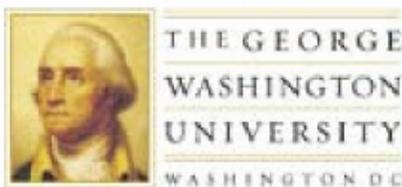


The Burger Court Opinion Writing Database

Edgar v. MITE Corp.

457 U.S. 624 (1982)

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



147

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

CHAMBERS OF
THE CHIEF JUSTICE

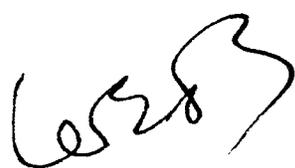
March 3, 1982

Re: No. 80-1188 - Edgar v. Mite Corp.

Dear Thurgood:

I join.

Regards,



Justice Marshall

Copies to the Conference

NOT RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
THE CHIEF JUSTICE

March 17, 1982

Re: No. 80-1188 - Edgar v. Mite Corp.

Dear Thurgood:

This case has been very difficult for everyone, beginning with the Conference discussion. In light of all the writing I am now going back over all the exchanges and the Conference itself. There were roughly four different positions at Conference.

My own concluding comment was that the intervening developments seemed to make this case moot. Alternatively, I said I could probably affirm but not on the rationale of the Seventh Circuit. As it should, the continuing exchanges have ventilated the subject more fully than was possible at the Conference.

As soon as I complete my re-examination I will "report."

Regards,

W303

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 8, 1982

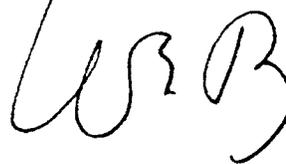
Re: No. 80-1188 - Edgar v. Mite Corp.

MEMORANDUM TO THE CONFERENCE:

My memo of March 17 reflected "second thoughts" arising from the differing views that emerged in the several separate and dissenting opinions.

I now conclude that I am in general agreement with Byron's latest draft.

Regards,

A handwritten signature in cursive script, appearing to read "W. B. Brennan".

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

CHAMBERS OF
THE CHIEF JUSTICE

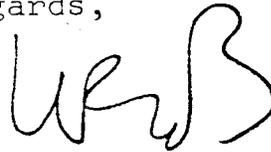
April 21, 1982

Re: 80-1188 - Edgar v. Mite Corp.

Dear Byron:

In view of the exchanges, it appears the case should
be assigned to you.

Regards,

A handwritten signature in black ink, appearing to be 'W. E. B.', written in a cursive style.

Justice White

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 11, 1982

Re: No. 80-1188 - Edgar v. Mite, Corp.

Dear Byron:

With all of our respective "backslidings" I come to the conclusion that you are more right here than in Nixon!! Hence I join.

Regards,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 2, 1982

RE: No. 80-1188 Edgar v. Mite Corporation

Dear Thurgood:

I agree.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 1, 1982

RE: No. 80-1188 Edgar v. Mite Corporation

Dear Byron:

I'll await the dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 7, 1982

RE: No. 80-1188 Edgar v. Mite Corporation

Dear Thurgood:

Please join me in your dissent.

Sincerely,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 8, 1982

Re: 80-1188 - Edgar v. Mite Corporation
and Mite Holdings, Inc.

Dear Thurgood,

I shall await John's dissent.

Sincerely yours,



Justice Marshall

Copies to the Conference

cpm

✓

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

From: Justice White

Circulated: 2/26/82

Recirculated: _____

Re: 80-1188 - Edgar v. Mite Corporation

JUSTICE WHITE, dissenting.

The Court of Appeals specifically found that this case was not moot. 633 F.2d 486, 490 (CA 7 1980). Rather than postponing jurisdiction to the hearing on the merits, which is our usual practice when we are in doubt as to our jurisdiction over an appeal,¹ we noted probable jurisdiction to consider whether the Illinois Business Take-Over Act imposes an impermissible burden on interstate commerce in violation of the Commerce Clause and whether the Illinois Act is preempted by the Williams Act. _____ U.S. _____ (1981). The majority now holds the case moot because it

¹To be sure, an order noting probable jurisdiction does not foreclose argument on a jurisdictional point that a party may wish to raise and the Court has, on occasion, dismissed on appeal as moot after noting probable jurisdiction. See, e.g., Murphy v. Hunt, _____ U.S. _____ (1982). However, an order noting probable jurisdiction usually indicates that the Court believes that any jurisdictional issues that have been raised are without merit. See R. Stern & E. Gressman, Supreme Court Practice, §5.23 (5th ed. 1978).

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

From: Justice White

Circulated: _____

Recirculated: 2 MAR

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.

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

[March —, 1982]

JUSTICE WHITE, with whom JUSTICE BLACKMUN joins,
dissenting.

The Court of Appeals specifically found that this case was not moot. 633 F. 2d 486, 490 (CA7 1980). Rather than postponing jurisdiction to the hearing on the merits, which is our usual practice when we are in doubt as to our jurisdiction over an appeal,* we noted probable jurisdiction to consider whether the Illinois Business Take-Over Act imposes an impermissible burden on interstate commerce in violation of the Commerce Clause and whether the Illinois Act is preempted by the Williams Act. — U. S. — (1981). The majority now holds the case moot because it no longer presents a “live controversy”. Op., at 6. The majority is able to reach this result only by considering an issue not properly before this Court and deciding that a preliminary injunction which was in effect when Mite made its tender offer bars the Secretary

*To be sure, an order noting probable jurisdiction does not foreclose argument on a jurisdictional point that a party may wish to raise and the Court has, on occasion, dismissed on appeal as moot after noting probable jurisdiction. See, e. g., *Murphy v. Hunt*, — U. S. — (1982). However, an order noting probable jurisdiction usually indicates that the Court believes that any jurisdictional issues that have been raised are without merit. See R. Stern & E. Gressman, *Supreme Court Practice*, § 5.23 (5th ed. 1978).

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

From: **Justice White**

Circulated: 28 MAY 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.

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

[June —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether the Illinois Business Take-Over Act, Ill. Rev. Stat., ch. 121 1/2, § 137.51, *et seq.* (Supp. 1980), is unconstitutional under the Supremacy and Commerce Clauses of the Federal Constitution.

I

Appellee MITE Corporation and its wholly-owned subsidiary, MITE Holdings, Inc., are corporations organized under the laws of Delaware with their principal executive offices in Connecticut. Appellant James Edgar is the Secretary of State of Illinois and is charged with the administration and enforcement of the Illinois Act. Under the Illinois Act any takeover offer¹ for the shares of a corporation must be registered with the Secretary of State if 10% of the class of equity

¹The Illinois Act defines "take-over offer" as "the offer to acquire or the acquisition of any equity security of a target company pursuant to a tender offer. . . ." Ill. Rev. Stat., ch. 121 1/2, § 137.52-9 (Supp. 1980). "A tender offer has been conventionally understood to be a publicly made invitation addressed to all shareholders of a corporation to tender their shares for sale at a specified price." Note, The Developing Meaning of "Tender Offer" Under the Securities Exchange Act of 1934, 86 Harv. L. Rev. 1250, 1251 (1973). The terms "tender offer" and "takeover offer" are often used interchangeably.

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

From: **Justice White**

- pp. 15-18, 20 & stylistic -

Circulated: _____

Recirculated: 7 JUN 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.

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

[June —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether the Illinois Business Take-Over Act, Ill. Rev. Stat., ch. 121 1/2, § 137.51, *et seq.* (Supp. 1980), is unconstitutional under the Supremacy and Commerce Clauses of the Federal Constitution.

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Appellee MITE Corporation and its wholly-owned subsidiary, MITE Holdings, Inc., are corporations organized under the laws of Delaware with their principal executive offices in Connecticut. Appellant James Edgar is the Secretary of State of Illinois and is charged with the administration and enforcement of the Illinois Act. Under the Illinois Act any takeover offer¹ for the shares of a corporation must be registered with the Secretary of State if 10% of the class of equity

¹The Illinois Act defines "take-over offer" as "the offer to acquire or the acquisition of any equity security of a target company pursuant to a tender offer. . . ." Ill. Rev. Stat., ch. 121 1/2, § 137.52-9 (Supp. 1980). "A tender offer has been conventionally understood to be a publicly made invitation addressed to all shareholders of a corporation to tender their shares for sale at a specified price." Note, *The Developing Meaning of "Tender Offer" Under the Securities Exchange Act of 1934*, 86 Harv. L. Rev. 1250, 1251 (1973). The terms "tender offer" and "takeover offer" are often used interchangeably.

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

From: **Justice White**

Circulated: _____

Recirculated: _____ 11 JUN 1982

STENOGRAPHIC CHANGES THROUGHOUT

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.

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

[June —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether the Illinois Business Take-Over Act, Ill. Rev. Stat., ch. 121 1/2, § 137.51, *et seq.* (Supp. 1980), is unconstitutional under the Supremacy and Commerce Clauses of the Federal Constitution.

I

Appellee MITE Corporation and its wholly-owned subsidiary, MITE Holdings, Inc., are corporations organized under the laws of Delaware with their principal executive offices in Connecticut. Appellant James Edgar is the Secretary of State of Illinois and is charged with the administration and enforcement of the Illinois Act. Under the Illinois Act any takeover offer¹ for the shares of a corporation must be registered with the Secretary of State if 10% of the class of equity

¹The Illinois Act defines "take-over offer" as "the offer to acquire or the acquisition of any equity security of a target company pursuant to a tender offer. . . ." Ill. Rev. Stat., ch. 121 1/2, § 137.52-9 (Supp. 1980). "A tender offer has been conventionally understood to be a publicly made invitation addressed to all shareholders of a corporation to tender their shares for sale at a specified price." Note, The Developing Meaning of "Tender Offer" Under the Securities Exchange Act of 1934, 86 Harv. L. Rev. 1250, 1251 (1973). The terms "tender offer" and "takeover offer" are often used interchangeably.

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

From: **Justice White**

pp. 2, 14 and stylistic

Circulated: _____

Recirculated: _____ 16 JUN 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.

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

[June —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether the Illinois Business Take-Over Act, Ill. Rev. Stat., ch. 121 1/2, § 137.51, *et seq.* (Supp. 1980), is unconstitutional under the Supremacy and Commerce Clauses of the Federal Constitution.

I

Appellee MITE Corporation and its wholly-owned subsidiary, MITE Holdings, Inc., are corporations organized under the laws of Delaware with their principal executive offices in Connecticut. Appellant James Edgar is the Secretary of State of Illinois and is charged with the administration and enforcement of the Illinois Act. Under the Illinois Act any takeover offer¹ for the shares of a target company must be registered with the Secretary of State. Ill. Rev. Stat., ch.

¹ The Illinois Act defines "take-over offer" as "the offer to acquire or the acquisition of any equity security of a target company, pursuant to a tender offer. . . ." Ill. Rev. Stat., ch. 121 1/2, § 137.52-9 (Supp. 1980). "A tender offer has been conventionally understood to be a publicly made invitation addressed to all shareholders of a corporation to tender their shares for sale at a specified price." Note, The Developing Meaning of "Tender Offer" Under the Securities Exchange Act of 1934, 86 Harv. L. Rev. 1250, 1251 (1973). The terms "tender offer" and "takeover offer" are often used interchangeably.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 18, 1982

Re: 80-1188 - Edgar v. Mite Corp.

Dear Thurgood,

You are just envious. Counting all of the x's set out, I bet you have never had as many votes for any of your opinions. I am proud of each of these votes, especially since some of them add up to an opinion for the Court.

Sincerely yours,



Justice Marshall

Copies to the Conference

cpm

Changes to page 1 as indicated

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

5th Draft

From: Justice White

Circulated: ~~6-22-80~~

SUPREME COURT OF THE UNITED STATES

Recirculated: 6-22-80

No. 80-1188

JAMES EDGAR, APPELLANT v. MITE CORPORATION
AND MITE HOLDINGS, INC.

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

JUSTICE WHITE delivered an opinion, Parts I, II, and V-B |
of which are the opinion of the Court.*

The issue in this case is whether the Illinois Business Take-
Over Act, Ill. Rev. Stat., ch. 121 1/2, § 137.51, *et seq.* (Supp.
1980), is unconstitutional under the Supremacy and Com-
merce Clauses of the Federal Constitution.

I

Appellee MITE Corporation and its wholly-owned subsid-
iary, MITE Holdings, Inc., are corporations organized under
the laws of Delaware with their principal executive offices in
Connecticut. Appellant James Edgar is the Secretary of
State of Illinois and is charged with the administration and
enforcement of the Illinois Act. Under the Illinois Act any
takeover offer¹ for the shares of a target company must be

*THE CHIEF JUSTICE and JUSTICES WHITE, BLACKMUN (except for
Part V-B), POWELL (except for Part II), STEVENS and O'CONNOR join
Parts I, II, and V-B of the opinion.

¹The Illinois Act defines "take-over offer" as "the offer to acquire or the
acquisition of any equity security of a target company, pursuant to a tender
offer. . . ." Ill. Rev. Stat., ch. 121 1/2, § 137.52-9 (Supp. 1980). "A
tender offer has been conventionally understood to be a publicly made invi-
tation addressed to all shareholders of a corporation to tender their shares
for sale at a specified price." Note, *The Developing Meaning of "Tender*

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 22, 1982

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 80-1188, Edgar v. MITE

1. No. 81-634, Sharon Steel Corp. v. Insurance Commissioner of New Hampshire. Appellants purchased approximately 10% of the shares of appellee Nashua, a New Hampshire corporation, in New York Stock Exchange transactions in 1979 and 1980. Nashua sought and obtained a cease and desist order pursuant to the New Hampshire Security Takeover Disclosure Act. The order directed appellant to cease purchasing Nashua stock until it complied with the New Hampshire Act, which provides that no offeror shall make a takeover bid for a New Hampshire corporation unless 20 days prior to making the bid he files a registration statement with the State Insurance Commissioner. The Act also provides that hearings may be sought by the target company, which can request a ruling from the Insurance Commission on whether the takeover bid may go forward.

The New Hampshire Supreme Court upheld the Commission's order and held that the Act is not preempted by the Williams Act and does not violate the Commerce Clause. I will vote to vacate and remand for reconsideration in light of Edgar v. MITE.

2. No. 81-1314, W.R. Grace & Co. v. Local No. 759. In 1974 petitioner signed a conciliation agreement with the EEOC which by its terms overrides the seniority provisions of the contract between the Company and the Union. After the Union brought grievance proceedings on behalf of male employees who had been laid off while female employees with less seniority had been retained, the Company brought suit seeking to enjoin the Union from arbitrating grievances

FEB 1 1982

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

**JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.**

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

[January —, 1982]

MR. JUSTICE MARSHALL delivered the opinion of the Court

This case arises out of an attempt by appellees, Mite Corporation and Mite Holdings, Inc. (referred to collectively as Mite), to make a cash tender offer for another corporation, Chicago Rivet & Machine Co. Before making the offer, appellees sought to enjoin the Secretary of State of Illinois from enforcing the Illinois Business Take-Over Act (Illinois Act), Ill. Rev. Stat., ch. 121 1/2, § 137.51 *et seq.* (Cum. Supp. 1980). The Illinois Act regulates purchases of stock in corporations having substantial connections with Illinois. The United States District Court for the Northern District of Illinois granted injunctive relief, holding that the Illinois Act is preempted by the Williams Act amendments to the Securities Exchange Act of 1934, 15 U. S. C. §§ 78m(d)-(e), 78n(d)-(f), and imposes an impermissible burden on interstate commerce in violation of the Commerce Clause. App. to Juris. Statement (J.S. App.) 32a-41a. The United States Court of Appeals for the Seventh Circuit affirmed. *Mite Corp. v. Dixon*, 633 F. 2d 486 (1980). We noted probable jurisdiction. — U. S. — (1981). Because we conclude that the case is moot, we now dismiss the appeal.

I

Appellees are corporations organized under the laws of

FEB 4 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

**JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.**

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

[January —, 1982]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case arises out of an attempt by appellees, Mite Corporation and Mite Holdings, Inc. (referred to collectively as Mite), to make a cash tender offer for another corporation, Chicago Rivet & Machine Co. Before making the offer, appellees sought to enjoin the Secretary of State of Illinois from enforcing the Illinois Business Take-Over Act (Illinois Act), Ill. Rev. Stat., ch. 121 1/2, § 137.51 *et seq.* (Cum. Supp. 1980). The Illinois Act regulates purchases of stock in corporations having substantial connections with Illinois. The United States District Court for the Northern District of Illinois granted injunctive relief, holding that the Illinois Act is preempted by the Williams Act amendments to the Securities Exchange Act of 1934, 15 U. S. C. §§ 78m(d)–(e), 78n(d)–(f), and imposes an impermissible burden on interstate commerce in violation of the Commerce Clause. App. to Juris. Statement (J.S. App.) 32a–41a. The United States Court of Appeals for the Seventh Circuit affirmed. *Mite Corp. v. Dixon*, 633 F. 2d 486 (1980). We noted probable jurisdiction. — U. S. — (1981). Because we conclude that the case is moot, we now vacate the judgment of the Court of Appeals. The Court of Appeals should remand the case to the District Court with instructions to dismiss.

PP. 8-12

FEB 12 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

**JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.**

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

[February —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

This case arises out of an attempt by appellees, Mite Corporation and Mite Holdings, Inc. (referred to collectively as Mite), to make a cash tender offer for another corporation, Chicago Rivet & Machine Co. Before making the offer, appellees sought to enjoin the Secretary of State of Illinois from enforcing the Illinois Business Take-Over Act (Illinois Act), Ill. Rev. Stat., ch. 121 1/2, § 137.51 *et seq.* (Cum. Supp. 1980). The Illinois Act regulates purchases of stock in corporations having substantial connections with Illinois. The United States District Court for the Northern District of Illinois granted injunctive relief, holding that the Illinois Act is preempted by the Williams Act amendments to the Securities Exchange Act of 1934, 15 U. S. C. §§ 78m(d)-(e), 78n(d)-(f), and imposes an impermissible burden on interstate commerce in violation of the Commerce Clause. App. to Juris. Statement (J.S. App.) 32a-41a. The United States Court of Appeals for the Seventh Circuit affirmed. *Mite Corp. v. Dixon*, 633 F. 2d 486 (1980). We noted probable jurisdiction. — U. S. — (1981). Because we conclude that the case is moot, we now vacate the judgment of the Court of Appeals. The Court of Appeals should remand the case to the District Court with instructions to dismiss.

PP. 5, 11, 12

FEB 24 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

**JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.**

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

[February —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

This case arises out of an attempt by appellees, Mite Corporation and Mite Holdings, Inc. (referred to collectively as Mite), to make a cash tender offer for another corporation, Chicago Rivet & Machine Co. Before making the offer, appellees sought to enjoin the Secretary of State of Illinois from enforcing the Illinois Business Take-Over Act (Illinois Act), Ill. Rev. Stat., ch. 121 1/2, § 137.51 *et seq.* (Cum. Supp. 1980). The Illinois Act regulates purchases of stock in corporations having substantial connections with Illinois. The United States District Court for the Northern District of Illinois granted injunctive relief, holding that the Illinois Act is preempted by the Williams Act amendments to the Securities Exchange Act of 1934, 15 U. S. C. §§ 78m(d)–(e), 78n(d)–(f), and imposes an impermissible burden on interstate commerce in violation of the Commerce Clause. App. to Juris. Statement (J.S. App.) 32a–41a. The United States Court of Appeals for the Seventh Circuit affirmed. *Mite Corp. v. Dixon*, 633 F. 2d 486 (1980). We noted probable jurisdiction. — U. S. — (1981). Because we conclude that the case is moot, we now vacate the judgment of the Court of Appeals. The Court of Appeals should remand the case to the District Court with instructions to dismiss.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 25, 1982

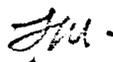
Re: No. 80-1188 - Edgar v. Mite

Dear Sandra:

(1) The District Court record does not show whether a bond was posted. Since we are uncertain about whether a bond was posted, and since the parties do not discuss the effect of a bond in their briefs, I am reluctant to address this issue in the opinion.

(2) I think that Oil Workers is distinguishable from this case. In Oil Workers, no federal court had entered an injunction protecting the strikers from a state action for penalties. Here, on the other hand, a federal court did enter an injunction protecting Mite from a state action for penalties. Because this injunction remains in place, Illinois cannot go into state court unless this Court reaches the merits, determines that the Illinois Act is unconstitutional, and lifts the permanent injunction. That is, in this case, unlike Oil Workers, the state's ability to commence an action for penalties depends directly on resolution of the merits by this Court; a state action for penalties is not really separate from this litigation. Under the circumstances, I do not believe that Oil Workers is controlling. In my view, this case is moot, only if the state would be barred from commencing an action for penalties, even if this Court were to reach the merits and lift the permanent injunction.

Sincerely,



T.M.

Justice O'Connor

PP. 6-10, 14

MAR 11 1982

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.

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

[February —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

This case arises out of an attempt by appellees, Mite Corporation and Mite Holdings, Inc. (referred to collectively as Mite), to make a cash tender offer for another corporation, Chicago Rivet & Machine Co. Before making the offer, appellees sought to enjoin the Secretary of State of Illinois from enforcing the Illinois Business Take-Over Act (Illinois Act), Ill. Rev. Stat., ch. 121 1/2, § 137.51 *et seq.* (Cum. Supp. 1980). The Illinois Act regulates purchases of stock in corporations having substantial connections with Illinois. The United States District Court for the Northern District of Illinois granted injunctive relief, holding that the Illinois Act is preempted by the Williams Act amendments to the Securities Exchange Act of 1934, 15 U. S. C. §§ 78m(d)-(e), 78n(d)-(f), and imposes an impermissible burden on interstate commerce in violation of the Commerce Clause. App. to Juris. Statement (J.S. App.) 32a-41a. The United States Court of Appeals for the Seventh Circuit affirmed. *Mite Corp. v. Dixon*, 633 F. 2d 486 (1980). We noted probable jurisdiction. — U. S. — (1981). Because we conclude that the case is moot, we now vacate the judgment of the Court of Appeals. The Court of Appeals should remand the case to the District Court with instructions to dismiss.

PP. 14, 15

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

From: Justice Marshall

Circulated: _____

Recirculated: MAR 19

1982

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

**JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.**

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

[February —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

This case arises out of an attempt by appellees, Mite Corporation and Mite Holdings, Inc. (referred to collectively as Mite), to make a cash tender offer for another corporation, Chicago Rivet & Machine Co. Before making the offer, appellees sought to enjoin the Secretary of State of Illinois from enforcing the Illinois Business Take-Over Act (Illinois Act), Ill. Rev. Stat., ch. 121 1/2, § 137.51 *et seq.* (Cum. Supp. 1980). The Illinois Act regulates purchases of stock in corporations having substantial connections with Illinois. The United States District Court for the Northern District of Illinois granted injunctive relief, holding that the Illinois Act is preempted by the Williams Act amendments to the Securities Exchange Act of 1934, 15 U. S. C. §§ 78m(d)-(e), 78n(d)-(f), and imposes an impermissible burden on interstate commerce in violation of the Commerce Clause. App. to Juris. Statement (J.S. App.) 32a-41a. The United States Court of Appeals for the Seventh Circuit affirmed. *Mite Corp. v. Dixon*, 633 F. 2d 486 (1980). We noted probable jurisdiction. — U. S. — (1981). Because we conclude that the case is moot, we now vacate the judgment of the Court of Appeals. The Court of Appeals should remand the case to the District Court with instructions to dismiss.

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS



PP. 1, 2, 10

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

From: **Justice Marshall**

Circulated: JUN 1 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

**JAMES EDGAR, APPELLANT v. MITE CORPORATION
AND MITE HOLDINGS, INC.**

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

[June —, 1982]

JUSTICE MARSHALL, dissenting.

The jurisdiction of this Court depends upon the existence of a live controversy. We may resolve a particular dispute only if the parties have a real interest in the outcome of that dispute. Otherwise, the case is moot, and must be dismissed. *Roße v. Wade*, 410 U. S. 113, 125 (1975); *SEC v. Medical Comm. for Human Rights*, 404 U. S. 403, 407 (1972). In my view, this case should have been dismissed. The parties to this appeal have no adversary interest in the outcome of this case. Their positions would be the same, whether the Court approved the Illinois Business Take-Over Act or struck it down. Because the Court finds that the Illinois Act is unconstitutional, there will be no further litigation. However, even if the Court had held that the Illinois Act is constitutional, and had lifted the permanent injunction that now restrains enforcement of the Act against Mite, there would be no basis for continued litigation. The Secretary stated that if the decision below were reversed, he would initiate enforcement proceedings against Mite in state court, seeking civil and criminal penalties for its failure to comply with the Illinois Act. But a preliminary injunction was in effect at the time the alleged violations occurred. As I explain below, I believe that this injunction would have barred the Secretary from seeking either civil or criminal

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

From: **Justice Marshall**

Circulated: _____

Recirculated: JUN 9 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

**JAMES EDGAR, APPELLANT v. MITE CORPORATION
AND MITE HOLDINGS, INC.**

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

[June —, 1982]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

The jurisdiction of this Court depends upon the existence of a live controversy. We may resolve a particular dispute only if the parties have a real interest in the outcome of that dispute. Otherwise, the case is moot, and must be dismissed. *Roe v. Wade*, 410 U. S. 113, 125 (1975); *SEC v. Medical Comm. for Human Rights*, 404 U. S. 403, 407 (1972). In my view, this case should have been dismissed. The parties to this appeal have no adversary interest in the outcome of this case. Their positions would be the same, whether the Court approved the Illinois Business Take-Over Act or struck it down. Because the Court finds that the Illinois Act is unconstitutional, there will be no further litigation. However, even if the Court had held that the Illinois Act is constitutional, and had lifted the permanent injunction that now restrains enforcement of the Act against Mite, there would be no basis for continued litigation. The Secretary stated that if the decision below were reversed, he would initiate enforcement proceedings against Mite in state court, seeking civil and criminal penalties for its failure to comply with the Illinois Act. But a preliminary injunction was in effect at the time the alleged violations occurred. As I explain below, I believe that this injunction would have



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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 18, 1982

Memorandum to the Conference

Re: No. 80-1188 Edgar v. Mite

I may suggest to Henry Lind that he include the following part of the syllabus in Edgar v. Mite--for the benefit of confused readers. What do you think?

The votes for Justice White's opinion are as follows:

	Parts							
	I	II	III	IVA	IVB	IVC	VA	VB
Chief Justice	x	x	x	x	x	x	x	x
Justice Brennan								
Justice White	x	x	x	x	x	x	x	x
Justice Marshall								
Justice Blackmun	x	x	x	x	x	x		
Justice Rehnquist								
Justice Powell	x	x						x
Justice Stevens	x						x	x
Justice O'Connor	x	x					x	x

There are five votes for parts I (statement of the case), II (mootness), and VB (invalid under commerce clause).

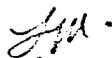
There are six separate opinions.

- 1) Justice White
- 2) Justice Marshall, joined by Justice Brennan, dissenting on mootness grounds.
- 3) Justice Rehnquist, dissenting on mootness grounds.
- 4) Justice Powell, concurring in part.
- 5) Justice Stevens, concurring in part and concurring in the judgment.
- 6) Justice O'Connor, concurring in part.

The votes have shifted as follows:

- 1) Justice Marshall circulates opinion for the Court.
- 2) Justice Brennan joins.
- 3) Justice Rehnquist joins.
- 4) Justice Powell joins.
- 5) Justice White circulates a dissent.
- 6) Justice Stevens circulates a dissent.
- 7) Justice Blackmun joins Justice White.
- 8) Justice O'Connor joins Justice Stevens.
- 9) The Chief Justice joins Justice Marshall.
- 10) Justice Rehnquist changes vote.
- 11) The Chief Justice changes vote.
- 12) Justice White circulates opinion for the Court.
- 13) Justice Marshall circulates dissent.
- 14) Justice Brennan joins Justice Marshall.
- 15) Justice Stevens circulates concurring opinion.
- 16) Justice Rehnquist circulates dissent.
- 17) The Chief Justice joins Justice White.
- 18) Justice O'Connor concurs.
- 19) Justice Powell concurs.
- 20) Justice Blackmun concurs.

Sincerely,



TM

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 1, 1982

Re: No. 80-1188 - Edgar v. Mite Corporation

Dear Byron:

This case has given me much difficulty. I now agree with your dissent. Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 9, 1982

Re: No. 80-1188 - Edgar v. Mite Corporation

Dear Byron:

Please do not hold me to this, but, as presently advised, I am inclined to join Parts I, II, III, and IV of your opinion. John, of course, may persuade me otherwise.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 17, 1982

Re: No. 80-1188 - Edgar v. Mite Corporation

Dear Byron:

Just for the record, I formally join Parts I, II, III, and IV of your opinion.

According to my notes, you have a Court for Parts I, II, and V-B, four votes for Part V-A and three votes for Parts III and IV.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 18, 1982

80-1188 Edgar v. Mite Corporation

Dear Thurgood:

Please join me in your opinion (3rd draft) for the
Court.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

P.S. I understand that you will change the word "would" to
"might" in the last line in Part II on page 12.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 17, 1982

80-1188 Edgar v. Mite Corporation

Dear Thurgood:

I am still with you.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 14, 1982

80-1188 Edgar v. Mite

Dear Byron:

In reviewing the "bidding" in various cases over the weekend, I note that several of us still remain out in this case.

My position remains the same. I agree with Thurgood on the mootness issue, but if the Court reaches the merits I also agree that the Illinois statute is invalid under the Commerce Clause. I think it unnecessary to address the preemption issue. I also am inclined to agree with John that there may still be room for state legislation limited to activities within the state.

If you obtain a Court to reach the merits, I will simply say the foregoing in a sentence or two. I will write no opinion beyond this.

Sincerely,



Justice White

lfp/ss

cc: The Conference

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

6/16/82

From: Justice Powell

Circulated: JUN 16 1982

Recirculated: _____

80-1188: Edgar v. Mite

Justice Powell, concurring in part.

I agree with Justice Marshall that this case is moot. In view, however, of the decision of a majority of the Court to reach the merits, I join Parts I, II, and VB of the Court's opinion. In my view, the remainder of the Court's opinion is unnecessary for the resolution of this case.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 19, 1982

80-1188 Edgar v. Mite

Dear Byron:

Thurgood's wonderful "charting" of the gyrations of the "Brothers and Sister" in this case should make the history books.

I note that among those who have "gyrated", I may be tied for the leadership with John. Not wishing to be outdone, my final vote is to join Parts I and V-B only - as expressed in the enclosed revision of my little concurrence.

I look forward to hearing you announce this case and to what the reporters say about it.

Sincerely,



Justice White

lfp/ss

cc: The Conference

6/19/82

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

From: Justice Powell

Circulated: 6/19/82

Recirculated: ~~_____~~

80-1188 Edgar v. Mite

JUSTICE POWELL, concurring in part.

I agree with Justice Marhsall that this case is moot. In view, however, of the decision of majority of the Court to reach the merits, I join Parts I and V-B of the Court's opinion.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 21, 1982

80-1188 Edgar v. Mite

Dear Byron:

Here is the paragraph that I mentioned this morning as being something I would like to add to my little concurring statement. It explains - what is not self evident - why I join only Part V-B of the operative portion of your opinion.

I should have done this much earlier, and therefore have said that if this addition would hold you up I will scrub it. I am delivering copies to the printer and to Henry Lind.

This also will enable Thurgood to make an additional entry in his chart.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference
Mr. Henry Lind

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 1, 1982

Re: No. 80-1188 Edgar v. Mite Corporation

Dear Thurgood:

I am in substantial agreement with the first draft of your proposed opinion in this case, and expect to end up joining it. I offer one suggestion: would it not be better to vacate the judgment of the Court of Appeals with instructions that it remand the case to the District Court with instructions to dismiss the complaint? This, as I understand it, is the traditional "Munsingwear" formula, which is traditionally used in dealing with moot cases in the federal system. If you were to adopt this suggestion, that language could be substituted for the phrase "...we now dismiss the appeal", on page 1 of your present draft, and conforming language could be substituted for the final sentence on page 11. It is my understanding that dismissing the appeal where the case is moot is a practice we resort to only in decisions of state courts, which are free to decide moot cases if they so desire.

Sincerely,

Justice Marshall

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 3, 1982

Re: No. 80-1188 Edgar v. Mite Corporation

Dear Thurgood:

While I agree generally with your circulating draft opinion in this case, I have some difficulty reconciling the last four sentences before the Roman numeral on page 11 with Weinstein v. Bradford, 423 U.S. 147, which you cite on page 10, and with Lewis' treatment of that case in his presently circulating draft opinion in Murphy v. Hunt, No. 80-2165. Up until the sentence beginning on the fifth line on page 11 of your draft, "Nor is there any risk that the question whether the Illinois Act is constitutional will always escape review by this Court, even in cases involving other corporations", I get the impression that you are following Weinstein v. Bradford that there must be a probability that this particular plaintiff will continue to have a controversy with this particular defendant in order to come within the "capable of repetition, yet evading review" exception to the mootness principle. But beginning with the sentence just referred to, I think that sentence and the several that come after it could be read as expanding the exception to cover situations where there is no probability that these particular parties will again litigate, but where the question at issue might nonetheless continue to "escape review".

I, for one, have great reservations about such an expansion of the "capable of repetition, yet evading review" exception to the mootness principle. I think it is demonstrably contrary to Weinstein v. Bradford, *supra*, and if interpreted as I suggest would require a different result in Lewis' circulation in Murphy v. Hunt. If you mean no more than to make a practical observation, without broadening the exception, the idea may be unexceptionable,

but if this is the case I do think some of the language should be changed to make it clear that this is what is being done.

Sincerely,



Justice Marshall

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

**JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.**

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

[February —, 1982]

JUSTICE REHNQUIST, concurring in the judgment.

I join parts I and III of the Court's opinion. I agree with all except the last paragraph of part II of the Court's opinion. I agree with the Court that the "capable of repetition, yet evading review" exception applies "only when the challenged action is too short to be fully litigated before its cessation, and when there is a reasonable expectation or a demonstrated probability that the same complaining party will be subject to the same action in the future. *Illinois State Board of Elections v. Socialist Workers Party*, 440 U. S. 173, 187 (1979); *Weinstein v. Bradford*, 423 U. S. 147, 149 (1975)." *Ante*, at 11. Having so concluded, I see no need to explore the additional question of whether this particular issue will always escape review by this Court.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

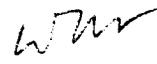
March 16, 1982

Re: No. 80-1188 Edgar v. Mite Corp.

Dear Thurgood:

As the debate between you, John, and Byron has escalated in this case, the issue of the effect of an injunction issued pursuant to Rule 65 F. R. Civ. P., and the liability for damages in the event that an injunction is wrongly issued, seems to have become a more and more important part of the decision. I was mildly uneasy from the first with the flat proposition that an injunction grants "immunity", but it seemed to be kind of a minor theme in the original draft of your opinion which I felt I could join because I then agreed that the case was moot, and that your opinion correctly so decided. But it now appears that both you and John agree that the question of liability in the event that an injunction is improvidently issued is one that has not been decided by this Court before. With the increased emphasis on that issue in subsequent drafts of all opinions, I am now pretty well convinced that the issue shouldn't be decided on the sort of record and briefs we now have before us. I don't know exactly where that leaves me, but I thought I would let you know what my current state of mind is on the subject.

Sincerely,



Justice Marshall

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 17, 1982

Re: No. 80-1188 Edgar v. Mite Corporation

Dear Thurgood:

As I let you know just a short while ago, I have become more and more uneasy with my position in this case as the debate between you, John, and Byron has escalated. With the increasing prominence, in each of the recirculations, which has been given to the issue of liability for the improvident issuance of an injunction (a question which I gather that all agree is one of first impression) I now find myself in the embarrassing position of having to withdraw my previous partial "join" and partial concurrence in the result. Although the issue of mootness is adequately briefed by the parties, the factual assertions which they necessarily make to support their positions are, in my view, not adequately documented in this skimpy record. I think it is something akin to the tail wagging the dog to decide the injunction issue in order to dispose of the mootness question: the latter simply consists of the application of well recognized principles to this particular case, while the former is an important and novel issue.

Would you, therefore, please note at the end of your opinion the following:

"JUSTICE REHNQUIST, believing that it is impossible to dispose of the issue of mootness in this case without deciding far-reaching questions of first impression tendered on a record all but barren of the factual development necessary to their decision, would dismiss the appeal. See Socialist Labor Party v. Gilligan, 406 U.S. 583

(1972); Rescue Army v. Municipal Court, 331 U.S.
549 (1947)."

Sincerely,

Wm

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

100-1188-15

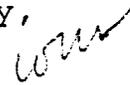
May 3, 1982

Re: No. 80-1188 Edgar v. Mite Corp.

Dear Byron:

You have inquired each of the last couple of Conferences how we all stood on this case since it has been reassigned to you. I did not volunteer any position, because I have wandered all over the lot as it is, and wanted to be fairly sure that if I did make some statement there would be a reasonable probability that I would stick to it. I have done a fair amount of thinking about the case, and while I still cannot join Thurgood's proposed disposition concluding that the case is moot, I think that by following a different route I can avoid confronting the "injunction" issue debated between Thurgood and John and nonetheless conclude it is moot. I find support for my position in Oil Workers Unions v. Missouri, 361 U.S. 363 (1960), and American Book Co. v. Kansas, 193 U.S. 49 (1904).

Sincerely,



Justice White

Copies to the Conference

P. 2

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: 6/10/82

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

**JAMES EDGAR, APPELLANT v. MITE CORPORATION
AND MITE HOLDINGS, INC.**

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

[June —, 1982]

JUSTICE REHNQUIST, dissenting.

I agree with JUSTICE MARSHALL that this case is moot, but for a different reason.

Mite obtained an injunction in order to effect a cash tender offer for the stock of Chicago Rivet. The injunction restrained the Illinois Secretary of State from interfering with the Chicago Rivet tender offer by enforcing the Illinois Business Take-Over Act against Mite. Three days after the District Court issued a permanent injunction, Mite and Chicago Rivet reached an agreement and Mite withdrew its extant offer. Approximately one month later, Mite announced its decision not to make any tender offer. Mite is not presently engaging in activity that is regulated by the Illinois statute, and there is no indication that Mite intends to engage in any such activity in the future. Therefore, the facts that gave rise to *this controversy* over the constitutionality of Illinois' anti-takeover statutes no longer exist and it is unlikely that they will be repeated in the future. As the tender offer has met its demise for reasons having nothing to do with the validity of the Illinois statute, the injunction is no longer necessary to accomplish the purposes for which it was obtained. Mite no longer needs an injunction in order to effect a tender offer for the shares of Chicago Rivet or any other corporation subject to the Illinois Act. Nor does Mite need the injunc-

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PP. 1-2

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

From: Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.

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

[June —, 1982]

JUSTICE REHNQUIST, dissenting.

I agree with JUSTICE MARSHALL that this case does not present a justiciable controversy, but for a different reason.

Mite obtained an injunction in order to effect a cash tender offer for the stock of Chicago Rivet. The injunction restrained the Illinois Secretary of State from interfering with the Chicago Rivet tender offer by enforcing the Illinois Business Take-Over Act against Mite. Three days after the District Court issued a permanent injunction, Mite and Chicago Rivet reached an agreement and Mite withdrew its extant offer. Approximately one month later, Mite announced its decision not to make any tender offer. Mite is not presently engaging in activity that is regulated by the Illinois statute, and there is no indication that Mite intends to engage in any such activity in the future. Therefore, the facts that gave rise to *this controversy* over the constitutionality of Illinois' anti-takeover statutes no longer exist and it is unlikely that they will be repeated in the future. As the tender offer has met its demise for reasons having nothing to do with the validity of the Illinois statute, the injunction is no longer necessary to accomplish the purposes for which it was obtained. Mite no longer needs an injunction in order to effect a tender offer for the shares of Chicago Rivet or any other corporation subject to the Illinois Act. Nor does Mite need the injunc-

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 4, 1982

Re: 80-1188 - Edgar v. Mite

Dear Thurgood:

Your novel holding that a federal court has the power to grant immunity from enforcement of a state law even if the state law is valid is one that I cannot accept. In due course, I shall be writing in dissent.

Respectfully,

Justice Marshall

Copies to the Conference

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✓
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.

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

[March —, 1982]

JUSTICE STEVENS, dissenting.

The Supremacy Clause of the United States Constitution invalidates any state law to the extent that it conflicts with federal law.¹ State judges and federal judges alike have a duty to protect individuals from the enforcement of any such invalid law.

At first blush, today's decision may appear to implement that important duty. The superficial appeal of the Court's holding, however, will not withstand analysis. For under that holding, a federal judge may not only protect an individual from an unconstitutional state law; the judge also is given power to provide "protection"—beyond the period needed to decide the constitutional question—from a *valid* law that is mistakenly believed to be invalid. The Court rules that a federal judge has power to grant permanent immunity from a valid state law, subject only to the restraint of the judge's own subjective intentions.² In this case the Court concludes

¹"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Art. VI.

²"Determining whether a particular injunction provides temporary or

(all stylized)

1, 2, 4, 5, 11

Justice Stevens
Justice O'Connor
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Burger
Justice Chief Justice

2nd DRAFT

Reproduced: MAR 3 1982

SUPREME COURT OF THE UNITED STATES

No. 80-1188

**JAMES EDGAR, APPELLANT v. MITE CORPORATION
AND MITE HOLDINGS, INC.**

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

[March —, 1982]

JUSTICE STEVENS, with whom JUSTICE O'CONNOR joins,
dissenting.

The Supremacy Clause of the United States Constitution invalidates any state law to the extent that it conflicts with federal law.¹ State judges and federal judges alike have a duty to protect individuals from the enforcement of any such invalid law.

At first blush, today's decision may appear to implement that important duty. The superficial appeal of the Court's holding, however, will not withstand analysis. For under that holding, a federal judge may not only protect an individual from an unconstitutional state law; the judge also is given power to provide "protection"—beyond the period needed to decide the constitutional question—from a *valid* law that is mistakenly believed to be invalid. The Court rules that a federal judge has power to grant permanent immunity from a valid state law, subject only to the restraint of the judge's own subjective intentions.² In this case the Court concludes

¹"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Art. VI.

²"Determining whether a particular injunction provides temporary or

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7. 6, 8-10

U.S. Supreme Court
Washington, D.C. 20540
Date: _____
Re: _____
No. _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

**JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.**

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

[March —, 1982]

JUSTICE STEVENS, with whom JUSTICE O'CONNOR joins,
dissenting.

The Supremacy Clause of the United States Constitution invalidates any state law to the extent that it conflicts with federal law.¹ State judges and federal judges alike have a duty to protect individuals from the enforcement of any such invalid law.

At first blush, today's decision may appear to implement that important duty. The superficial appeal of the Court's holding, however, will not withstand analysis. For under that holding, a federal judge may not only protect an individual from an unconstitutional state law; the judge also is given power to provide "protection"—beyond the period needed to decide the constitutional question—from a *valid* law that is mistakenly believed to be invalid. The Court rules that a federal judge has power to grant permanent immunity from a valid state law, subject only to the restraint of the judge's

¹"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Art. VI.

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



CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 19, 1982

MEMORANDUM TO THE CONFERENCE

Re: 80-1188 - Edgar v. Mite Corp.

At page 4 of my dissent, I am adding the following to footnote 6:

JUSTICE REHNQUIST'S position in this case is difficult to understand. He agrees with the plurality to dismiss the appeal because the record is "all but barren" of factual development necessary to decide "far-reaching questions of first impression." Post, at 15. He fails to indicate, however, what additional factual information is needed to decide the legal issue presented in this case. His position certainly is not justified by the cases that he cites. In Socialist Labor Party v. Gilligan, 406 U.S. 583, the Court dismissed an appeal because intervening statutory developments had rendered moot much of the case and, as to the single statutory provision that remained under attack, appellants had failed to establish that they were injured by the provision's operation; "[n]othing in the record shows that appellants have suffered any injury thus far, and the law's future effect remains wholly speculative." Id., at 589. In Rescue Army v. Municipal Court, 331 U.S. 549, the Court dismissed an appeal from a state court because it found the constitutional question clouded by several "serious problem[s] of construction relating either to the terms of the questioned legislation or to its interpretation by the state courts." Id., at 584.

In this case--unlike either Socialist Labor Party or Rescue Army--a federal court has declared a state statute unconstitutional. The court has enjoined the State's attempt to regulate certain business takeovers. No one would contend that the State's injury is speculative or that problems of interpretation remain. In 28 U.S.C. § 1254(2), Congress granted the State a right of review in this Court. The Court may not--absent compelling reasons, or a true jurisdictional bar--ignore its statutory obligation to review this case; JUSTICE REHNQUIST'S unexplained desire for further factual development is not a sufficient reason to dismiss this appeal.

Respectfully,

A handwritten signature in cursive script, appearing to be the initials 'JH'.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 4, 1982

Re: 80-1188 - Edgar v. Mite Corp.

Dear Byron:

On the merits I have grave doubts about the validity of the Court of Appeals' pre-emption analysis, but I am satisfied that the Illinois statute imposes an impermissible burden on interstate commerce.

Respectfully,



Justice White

Copies to the Conference

P.S. For the reasons set forth in the attached memorandum prepared by David DeBruin, Bill Rehnquist's citation of the Oil Workers case does not change my opinion that the case is not moot.

82 MAY -4 AM 1:46

RECEIVED
SUPREME COURT U.S.
JUSTICE JOHN PAUL STEVENS

To: Justice Stevens

From: David DeBruin

Date: May 3, 1982

Justice Rehnquist relies on Oil Workers Unions v. Missouri, 361 U.S. 363, to conclude that Mite is moot. In Oil Workers, a state statute authorized the Governor to take possession of any public utility affected by a work stoppage when in his opinion "the public interest, health and welfare are jeopardized." The statute prohibited any concerted refusal to work after the utility had been taken over by the State. If a union struck after that time, (1) the union became subject to statutory penalties, and (2) the strike could be enjoined by a state court.

In Oil Workers, a union struck a gas company after an existing collective bargaining agreement expired. Five days later the Governor took possession of the utility. After the seizure, the union continued to strike. Two actions in state court then followed. In one action, the State sought an injunction against the strike. In the second, the State sought monetary penalties from the union. The injunction was granted in the first case. The union then terminated its strike and negotiated a new collective bargaining agreement with the utility. The union nevertheless challenged the injunction on appeal, contending that the state statute under which it was

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 1, 1982

Re: 80-1188 - Edgar v. Mite Corp.

Dear Byron:

As presently advised, I expect to join Part V of your opinion. I agree with you that when Congress enacted the Williams Act, it took extreme care to avoid tipping the scales either in favor of management or in favor of possible takeovers. However, it seems to me that there is a significant difference between adopting such a policy of neutrality with respect to federal legislation that Congress was enacting, and requiring states to follow the same policy. As of now, I am not persuaded that Congress intended to prevent the states from loading the scales one way or the other. You are, of course, dead right in your analysis of the Illinois statute as being loaded in favor of management.

I also am still not sure we do not need to address the mootness question more thoroughly because if the injunction were a complete defense to civil or criminal penalties, I should think this case would be moot and we would be without jurisdiction to reach the merits. I may therefore file a condensed version of my former writing on this issue.

Respectfully,



Justice White

Copies to the Conference

June 9, 1982

[0\$1188i,0\$1188if]

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

From: Justice Stevens

Circulated: JUN 9 '82

Recirculated: _____

80-1188 - Edgar v. MITE Corporation

JUSTICE STEVENS, concurring in part and concurring in the judgment.

The question whether this case is moot depends on the effect of the preliminary injunction entered on February 2, 1979, restraining the Illinois Secretary of State from enforcing the Illinois Business Take-Over Act while the injunction remained in effect. If, as JUSTICE MARSHALL contends in his dissenting opinion, the injunction granted the MITE Corporation a complete immunity from state sanctions for any acts performed while the injunction was outstanding, I would agree that the case is moot. On the other hand, if the injunction did no more than it purported to do, setting aside the injunction would remove its protection and MITE would be subject to sanctions in the state courts. Those courts might regard the fact that an injunction was outstanding at the time MITE violated the Illinois statute as a defense to any enforcement proceeding, but unless the federal injunction was tantamount to a grant of immunity, there is no federal rule of law that would require the state courts to absolve MITE from liability. I believe, therefore, that to

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

6, 8-9

From: **Justice Stevens**

Circulated: _____

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1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1188

**JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.**

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

[June —, 1982]

JUSTICE STEVENS, concurring in part and concurring in the judgment.

