. Laws, Pub. Act 81-1078. That very day appellees, four physicians who provide obstet-

¹ 1975 Ill. Laws, Pub. Act 79-1126, as amended, now codified as Ill. Rev. Stat. ch. 38, §§ 81-21 to 81-34 (1983). The 1975 Act was passed over the Governor's veto. Substantial portions of it already have been held to be unconstitutional. See, e. g., *Wynn v. Scott*, 449 F. Supp. 1302 (ND Ill. 1978), *aff'd sub nom. Wynn v. Carey*, 599 F. 2d 193 (CA7 1979).

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 29, 1986

MEMORANDUM TO THE CONFERENCE

Re: Hold for No. 84-1379, Diamond v. Charles

One case is held for Diamond. It is No. 85-426, Save the Dunes Council, Inc. v. United States. This case concerns Crescent Dune, a tract of land lying between the Indiana Dunes National Lakeshore and a generating station owned by Northern Indiana Public Service Co. (NIPSCO). The Indiana Dunes National Lakeshore Act, as amended in 1976, 16 U.S.C. §460u-12, authorized the Secretary of the Interior to acquire Crescent Dune. In 1978 the U.S. instituted condemnation proceedings for a portion of the tract.

Petitioner, a not-for-profit corporation that seeks legal protection for the public use of the Dunes, filed a motion, under Fed. Rule Civ. Proc. 24(a)(2), to intervene as of right in the condemnation action. The DC denied the motion on the grounds that petitioner lacked an interest in the property sought to be condemned sufficient to warrant intervention as of right, and had no right to assert that its interest was inadequately represented.

CA7, by a divided vote, affirmed. In an eminent domain proceeding, only two legal interests are at stake: the interest of the sovereign in exercising the eminent domain power, and the private owner's interest in the condemned property. Petitioner possessed neither, and its interest in the property was insufficient; "[t]he interest of a proposed intervenor, however, must be greater than the interest sufficient to satisfy the standing requirement." App. to Pet. for Cert. A-5. Judge Cudahy dissented, on the ground that the requirements for intervention should be more liberal than those for standing to sue.

The central point of the decision in Save the Dunes, and the basis, in my mind, for the hold, was the question of the degree of interest necessary for intervention as of right. The majority opinion in Diamond does not address this issue, except to note that the Courts of Appeals have reached varying conclusions as to whether a party seeking to intervene as of right must possess an interest equivalent to that required for standing. Slip. op. 13, n. 21.

While the degree of interest necessary for intervention may well require resolution by this Court, I shall vote to deny. According to the CA7, the nature of an eminent domain proceeding

affects the interests necessary for intervention; CA7 might require a lesser interest in another kind of judicial proceeding. In addition, the U.S. and NIPSCO have filed a stipulated judgment agreeing to dismissal. As the preliminary memo in this case pointed out, it is not clear that petitioner could block "approval" of this stipulation even if it were granted leave to intervene as a plaintiff. If petitioner could block the stipulation, the U.S. could unilaterally decide to abandon its prosecution of the condemnation proceedings; petitioner could not carry the proceedings forward, and thus there is some reason to doubt that petitioner could vindicate its interests even if it were allowed to intervene.

H.C.B.



CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

February 25, 1986

84-1379 Diamond v. Charles

Dear Harry:

Please join me.

Sincerely,

Justice Blackmun

lfp/ss

cc: The Conference

68 11 30 10:10

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

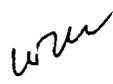
April 16, 1986

Re: No. 84-1379 Diamond v. Charles

Dear Sandra,

Please join me in your opinion concurring in part and concurring
in the judgment.

Sincerely,



Justice O'Connor

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 18, 1986

Re: 84-1379 - Diamond v. Charles

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

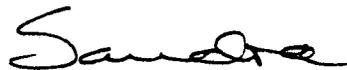
February 25, 1986

Re: 84-1379 Diamond v. Charles

Dear Harry,

Although I agree with much of your opinion's reasoning and with its result, I plan to write separately, at least in part. In my view, the trial court erred in allowing Dr. Diamond to intervene. I think he lacked Article III standing to defend the challenged provisions of the Illinois statute. It seems to me Dr. Diamond's lack of standing to intervene in the first place is useful in resolving whether Illinois' presence as an appellee under our Rule 10.4 gives us a case or controversy.

Sincerely,



Justice Blackmun

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: ~~APR 10 1986~~

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1379

EUGENE F. DIAMOND AND JASPER F. WILLIAMS,
APPELLANTS *v.* ALLAN G. CHARLES ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[April —, 1986]

JUSTICE O'CONNOR, concurring in part and concurring in the judgment.

I join the Court's judgment and Part I of its opinion, and I agree with much of the Court's discussion of why Dr. Diamond's asserted interests in defending the Illinois Abortion Act do not satisfy the Art. III standing requirement. I write separately, however, because I do not agree with the Court's reasons for rejecting Dr. Diamond's contention that Illinois' presence as an appellee ensures that a justiciable controversy is before us. In my view, Dr. Diamond was not a proper intervenor in the Court of Appeals, and therefore Illinois is not before this Court in any capacity, because Diamond was not authorized to bring this appeal under 28 U. S. C. § 1254(2).

The Court assumes that Diamond could properly bring an appeal under § 1254(2) and therefore that Illinois is present in this Court as an appellee under ~~our~~ Rule 10.4. The Court then asserts that Illinois is not "the functional equivalent of an appellant" by virtue of its status as a party under Rule 10.4. *Ante*, at —. On this basis, the Court concludes that Illinois' "failure to invoke our jurisdiction leaves the Court without a 'case' or 'controversy' between appellees and the State of Illinois," *ante*, at —, even if Illinois' interests are actually adverse to appellees' interests. I believe this analysis is needlessly inconsistent with this Court's opinion in

this Court's

pp. 1, 6 and

Stylistic Changes Through

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: APR 16 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1379

EUGENE F. DIAMOND AND JASPER F. WILLIAMS,
APPELLANTS *v.* ALLAN G. CHARLES ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[April —, 1986]

JUSTICE O'CONNOR, with whom JUSTICE REHNQUIST joins, concurring in part and concurring in the judgment.

I join the Court's judgment and Part I of its opinion, and I agree with much of the Court's discussion of why Dr. Diamond's asserted interests in defending the Illinois Abortion Act do not satisfy the Art. III standing requirement. I write separately, however, because I do not agree with the Court's reasons for rejecting Dr. Diamond's contention that Illinois' presence as an appellee ensures that a justiciable controversy is before us. In my view, Dr. Diamond was not a proper intervenor in the Court of Appeals, and therefore Illinois is not before this Court in any capacity, because Diamond was not authorized to bring this appeal under 28 U. S. C. § 1254(2).

The Court assumes that Diamond could properly bring an appeal under § 1254(2) and therefore that Illinois is present in this Court as an appellee under this Court's Rule 10.4. The Court then asserts that Illinois is not "the functional equivalent of an appellant" by virtue of its status as a party under Rule 10.4. *Ante*, at —. On this basis, the Court concludes that Illinois' "failure to invoke our jurisdiction leaves the Court without a 'case' or 'controversy' between appellees and the State of Illinois," *ante*, at —, even if Illinois' interests are actually adverse to appellees' interests. I believe this analysis is needlessly inconsistent with this Court's opin-

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: **APR 25 1986**

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1379

**EUGENE F. DIAMOND AND JASPER F. WILLIAMS,
APPELLANTS v. ALLAN G. CHARLES ET AL.**

**ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

[April —, 1986]

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE and JUSTICE REHNQUIST join, concurring in part and concurring in the judgment.

I join the Court's judgment and Part I of its opinion, and I agree with much of the Court's discussion of why Dr. Diamond's asserted interests in defending the Illinois Abortion Act do not satisfy the Art. III standing requirement. I write separately, however, because I do not agree with the Court's reasons for rejecting Dr. Diamond's contention that Illinois' presence as an appellee ensures that a justiciable controversy is before us. In my view, Dr. Diamond was not a proper intervenor in the Court of Appeals, and therefore Illinois is not before this Court in any capacity, because Diamond was not authorized to bring this appeal under 28 U. S. C. § 1254(2).

The Court assumes that Diamond could properly bring an appeal under § 1254(2) and therefore that Illinois is present in this Court as an appellee under this Court's Rule 10.4. The Court then asserts that Illinois is not "the functional equivalent of an appellant" by virtue of its status as a party under Rule 10.4. *Ante*, at —. On this basis, the Court concludes that Illinois' "failure to invoke our jurisdiction leaves the Court without a 'case' or 'controversy' between appellees and the State of Illinois," *ante*, at —, even if Illinois' interests are actually adverse to appellees' interests.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

pp. 1