

The Burger Court Opinion Writing Database

Welsh v. United States

398 U.S. 333 (1970)

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

June 10, 1970

Re: No. 76 - Welsh v. U. S.

Dear Byron:

Please join me in your dissent.

Regards,

Mr. Justice White

cc: The Conference

cc: The CHIEF JUSTICE
 Mr. Justice Douglas
 Mr. Justice Harlan
~~Mr. Justice Brennan~~
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Clark
 Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Black, J.

Circulated:

FEB 24 1970

No. 76.—OCTOBER TERM, 1969

Recirculated:

Elliott Ashton Welsh, II,
 Petitioner,
 v.
 United States.

On Writ of Certiorari to the
 United States Court of Ap-
 peals for the Ninth Circuit.

[March —, 1970]

MR. JUSTICE BLACK delivered the opinion of the Court.

The petitioner, Elliott Ashton Welsh, II, was convicted by a United States district judge of refusing to submit to induction into the Armed Forces in violation of 50 U. S. C. App. § 462 (a), and was on June 1, 1966, sentenced to imprisonment for three years. One of petitioner's defenses to the prosecution was that § 6 (j) of the Universal Military Training and Service Act exempted him from combat and noncombat service because he was "by reason of religious training and belief . . . conscientiously opposed to participation in war in any form."¹ After finding that there was no religious basis for petitioner's conscientious objector claim, the Court of Appeals, Judge Hamley dissenting, affirmed the conviction. 404 F. 2d 1078 (1968). We granted certiorari chiefly to review the contention that Welsh's conviction should be set aside on the basis of this Court's decision in *United States v. Seeger*, 380 U. S. 163 (1965). 396 U. S. 816 (1969). For the reasons to be stated, and without passing upon the constitutional arguments which have been raised, we reverse the conviction because of

¹ 62 Stat. 612. See also 50 U. S. C. App. § 456 (j). The entire provision as it read during the period relevant to this case is set out *infra*, at 2-3.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
~~Mr.~~ Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

3

SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 76.—OCTOBER TERM, 1969

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United States Court of Appeals for the Ninth Circuit.

[March —, 1970]

MR. JUSTICE BLACK delivered the opinion of the Court.

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¹ 62 Stat. 612. See also 50 U. S. C. App. § 456 (j). The entire provision as it read during the period relevant to this case is set out *infra*, at 2-3.

Stylistic Changes Throughout

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

4

SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 76.—OCTOBER TERM, 1969

Circulated:

Elliott Ashton Welsh, II,
 Petitioner,
 v.
 United States.

On Writ of Certiorari to the
 United States Court of Ap-
 peals for the Ninth Circuit.

Recirculated: 4-2-70

[April —, 1970]

MR. JUSTICE BLACK delivered the opinion of the Court.

The petitioner, Elliott Ashton Welsh, II, was convicted by a United States district judge of refusing to submit to induction into the Armed Forces in violation of 50 U. S. C. App. § 462 (a), and was on June 1, 1966, sentenced to imprisonment for three years. One of petitioner's defenses to the prosecution was that § 6 (j) of the Universal Military Training and Service Act exempted him from combat and noncombat service because he was "by reason of religious training and belief . . . conscientiously opposed to participation in war in any form."¹ After finding that there was no religious basis for petitioner's conscientious objector claim, the Court of Appeals, Judge Hamley dissenting, affirmed the conviction. 404 F. 2d 1078 (1968). We granted certiorari chiefly to review the contention that Welsh's conviction should be set aside on the basis of this Court's decision in *United States v. Seeger*, 380 U. S. 163 (1965). 396 U. S. 816 (1969). For the reasons to be stated, and without passing upon the constitutional arguments which have been raised, we reverse the conviction because of

¹ 62 Stat. 612. See also 50 U. S. C. App. § 456 (j). The entire provision as it read during the period relevant to this case is set out *infra*, at 2-3.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

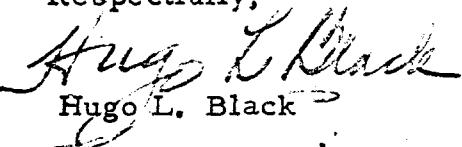
June 23, 1970

MEMORANDUM FOR THE CONFERENCE

This memorandum discusses the cases that have been held for Welsh v. United States, No. 76. It does not discuss the cases which were held for Sisson, No. 305, either on the selective [redacted] conscientious objector point or on the jurisdictional question. Of the six cases discussed here, I think one should be granted (No. 738 Misc.), three vacated and remanded for reconsideration in light of Welsh (Nos. 672, 35 Misc., and 88 Misc.) and two denied (Nos. 516 and 212 Misc.).

In each of the cases other than No. 212 Misc. petitioner attacks his conviction for refusal to submit to induction on the ground that he was improperly denied a conscientious objector exemption from military service.

Respectfully,


Hugo L. Black

The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 24, 1970

Dear Hugo:

In No. 76 -- Welsh v. U. S.,
I join your opinion. I may possibly
write an additional page; but I'm not
sure. Even if I do, what I will say
will not be at war with your fine
opinion.

W. O. Douglas

Mr. Justice Black

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

April 16, 1970

Re: No. 76 - Welsh v. United States

Dear Hugo:

I had hoped to have my concurring opinion in this case ready for circulation before the end of this week, but I now find that I will not be ready to circulate until the forepart of next week. I regret this further delay.

Sincerely,



Mr. Justice Black

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

2

SUPREME COURT OF THE UNITED STATES

Harlan, J.

APR 23 1970

Circulated:

No. 76.—OCTOBER TERM, 1969

Recirculated:

Elliott Ashton Welsh, II, Petitioner,
 v.
 United States.

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

[April —, 1970]

MR. JUSTICE HARLAN, concurring in the result.

Candor requires me to say that I joined the Court's opinion in *Seeger v. United States*, 380 U. S. 163 (1965), only with the gravest misgivings as to whether it was a legitimate exercise in statutory construction, and today's decision convinces me that in doing so I made a mistake that I must now acknowledge.

In *Seeger* the Court construed § 6 (j) of the Selective Service Act so as to sustain a conscientious objector claim not founded on a theistic belief. The Court there said: "Congress, in using the expression 'Supreme Being' rather than the designation 'God,' was merely clarifying the meaning of religious training and belief so as to embrace all religions and to exclude essentially political, sociological, and philosophical views," and held that the test of belief "in relation to a 'Supreme Being' is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by orthodox belief in God of one who clearly qualifies for the exemption." 380 U. S., at 165-166. Today the Court makes explicit its reading out of the statutorily required religious content for a conscientious objector exemption. The Court now says: "if an individual deeply and sincerely holds beliefs which are *purely ethical or moral* in source and content but which nevertheless impose on him a duty of conscience to refrain

P-6, 7, 11-16, 18, 19

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

3

SUPREME COURT OF THE UNITED STATES

No. 76.—OCTOBER TERM, 1969

Circulate

Recirculate

APR 25 1970

Elliott Ashton Welsh, II,
Petitioner,
v.
United States.

On Writ of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[April —, 1970]

MR. JUSTICE HARLAN, concurring in the result.

Candor requires me to say that I joined the Court's opinion in *Seeger v. United States*, 380 U. S. 163 (1965), only with the gravest misgivings as to whether it was a legitimate exercise in statutory construction, and today's decision convinces me that in doing so I made a mistake that I must now acknowledge.

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p. 6, 10, 11, 15, 17, 18, 19, 16, 7

SEE PAGE 2, 7, 9 FOR ADDITIONAL PAGES THROUGHOUT.

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

SUPREME COURT OF THE UNITED STATES

AMES Harlan, J.

No. 76.—OCTOBER TERM, 1969

Circulated:-

MAY 1 1970

Recirculated:

Recirc

Elliott Ashton Welsh, II, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1970]

MR. JUSTICE HARLAN, concurring in the result.

Candor requires me to say that I joined the Court's opinion in *Seeger v. United States*, 380 U. S. 163 (1965), only with the gravest misgivings as to whether it was a legitimate exercise in statutory construction, and today's decision convinces me that in doing so I made a mistake that I should now acknowledge.

In *Seeger* the Court construed § 6 (j) of the Selective Service Act so as to sustain a conscientious objector claim not founded on a theistic belief. The Court, in treating with the provision of the statute that limited conscientious objector claims to those stemming from belief in "a Supreme Being, there said: "Congress, in using the expression 'Supreme Being' rather than the designation 'God,' was merely clarifying the meaning of religious training and belief so as to embrace all religions and to exclude essentially political, sociological, and philosophical views," and held that the test of belief "in relation to a 'Supreme Being' is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by orthodox belief in God of one who clearly qualifies for the exemption." 380 U. S., at 165-166. Today the Court makes explicit its total elimination of the statutorily required religious content for a conscientious objector exemption. The Court now says: "if an individual deeply and sincerely holds beliefs which are *purely*

1
D. 11/2

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

SUPREME COURT OF THE UNITED STATES

No. 76.—OCTOBER TERM, 1969

From: Harlan, J.

Circulated:

MAY 22 1970

Elliott Ashton Welsh, II,
 Petitioner,
 v.
 United States.

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

[May —, 1970]

MR. JUSTICE HARLAN, concurring in the result.

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p. 1, 3, 4, 5, 7, 8, 9, 10, 11, 13, 17-18

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

8

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

No. 76.—OCTOBER TERM, 1969

Circulated:

MAY 27 1970

Elliott Ashton Welsh, II,
 Petitioner,
 v.
 United States.

On Writ of Certiorari to the
 United States Court of Ap-
 peals for the Ninth Circuit.

Recirculated:

[June —, 1970]

MR. JUSTICE HARLAN, concurring in the result.

Candor requires me to say that I joined the Court's opinion in *Seeger v. United States*, 380 U. S. 163 (1965), only with the gravest misgivings as to whether it was a legitimate exercise in statutory construction, and today's decision convinces me that in doing so I made a mistake that I should now acknowledge.¹

In *Seeger* the Court construed § 6 (j) of the Selective Service Act so as to sustain a conscientious objector claim not founded on a theistic belief. The Court, in treating with the provision of the statute that limited conscientious objector claims to those stemming from belief in "a Supreme Being," there said: "Congress, in using the expression 'Supreme Being' rather than the designation 'God,' was merely clarifying the meaning of religious training and belief so as to embrace all religions and to exclude essentially political, sociological, and philosophical views," and held that the test of belief "in relation to a 'Supreme Being' is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by orthodox belief in God of one who clearly qualifies for the exemption." 380 U. S., at 165-166. Today the Court

¹ For a discussion of those principles that determine the appropriate scope for the doctrine of *stare decisis*, see my dissenting opinion in *Baldwin v. New York*, — U. S. —, — (1970).

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

SUPREME COURT OF THE UNITED STATES

No. 76.—OCTOBER TERM, 1969

Circulated:

JUN 9 1970

Elliott Ashton Welsh, II,
 Petitioner,
 v.
 United States.

On Writ of Certiorari to the
 United States Court of Ap-
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Recirculated:

[June —, 1970]

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¹ For a discussion of those principles that determine the appropriate scope for the doctrine of *stare decisis*, see my dissenting opinion in *Baldwin v. New York*, — U. S. — (1970); *Moragne v. States Marine Lines*, — U. S. — (1970); *Boys Market v. Retail Clothing Stores*, — U. S. — (1970).

P.2

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

SUPREME COURT OF THE UNITED STATES, J.

