

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

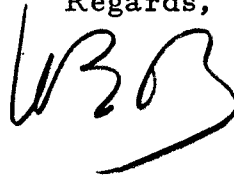
April 20, 1971

No. 362 - McGee v. United States

Dear Thurgood:

Please join me.

Regards,



Mr. Justice Marshall

c c: The Conference

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SSBPCNOC 30 ADV 001 1 IN

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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
Hugo

Mr. Justice Marshall

cc: Members of the Conference

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U. S. DEPARTMENT OF JUSTICE

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 362.—OCTOBER TERM, 1970

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

[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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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 362.—OCTOBER TERM, 1970

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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
From: Douglas, J.

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

4/21/71

[April —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

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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 did pass on the claim. And this Court now refuses to pass on the registrant's claim to the contrary, because, it says, that finding is not.

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

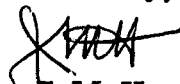
April 22, 1971

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

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U.S. DEPARTMENT OF JUSTICE

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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,

Bul

Mr. Justice Marshall

cc: The Conference

*All have voted - joined.
WJD only dissent*

ST
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

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U.S. SUPREME COURT MANUSCRIPTS

UP
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

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U.S. DEPARTMENT OF JUSTICE

Supreme Court of the United States

Memorandum

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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

GN ✓
K DM
R

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.¹ The board

¹ 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. 10 to be minor change

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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Petitioner,		the United States Court
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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 362.—OCTOBER TERM, 1970

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Petitioner,		the United States Court
v.		of Appeals for the Sec-
United States.		ond Circuit.

[May —, 1971]

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*BS
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WFD dissent
No word from
WFB*

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

R

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