The question whether this case is moot depends on the effect of the preliminary injunction entered on February 2, 1979, restraining the Illinois Secretary of State from enforcing the Illinois Business Take-Over Act while the injunction remained in effect. If, as JUSTICE MARSHALL contends in his dissenting opinion, the injunction granted the MITE Corporation a complete immunity from state sanctions for any acts performed while the injunction was outstanding, I would agree that the case is moot. On the other hand, if the injunction did no more than it purported to do, setting aside the injunction would remove its protection and MITE would be subject to sanctions in the state courts. Those courts might regard the fact that an injunction was outstanding at the time MITE violated the Illinois statute as a defense to any enforcement proceeding, but unless the federal injunction was tantamount to a grant of immunity, there is no federal rule of law that would require the state courts to absolve MITE from liability. I believe, therefore, that to resolve the mootness issue—which, of course, is jurisdictional—we must answer the question that JUSTICE MARSHALL's dissent raises.

JUSTICE MARSHALL advances various reasons for adopting

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 18, 1982

Re: 80-1188 - Edgar v. Mite Corp.

Dear Thurgood:

If you can devise a three-dimensional device that will reflect the information on page one and the information on page two simultaneously--and if ATEX can print it without blowing a fuse and thereby making Bill miss the ferry--I will join your proposed syllabus.

Respectfully,



Justice Marshall

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 11, 1982

No. 80-1188 Edgar v. Mite Corp.

Dear Thurgood,

I have given some thought to the problem addressed in the draft opinion in the referenced case and I share with you my thoughts and concerns. I have not circulated this to the other Chambers and you may or may not wish to pursue these ideas.

Your draft opinion states that "unless the order [granting a preliminary injunction] contains specific language to the contrary, it should be presumed that an injunction secures permanent protection for violations that occurred during the period it was in effect." p. 7. I have trouble reconciling this presumption with Fed. R. Civ. Proc. 65(c). That rule declares:

"No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained."

Surely the filing of an injunction bond, as well as the type of specific language you describe, would suggest that a particular preliminary injunction granted only temporary protection. The general language of Rule 65(c), moreover, suggests that, if any presumption governs preliminary injunctions, it is a presumption that the applicant will be liable for any damages caused by an erroneous injunction.

In this case, the District Court docket reveals the filing of no bond. The Court, therefore, may be able to conclude that the court and parties intended Mite to enjoy permanent immunity for its actions. In light of Rule 65(c), however, such a holding could not rest on the broad presumption quoted above.

If it becomes difficult to describe the circumstances under which a preliminary injunction permanently shields the applicant, it may be possible to find this case moot on a different ground. In Oil Workers Union v. Missouri, 361 U.S. 363 (1960), Missouri obtained an injunction against a strike by public utility workers, as well as a declaratory judgment upholding the constitutionality of a state statute authorizing the State to take possession of public utilities affected by work stoppages. The labor dispute ended before the case reached this Court. The unions nevertheless contended that the controversy was not moot, because Missouri could penalize them for their strike. The State had in fact commenced a separate law suit to collect these penalties. This Court, however, ruled that the separate litigation could not give life to the appeal.

Oil Workers differs factually from this case because no injunction purported to protect the striking workers. The guiding principle in Oil Workers, however, was that future litigation could not save an entirely separate course of litigation from mootness. Similarly, any suit by Illinois to impose civil or criminal penalties on Mite would be entirely separate from this litigation. If Illinois institutes such a suit, Mite would have at least two defenses: that a federal injunction shielded it from liability and that the Illinois take-over statute is unconstitutional. It might be preferable for the Court to leave both of these issues for that future litigation.

The difficulty with reliance on Oil Workers is the language you quote from Leroy v. Great Western Corp., 443 U.S. 173 (1979). Perhaps there is some other way to distinguish the one sentence in Leroy and still follow the approach taken in Oil Workers.

Perhaps these comments can at least be useful in any additional changes you may be considering.

Sincerely,



Justice Marshall

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 1, 1982

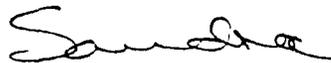
No. 80-1188 Edgar v. Mite Corporation

Dear John,

Although I voted at Conference to decide this case on mootness, your dissent is persuasive.

Please join me in it.

Sincerely,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 1, 1982

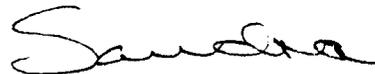
No. 80-1188 Edgar v. Mite Corporation

Dear Thurgood,

Although I initially thought this case could be resolved on the grounds of mootness, John's dissent raises sufficient concerns that I now believe we should not decide it on the basis of mootness and we should decide it on the merits.

Accordingly, I am unable to join the draft opinion.

Sincerely,



Justice Marshall

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Washington, D. C. 20543

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JUSTICE SANDRA DAY O'CONNOR

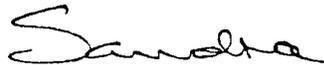
April 23, 1982

Re: 80-1188 Edgar v. Mite Corporation

Dear Byron,

In reviewing my notes on this case it appears that I thought the extraterritorial aspects of the Illinois statute interfere impermissibly with interstate commerce. I also thought the Williams Act did not preempt the state law because Congress had not expressed such an intent. I am still of the same view unless persuaded otherwise by the writing.

Sincerely,



Justice White

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 3, 1982

No. 80-1188 Edgar v. Mite Corporation

Dear Byron,

I will see what John's dissent says before
deciding what to join in this case.

Sincerely,



Justice White

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 16, 1982

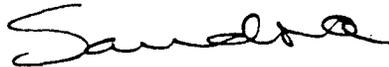
No. 80-1188 Edgar v. Mite Corporation

Dear Byron,

After revising my own views about this case more than once, I have decided to join Parts I, II and V of your opinion.

I will circulate a paragraph so stating.

Sincerely,



Justice White

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: ~~JUN 16 1982~~

Recirculated: _____

ATEX Draft

No. 80-1188 Edgar v. Mite Corporation

JUSTICE O'CONNOR, concurring in part.

I agree with the Court that the case is not moot, and that portions of the Illinois Takeover Act, Ill. Rev. Stat., ch. 121 1/2, §137.51 et seq., (Supp. 1980), are invalid under the Commerce Clause. Because it is not necessary to reach the preemption issue, I join only Parts I, II and V of the Court's opinion, and would affirm the judgment of the Court of Appeals on that basis.

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: JUN 16 1982

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SUPREME COURT OF THE UNITED STATES

No. 80-1188

JAMES EDGAR, APPELLANT *v.* MITE CORPORATION
AND MITE HOLDINGS, INC.

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

[June —, 1982]

JUSTICE O'CONNOR, concurring in part.

I agree with the Court that the case is not moot, and that portions of the Illinois Takeover Act, Ill. Rev. Stat., ch. 121 1/2, § 137.51 *et seq.*, (Supp. 1980), are invalid under the Commerce Clause. Because it is not necessary to reach the pre-emption issue, I join only Parts I, II and V of the Court's opinion, and would affirm the judgment of the Court of Appeals on that basis.