

The Burger Court Opinion Writing Database

O'Shea v. Littleton

414 U.S. 488 (1974)

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

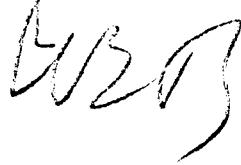
December 11, 1973

Re: 72-953 - O'Shea v. Littleton

Dear Byron:

Please join me.

Regards,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 29, 1973

MEMO TO CONFERENCE:

I will in due course circulate
a dissent in 72-953, Shea v. Littleton.

WD

William O. Douglas

The Conference

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

 No. 72-953

Case No. 12-3

Henry M. Jackson

Michael O'Shea, as Magistrate
 of the Circuit Court for
 Alexander County, Illinois,
 and Dorothy Spomer, as
 Associate Circuit Judge for
 Alexander County, Illinois,
 Petitioners,

On Writ of Certiorari
 to the United States
 Court of Appeals for
 the Seventh Circuit.

v.

Ezell Littleton et al.

[November --, 1973]

MR. JUSTICE DOUGLAS, dissenting.

The respondents in this case are black and indigent citizens of Cairo, Illinois. Suing in federal court, they alleged that since the early 1960's black citizens of Cairo have been actively seeking equal opportunity and treatment in employment, housing, education, and ordinary day-to-day relations with the white citizens and officials of Cairo. In this quest, blacks have engaged in a boycott of local merchants deemed to have engaged in racial discrimination.

Alleging that this quest for equality has generated substantial antagonism from white governmental officials, respondents brought a class action under 42 U. S. C. §§ 1981, 1982, 1983, and 1985, seeking to represent citizens of Cairo who have been subjected in the past, and continue to be subjected, to the allegedly discriminatory and unconstitutional administration of criminal justice in Alexander County, Illinois, which includes Cairo. Among their other claims, respondents alleged that petitioners Michael O'Shea and Dorothy Spomer, judges in Alexander County,

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No 72-953

From: Douglas, J.

Circulated:

Recirculated;

Michael O'Shea, as Magistrate
of the Circuit Court for
Alexander County, Illinois,
and Dorothy Spomer, as
Associate Circuit Judge for
Alexander County, Illinois,
Petitioners.

On Writ of Certiorari
to the United States
Court of Appeals for
the Seventh Circuit.

Ezell Littleton et al

{November -- 1973}

MR. JUSTICE DOUGLAS, dissenting:

The respondents in this case are black and indigent citizens of Cairo, Illinois. Suing in federal court, they alleged that since the early 1960's black citizens of Cairo have been actively seeking equal opportunity and treatment in employment, housing, education, and ordinary day-to-day relations with the white citizens and officials of Cairo. In this quest, blacks have engaged in a boycott of local merchants deemed to have engaged in racial discrimination.

Alleging that this quest for equality has generated substantial antagonism from white governmental officials, respondents brought a class action under 42 U. S. C. §§ 1981, 1982, 1983, and 1985, seeking to represent citizens of Cairo who have been subjected in the past, and continue to be subjected, to the allegedly discriminatory and unconstitutional administration of criminal justice in Alexander County, Illinois, which includes Cairo. Among their other claims, respondents alleged that petitioners Michael O'Shea and Dorothy Sponner, judges in Alexander County,

4th DRAFT

SUPREME COURT OF THE UNITED STATES

REFERENCES

No. 72-953

Circulate.

Recirculated:

Michael O'Shea, as Magistrate
of the Circuit Court for
Alexander County, Illinois,
and Dorothy Spomer, as
Associate Circuit Judge for
Alexander County, Illinois,
Petitioners.

On Writ of Certiorari
to the United States
Court of Appeals for
the Seventh Circuit.

Ezell, Littleton et al

[November —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

The respondents in this case are black and indigent citizens of Cairo, Illinois. Suing in federal court, they alleged that since the early 1960's black citizens of Cairo have been actively seeking equal opportunity and treatment in employment, housing, education, and ordinary day-to-day relations with the white citizens and officials of Cairo. In this quest, blacks have engaged in a boycott of local merchants deemed to have engaged in racial discrimination.

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

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-953

Recirculated: 12-28

Michael O'Shea, as Magistrate
of the Circuit Court for
Alexander County, Illinois,
and Dorothy Spomer, as
Associate Circuit Judge for
Alexander County, Illinois,
Petitioners,

On Writ of Certiorari
to the United States
Court of Appeals for
the Seventh Circuit.

v.

Ezell Littleton et al.

[November —, 1973]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL concur, dissenting.

The respondents in this case are black and indigent citizens of Cairo, Illinois. Suing in federal court, they alleged that since the early 1960's black citizens of Cairo have been actively seeking equal opportunity and treatment in employment, housing, education, and ordinary day-to-day relations with the white citizens and officials of Cairo. In this quest, blacks have engaged in a boycott of local merchants deemed to have engaged in racial discrimination.

Alleging that this quest for equality has generated substantial antagonism from white governmental officials, respondents brought a class action under 42 U. S. C. §§ 1981, 1982, 1983, and 1985, seeking to represent citizens of Cairo who have been subjected in the past, and continue to be subjected, to the allegedly discriminatory and unconstitutional administration of criminal justice in Alexander County, Illinois, which includes Cairo. Among their other claims, respondents alleged that petitioners Michael O'Shea and Dorothy Spomer, judges in Alexander County,

N.J.

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

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-953

From: Deputy Clerk

Circulate:

Recirculate: 1-11-74

Michael O'Shea, as Magistrate
 of the Circuit Court for
 Alexander County, Illinois,
 and Dorothy Spomer, as
 Associate Circuit Judge for
 Alexander County, Illinois,
 Petitioners,

v.
 Ezell Littleton et al.

On Writ of Certiorari
 to the United States
 Court of Appeals for
 the Seventh Circuit.

[November —, 1973]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BREN-
 NAN and MR. JUSTICE MARSHALL concur, dissenting.

The respondents in this case are black and indigent citizens of Cairo, Illinois. Suing in federal court, they alleged that since the early 1960's black citizens of Cairo have been actively seeking equal opportunity and treatment in employment, housing, education, and ordinary day-to-day relations with the white citizens and officials of Cairo. In this quest, blacks have engaged in a boycott of local merchants deemed to have engaged in racial discrimination.

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December 6, 1973

RE: No. 72-953 - O'Shea v. Littleton

Dear Bill:

In our discussion the other day of the above I suggested that the only way satisfactorily to hurdle Byron's "case or controversy" argument is to state with particularity the portions of respondents' complaint which might be fairly construed as allegations that the named plaintiffs suffered past discrimination at the hands of petitioners, and will, with reasonable likelihood, be subject to similar discrimination in the future.

I completely agree with that portion of your dissent which argues that respondents alleged past wrongs to the named plaintiffs with the necessary specificity. The Sixth Claim for Relief in the complaint plainly states that "Defendants O'Shea and Spomer have denied . . . to plaintiffs . . . their constitutional rights and then specifically names the rights denied. But the complaint also states the defendants "continue to deny to plaintiffs . . . their constitutional rights." (emphasis added). If this were the only allegation to support the likelihood of future wrongdoing, I might be inclined to go along with Byron's view that respondents' claim for injunctive relief is too speculative and conjectural to meet the "case or controversy" requirement imposed by Art. III. However, in paragraphs 10 and 11 of the complaint, respondents allege that they have been engaging in activities since the early 1960's to end discrimination in Cairo, and that these activities have generated tension and antagonism on the part of the officials of Cairo. More specifically, respondents allege at paragraph 23 that the police chief and police commissioner "have denied and continue to deny to plaintiffs and members of their class their constitutional rights in the following ways:

"(a) Defendants have made or caused to be made or cooperated in the making of arrests and filing of charges against plaintiffs and members of their class where such charges are not warranted and are

merely for the purpose of harassment and to discourage and prevent plaintiffs and their class from exercising their constitutional rights.

(b) Defendants have made or caused to be made or cooperated in the making of arrests and the filing of charges against plaintiffs and members of their class where there may be some colorable basis to the arrest or charge, but the crime defined in the charge is much harsher than is warranted by the facts and is far more severe than like charges would be against a white person." (emphasis added).

This allegation clearly supports the likelihood that the named plaintiffs, as well as members of their class, will be arrested in the future and therefore will appear before O'Shea and Spomer and be subjected to the alleged discriminatory practices in the administration of justice. The complaints in Jenkins v. McKeithen and Doe v. Bolton (with respect to the physician-appellants) were not any more specific about the likelihood of future harms, yet we found they presented a justiciable controversy.

In light of respondents' specific allegations that the police chief and commissioner continue to make harassing arrests for the purpose of discouraging respondents' activities (presumably the boycott activities), Byron's reading of the complaint is simply wrong that "the proposition is that if respondents proceed to violate an unchallenged law and if they are charged, held to answer, and tried in any proceeding before petitioners, they will be subjected to the discriminatory practices that petitioners are alleged to have followed." (p.8). The proposition is, as alleged in the complaint, that respondents have been arrested for harassment purposes and that these arrests are continuing and therefore will bring respondents before O'Shea and Spomer. These allegations of past and continuing wrongdoings clearly state a case or controversy.

In these circumstances I would not think references to the complaint against the states attorney general, (pp. 3-6 of the dissent) would be necessary or desirable. Further, the reference to damage claims (page 7 of the dissent) may cause needless confusion since damages are not sought against O'Shea and Spomer.

Sincerely,

Mr. Justice Douglas

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. December 10, 1973

RE: No. 72-953 O'Shea v. Littleton, et al.

Dear Bill:

Please join me in your dissenting
opinion in the above.

Sincerely,



Mr. Justice Douglas

cc: The Conference

January 10, 1974

RE: No. 72-953 - O'Shea v. Littleton

Dear Bill:

I note that Harry has filed a concurring opinion objecting to the Court reaching the merits in light of the conclusion in Part I of Byron's opinion (which Harry joins) that there is no case or controversy. Do you think it would be appropriate in your opinion to state an agreement with Harry that the Court should not reach the merits although we do since we disagree with the holding that there is no case or controversy? My only thought was that this would emphasize that Part II of the Court's opinion is merely advisory, which may be important if there should be a Court in Allee v. Medrano for a holding that there must be standing for the named plaintiffs and Part II of O'Shea is relied upon to support that holding.

Sincerely,

WJB

Mr. Justice Douglas

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 28, 1973

72-953 - O'Shea v. Littleton

Dear Byron,

Although the issue is, as you say, close, I agree with that part of your proposed opinion that holds that the complaint failed to satisfy the case or controversy requirement. I also agree with the balance of your opinion holding that the complaint does not state a case for equitable relief. If, however, a majority agree with the first part of the opinion, I wonder if it might not be wise to stop there.

Sincerely yours,

PS.
1

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 27, 1973

MEMORANDUM FOR THE CONFERENCE

Re: No. 72-953 - O'Shea v. Littleton

My vote at the conference in this case was that a case or controversy had been adequately stated but that injunctive relief was not warranted under the complaint. In light of our subsequent discussion in connection with Steffel as to the necessity of clearly stating a case or controversy, this circulation finds that the complaint fails to satisfy the case or controversy requirement. It is a close issue. I also deal with the lack of equity in the claim for an injunction.

Byron R. White
B.R.W.

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 11-27-73

No 72-953

Recirculated: _____

Michael O'Shea, as Magistrate
 of the Circuit Court for
 Alexander County, Illinois,
 and Dorothy Spomer, as
 Associate Circuit Judge for
 Alexander County, Illinois,
 Petitioners.

On Writ of Certiorari
 to the United States
 Court of Appeals for
 the Seventh Circuit.

Ezell Littleton et al

(December 1, 1973)

MR. JUSTICE WHITE delivered the opinion of the
 Court.

The respondents are 19 named individuals who commenced this civil rights action, individually and on behalf of a class of citizens of the city of Cairo, Illinois, against the State's Attorney for Alexander County, Illinois, his investigator, the Police Commissioner of Cairo, and the petitioners here, Michael O'Shea and Dorothy Spomer, Magistrate and Associate Judge of the Alexander County Circuit Court, respectively, alleging that they have intentionally engaged in, and are continuing to engage in, various patterns and practices of conduct in the administration of the criminal justice system in Alexander County that deprive respondents of rights secured by the First, Sixth, Eighth, Thirteenth, and Fourteenth Amendments, and by 42 U. S. C. §§ 1981, 1982, 1983, and 1985. The complaint, as amended, alleges that since the early 1960's, black

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

Styletice changes
and see pp 8 & 11

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 1-5-7

No. 72-953

Michael O'Shea, as Magistrate
of the Circuit Court for
Alexander County, Illinois,
and Dorothy Spomer, as
Associate Circuit Judge for
Alexander County, Illinois,
Petitioners,

On Writ of Certiorari
to the United States
Court of Appeals for
the Seventh Circuit.

v.

Ezell Littleton et al.

[December —, 1973]

MR. JUSTICE WHITE delivered the opinion of the
Court.

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To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 ✓ Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

pp 4, 10

3
 2nd DRAFT

From: White, J.

Circulated: _____

Recirculated: 1-9-7

SUPREME COURT OF THE UNITED STATES

—
 No. 72-953
 —

Michael O'Shea, as Magistrate
 of the Circuit Court for
 Alexander County, Illinois,
 and Dorothy Spomer, as
 Associate Circuit Judge for
 Alexander County, Illinois,
 Petitioners.

On Writ of Certiorari
 to the United States
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Excell Littleton et al.

[December —, 1973]

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 27, 1973

Re: No. 72-953 -- O'Shea v. Littleton

Dear Bill:

Please join me in your dissent.

Sincerely,


T. M.

Mr. Justice Douglas

cc: The Conference

To: The City of Toledo

Mr.	1
Mr.	2
Mr.	3
Mr.	4
Mr. Justice	5
Mr. Justice	6
Mr. Justice	7

1st DRAFT

SUPREME COURT OF THE UNITED STATES

STATED
From: - - - - -

No. 72-953

Circulated: 1/1/11

Recirculated: _____

Michael O'Shea, as Magistrate
of the Circuit Court for
Alexander County, Illinois,
and Dorothy Spomer, as
Associate Circuit Judge for
Alexander County, Illinois,
Petitioners.

Ezell-Littleton et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Seventh Circuit.

[January —, 1974]

MR. JUSTICE BLACKMUN, concurring in part.

I join the judgment of the Court and Part I of the Court's opinion which holds that the complaint failed to satisfy the threshold requirement imposed by Art. III of the Constitution that those who seek to invoke the power of federal courts must allege an actual case or controversy." *Ante*, p. 4.

When we arrive at that conclusion, it follows, it seems to me, that we are precluded from considering any other issue presented for review. Thus, the Court's additional discussion of the question whether a case for equitable relief was stated amounts to an advisory opinion that we are powerless to render. *Hayburn's Case*, 2 Dall. 409 (1792); *United States v. Evans*, 213 U. S. 297, 301 (1909); *Muskrat v. United States*, 219 U. S. 346, 360-361 (1911); *Stearns v. Wood*, 236 U. S. 75 (1915); *Coffmen v. Breeze Corps*, 323 U. S. 316 (1945); *United Public Workers v. Mitchell*, 330 U. S. 75 (1946); *Paschall v. Christie-Stewart, Inc.*, 414 U. S. ___, ___ (1973).

Mr. Justice Frankfurter stated the applicable principle

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Powell
 Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-953

Clerk's Office

Received by: 1/1/74

Michael O'Shea, as Magistrate
 of the Circuit Court for
 Alexander County, Illinois,
 and Dorothy Spomer, as
 Associate Circuit Judge for
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 Petitioners.

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[January — 1974]

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When we arrive at that conclusion, it follows, it seems to me, that we are precluded from considering any other issue presented for review. Thus, the Court's additional discussion of the question whether a case for equitable relief was stated is perilously close to an advisory opinion that we are powerless to render. *Hayburn's Case*, 2 Dall. 409 (1792); *United States v. Evans*, 213 U. S. 297, 301 (1909); *Muskrat v. United States*, 219 U. S. 346, 360-361 (1911); *Stearns v. Wood*, 236 U. S. 75 (1915); *Coffmen v. Breeze Corps*, 323 U. S. 316 (1945); *United Public Workers v. Mitchell*, 330 U. S. 75 (1946); *Paschall v. Christie-Stewart, Inc.*, 414 U. S. —, — (1973).

Mr. Justice Frankfurter stated the applicable principle

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 3, 1973

Re: No. 72-953 - O'Shea v. Littleton

Dear Byron:

I think I am about where Potter is, as described
in his letter of November 28 to you.

Sincerely

H. A. B.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 7, 1974

Dear Byron:

Re: No. 72-953 - O'Shea v. Littleton

I understand, from our last conference, that you plan to retain both parts of the opinion. In view of this, I shall put together a short concurrence and endeavor to have it around this week.

Sincerely,



Mr. Justice White

Copies to the Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Blackmun, S.

Circled by [initials]

Revised [initials] 1/14/74

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SUPREME COURT OF THE UNITED STATES

No. 72-953

Michael O'Shea, as Magistrate
of the Circuit Court for
Alexander County, Illinois,
and Dorothy Spomer, as
Associate Circuit Judge for
Alexander County, Illinois,
Petitioners,

On Writ of Certiorari
to the United States
Court of Appeals for
the Seventh Circuit.

v.

Ezell Littleton et al.

[January 15, 1974]

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Mr. Justice Frankfurter stated the applicable principle

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 4, 1973

No. 72-953 O'Shea v. Littleton

Dear Byron:

I agree with Potter's letter to you of November 28.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 3, 1973

Re: No. 72-953 - O'Shea v. Littleton

Dear Byron:

I agree with both parts of your proposed opinion, and would be happy to join either of them separately or both of them together.

Sincerely,



Mr. Justice White

Copies to the Conference