

The Burger Court Opinion Writing Database

Mitchum v. Foster

407 U.S. 225 (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. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 31, 1972

PERSONAL

No. 70-27 -- Mitchum v. Foster

Dear Harry:

I asked for a special memo in the proposed opinion and it confirmed my initial reaction.

Byron is already gone and I have not really gotten into this.

However I pass on Elmore's memo for what help it may be.

Regards,

W. B.

Mr. Justice Blackmun

To: Mr. John Lee Douglas
Mr. George Chapman
Mr. John T. Hart
Mr. John T. Hart

Circumstances: _____

No. 70-27 -- Mitchum v. Foster

Recirculated: _____

MR. CHIEF JUSTICE BURGER, concurring.

I concur in the opinion of the Court and add a few words to emphasize what the Court is and is not deciding today as I read the opinion. The Court holds only that 28 U.S.C. § 2283, which is an absolute bar to injunctions against state court proceedings in most suits, does not apply to a suit brought under 42 U.S.C. § 1983 seeking an injunction of state proceedings. But, as the Court's opinion has noted, it does nothing to "question or qualify in any way the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state court proceeding." Ante at _____. In the context of pending state criminal proceedings, we held in Younger v. Harris, 401 U. S. 37 (1971), that these principles allow a federal court properly to issue an injunction in only a narrow class of circumstances. We have not yet reached or decided exactly how great a restraint is imposed by these principles on a federal court asked to enjoin state civil proceedings. Therefore on remand in this case, it seems to me the District Court, before reaching a decision on

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 24, 1972

Dear Potter:

In No. 70-27 - Mitchum v. Foster,
please join me in your opinion.

W. O. D.

W. O. D.

Mr. Justice Stewart

cc: Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. May 25, 1972

RE: No. 70-27 - Mitchum v. Foster

Dear Potter:

I am happy to join you in the above.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

2nd DRAFT

Pls. file in my

SUPREME COURT OF THE UNITED STATES

Mr. Justice Stewart, Jr.
Circulated MAY 24 1972

No. 70-27

Resubmitted

Robert Mitchum, dba The
Book Mart, Appellant,
v.
Clinton E. Foster, Prosecuting
Attorney of Bay County,
Florida, et al.

On Appeal from the
United States District
Court for the North-
ern District of Florida.

[May —, 1972]

MR. JUSTICE STEWART delivered the opinion of the Court.

The federal anti-injunction statute provides that a federal court "may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."¹ An Act of Congress, 42 U. S. C. § 1983, expressly authorizes a "suit in equity" to redress "the deprivation," under color of state law, "of any rights, privileges, or immunities secured by the Constitution. . . ."² The question before us is whether this "Act of Congress" comes within the "expressly authorized" exception of the anti-injunction statute so as to permit a federal court in a § 1983 suit to grant an

¹ 28 U. S. C. § 2283.

² The statute provides in full: "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

2
LWP

3rd DRAFT

Mr. Chief Justice, and
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

Circulated:

No. 70-27

JUN 5 1972

Recirculated:

Robert Mitchum, dba The
Book Mart, Appellant,
v.
Clinton E. Foster, Prosecuting
Attorney of Bay County,
Florida, et al.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 30, 1972

Re: No. 70-72 - Mitchum v. Foster

Dear Potter:

Your opinion and the relevant materials have convinced me that you arrive at the right conclusion as to the relationship between § 1983 and § 2283. Hence, I join your opinion. I may write in concurrence.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

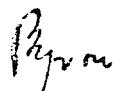
June 16, 1972

Re: No. 70-27 - Mitchum v. Foster

Dear Chief:

Please join me in your
concurrence.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 24, 1972

Re: No. 70-27 - Mitchum v. Foster

Dear Potter:

Please join me.

Sincerely,



T.M.

Mr. Justice Stewart

cc: Conference

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Supreme Court of the United States
Washington, D. C. 20530

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 12, 1972

Re: No. 70-27 - Mitchum v. Foster

Dear Potter:

Unless any further writings convince me otherwise, I am glad to join your opinion proposed for this case.

Sincerely,

H. A. B.

1

Mr. Justice Stewart

cc: The Conference

(2)
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 16, 1972

Re: No. 70-27 - Mitchum v. Foster

Dear Chief:

Please join me in your concurrence.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference