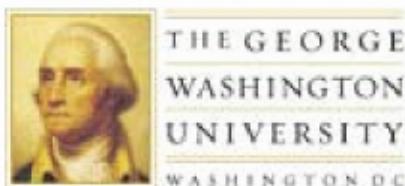


The Burger Court Opinion Writing Database

Miree v. DeKalb County

433 U.S. 25 (1977)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



1
M/

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

From: The Chief Justice

Circulated: JUN 17 1977

Recirculated: _____

No. 76-607 - Miree v. DeKalb Co., Ga.

MR. CHIEF JUSTICE BURGER, concurring in the judgment.

There is language in the Court's opinion which might be interpreted as rigidly limiting the application of "federal common law" to only those situations where the rights and obligations of the Federal Government are at issue. I do not agree with such a restrictive approach.

I cannot read Clearfield Trust Co. v. United States, 318 U.S. 363 (1943) and Bank of America National Trust and Savings Ass'n. v. Parnell, 352 U.S. 29 (1956) as, in all circumstances, precluding the application of "federal common law" to all matters involving only the rights of private citizens. Certainly, in a diversity action, state substantive law should not be ousted on the basis of "an amorphous doctrine of national sovereignty divorced from any specific constitutional or statutory provision and premised solely on the argument 'that every authorized activity of the United States represents an exercise of its governmental power'", United States v. Little Lake Misere Land Co., 412 U.S. 580, 592 n. 10 (1973), quoting

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

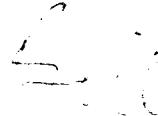
May 26, 1977

RE: Nos. 76-607, 659, 700 & 722 - Miree, Phillips,
Fireman's Fund, etc. and Fields v. DeKalb County,
Georgia, et al.

Dear Bill:

I agree.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 26, 1977

76-607, Miree v. DeKalb County

Dear Bill,

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

Sincerely yours,

RS

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 31, 1977

Re: Nos. 76-607, 76-659, 76-700 & 76-722 -
Miree v. DeKalb County

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

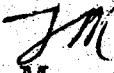
May 27, 1977

Re: Nos. 76-607, 76-659, 76-700, and 76-722, Miree v. Dekalb Co.

Dear Bill:

Please join me.

Sincerely,


T. M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 27, 1977

Re: Nos. 76-607, 76-659, 76-700, 76-722 - Miree, et al.
v. DeKalb County, Georgia

Dear Bill:

Please join me.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 26, 1977

No. 76-607 Miree v. DeKalb

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

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 Stevens

From: Mr. Justice Rehnquist

Circulated: MAY 25 1977

Not circulated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 76-607, 76-659, 76-700, AND 76-722

George Henson Miree et al.,
 Petitioners,

76-607 *v.*

DeKalb County, Georgia.

Judith Anita Phillips, etc.,
 Petitioner,

76-659 *v.*

DeKalb County, Georgia, et al.

Fireman's Fund Insurance Com-
 pany, Petitioner,

76-700 *v.*

DeKalb County, Georgia, et al.

William Michael Fields,
 Petitioner,

76-722 *v.*

DeKalb County, Georgia, et al.

On Writs of Certiorari to
 the United States Court
 of Appeals for the Fifth
 Circuit.

[June —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

These consolidated cases arise out of the 1973 crash of a Lear Jet shortly after takeoff from the DeKalb-Peachtree Airport. The United States Court of Appeals for the Fifth Circuit, *en banc*, affirmed the dismissal of petitioners' complaint against respondent DeKalb County, holding that principles of federal common law were applicable to the resolution of petitioners' breach of contract claim. We granted certiorari to consider whether federal or state law

R 7/8/9

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

From: Mr. Justice Rehnquist

Circulated

Recirculated: **MAY 3 1977**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 76-607, 76-659, 76-700, AND 76-722

George Henson Miree et al.,
Petitioners,

76-607 *v.*

DeKalb County, Georgia.

Judith Anita Phillips, etc.,
Petitioner,

76-659 *v.*

DeKalb County, Georgia, et al.

Fireman's Fund Insurance Com-
pany, Petitioner,

76-700 *v.*

DeKalb County, Georgia, et al.

William Michael Fields,
Petitioner,

76-722 *v.*

DeKalb County, Georgia, et al.

On Writs of Certiorari to
the United States Court
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[June —, 1977]

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 26, 1977

Re: 76-607, 659, 700, 722 - Miree v. DeKalb
County

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference