

# The Burger Court Opinion Writing Database

*McGee v. United States*  
402 U.S. 479 (1971)

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

April 20, 1971

No. 362 - McGee v. United States

Dear Thurgood:

Please join me.

Regards,

WBB

Mr. Justice Marshall

c c: The Conference

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

April 20, 1971

Dear Thurgood,

Re: No. 362 - McGee v. U. S.

I agree.

Sincerely,

  
Hugo  
Black

Mr. Justice Marshall

cc: Members of the Conference

File  
Cir  
4-19

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 362.—OCTOBER TERM, 1970

Vincent Francis McGee, Jr., Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

This is a case where so far every judge has agreed that McGee is a conscientious objector. He expressed his belief "in a personal Supreme Being to whom obligation is superior when duties of human relations are considered"; he said that "taking part in any form of military operation indicates an approval/consent situation repugnant . . . to love and service of God and fellow-man." The majority of the Court of Appeals concluded that "Neither his prior nor his subsequent actions were inconsistent with his assertions . . . and we see nothing in McGee's file—all that was before the board—that could reasonably put his sincerity in issue." 426 F. 2d 691, 697. Judge Feinberg in dissent agreed. *Id.*, at 703.

Petitioner was a Roman Catholic studying at the Union Theological Seminary in New York City, preparing for the ministry. His sincerity and dedication to his moral cause are not questioned.

The critical issue in the case is whether the Selective Service Board in 1966 did "consider" and reject the claim of the registrant that he was a conscientious objector. The District Court and a majority of the Court of Appeals held that the Board in 1966 did just that. And this Court now refuses to pass on the registrant's claim to the contrary, because, it says, that finding is not "clearly erroneous." That the finding is clearly erroneous seems apparent to one who reads the entire record.

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LAP

3rd DRAFT

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WD

34  
1

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

4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 362.—OCTOBER TERM, 1970 <sup>com:</sup> Douglas, J.

Vincent Francis McGee, Jr., } On Writ of Certiorari to  
Petitioner, } <sup>Circulated to</sup> the United States Court  
v. } of Appeals for the Sec-  
United States. } ond Circuit. 4/21/71

[April —, 1971]

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

CHAMBERS OF  
JUSTICE JOHN M. HARLAN

April 22, 1971

Re: No. 362 - McGee v. United States

Dear Thurgood:

I am glad to join your recirculation  
of April 19.

Sincerely,

  
J. M. H.

Mr. Justice Marshall

CC: The Conference

W. J. B.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 4, 1971

RE: No. 362 - McGee v. United States

Dear Thurgood:

I agree.

Sincerely,

Brennan

Mr. Justice Marshall

cc: The Conference

All have voted - joined.  
With only dissent

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 19, 1971

No. 362 -- McGee v. U. S.

Dear Thurgood,

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

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 15, 1971

Re: No. 362 - McGee v. United States

Dear Thurgood:

With respect to the first sentence of the paragraph beginning on p. 10, it seems unnecessary to reach the question whether the C.O. Form filed by McGee presented a prima facie case. I would rather not reach it. Otherwise, I am in accord with your opinion.

Sincerely,



Mr. Justice Marshall

Copies to Conference

Supreme Court of the United States  
Memorandum

-----, 19-----

re BRW's join memo in McGee

BRW says he'd rather not reach the question "whether the c.o. form filed by McGee presented a prima facie case." Of course we needn't reach the question and slight rewriting would take care of the matter. But it's obvious that McGee's form did present a prima facie claim--all 3 2d Cir judges held so (majority and dissent), and the SG expressly concedes the point. SG Brief at 26 n. 16 ("...it is conceded that the form presented a prima facie claim....").

Lew

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 20, 1971

Re: No. 362 - McGee v. United States

Dear Thurgood:

Please join me.

Sincerely,

  
B.R.W.

Mr. Justice Marshall

cc: Conference

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 362.—OCTOBER TERM, 1970

Vincent Francis McGee, Jr., On Writ of Certiorari to  
Petitioner, } the United States Court  
v. } of Appeals for the Sec-  
United States. } ond Circuit.

[April —, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Petitioner was convicted of failing to submit to induction and other violations of the draft laws. His principal defense involves the contention that he had been incorrectly classified by his local Selective Service board. The Court of Appeals ruled that this defense was barred because petitioner had failed to pursue and exhaust his administrative remedies. We granted certiorari, 400 U. S. 864 (1970), to consider the applicability of the "exhaustion of administrative remedies" doctrine in the circumstances of this case.

I

In February 1966, while attending the University of Rochester, petitioner applied to his local Selective Service board for conscientious objector status. In support of his claim to that exemption he submitted the special form for conscientious objectors (SSS Form 150), setting forth his views concerning participation in war.<sup>1</sup> The board

<sup>1</sup> In this connection he noted that he intended "to continue on to actual ordained Priesthood." After registering for the draft in 1961, petitioner had informed the local board that he was then a student at a Catholic seminary, preparing for the ministry under

P. 15  
Minor changes

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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

✓  
BPG  
Wood dissent  
No word from  
C  
CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 26, 1971

Re: No. 362 - McGee v. United States

Dear Thurgood:

Please join me.

Sincerely,

HAB.

Mr. Justice Marshall

cc: The Conference