

# 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



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.

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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,

PS

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,

*HAB*

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 15 1977

Re-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

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 8 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  
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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,

A handwritten signature in dark ink, appearing to be 'JPS', written in a cursive style.

Mr. Justice Rehnquist

Copies to the Conference