No. 76.—OCTOBER TERM, 1969 Circulated:

Elliott Ashton Welsh, II, Petitioner, v. United States. Recirculated: JUN 14 1970

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

[June 15, 1970]

MR. JUSTICE HARLAN, concurring in the result.

Candor requires me to say that I joined the Court's opinion in *Seeger v. United States*, 380 U. S. 163 (1965), only with the gravest misgivings as to whether it was a legitimate exercise in statutory construction, and today's decision convinces me that in doing so I made a mistake that I should now acknowledge.¹

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¹ For a discussion of those principles that determine the appropriate scope for the doctrine of *stare decisis*, see my dissenting opinion in *Moragne v. States Marine Lines*, also decided today, — U. S. — (1970), *Boys Market v. Retail Clothing Stores*, — U. S. — (1970); *Helvering v. Hallock*, 309 U. S. 106 (1940).

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

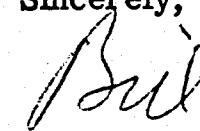
CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. February 25, 1970

RE: No. 76 - Welsh v. United States

Dear Hugo:

I agree.

Sincerely,



W.J.B. Jr.

Mr. Justice Black

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 5, 1970

No. 76 - Welch v. United States

Dear Byron,

I am glad to join your dissenting opinion,
which I think is a fine one.

Sincerely yours,

P. S.

Mr. Justice White

Copies to the Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
✓Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Fortas
Mr. Justice Marshall

1

SUPREME COURT OF THE UNITED STATES

File: White, J.

No. 76.—OCTOBER TERM, 1969

Circulated: 6-5-70

Elliott Ashton Welsh, II, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Recirculated:

[June —, 1970]

MR. JUSTICE WHITE, dissenting.

Whether or not *Seeger v. United States*, 380 U. S. 163 (1965), accurately reflected the intent of Congress in providing draft exemptions for religious conscientious objectors to war, I cannot join today's construction of § 6 (j) extending draft exemption to those who disclaim religious objections to war and whose views about war represent a purely personal code arising not from religious training and belief as the statute requires but from readings in history and sociology. Our obligation in statutory construction cases is to enforce the will of Congress, not our own; and as MR. JUSTICE HARLAN has demonstrated, construing § 6 (j) to include Welsh exempts from the draft a class of persons to whom Congress has expressly denied an exemption.

For me that conclusion should end this case. Even if Welsh is quite right in asserting that exempting religious believers is an establishment of religion forbidden by the First Amendment, he nevertheless remains one of those persons whom Congress took pains not to relieve from military duty. Whether or not § 6 (j) is constitutional, Welsh had no First Amendment excuse for refusing to report for induction. If it is contrary to the express will of Congress to exempt Welsh, as I think it is, then there is no warrant for saving the religious exemption and the statute by redrafting it in this Court to include Welsh and all others like him.

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 4

To: The Chief Justice
Mr. Justice Black
~~✓~~ Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

2

SUPREME COURT OF THE UNITED STATES: White, J.

No. 76.—OCTOBER TERM, 1969

Circulated:

Recirculated: 6-12-76

Elliott Ashton Welsh, II,
Petitioner,
v.
United States. } On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit.

[June 15, 1970]

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE and MR. JUSTICE STEWART join, dissenting.

Whether or not *Seeger v. United States*, 380 U. S. 163 (1965), accurately reflected the intent of Congress in providing draft exemptions for religious conscientious objectors to war, I cannot join today's construction of § 6 (j) extending draft exemption to those who disclaim religious objections to war and whose views about war represent a purely personal code arising not from religious training and belief as the statute requires but from readings in philosophy, history, and sociology. Our obligation in statutory construction cases is to enforce the will of Congress, not our own; and as MR. JUSTICE HARLAN has demonstrated, construing § 6 (j) to include Welsh exempts from the draft a class of persons to whom Congress has expressly denied an exemption.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 24, 1970

Re: No. 76 - Welsh v. United States

Dear Hugo:

Please join me.

Sincerely,


T.M.

Mr. Justice Black

cc: The Conference