

The Burger Court Opinion Writing Database

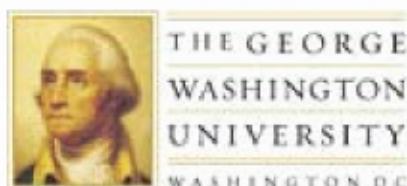
SEC v. Medical Committee for Human Rights

404 U.S. 403 (1972)

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

December 23, 1971

Re: No. 70-61 - SEC v. Medical Committee for Human Rights

Dear Thurgood:

Please join me.

Regards,

WSB

Mr. Justice Marshall

cc: The Conference

6
h
1st DRAFT

The Chief Justice
Mr. Justice Black
Mr. Justice Marshall
Mr. Justice Breit
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black

SUPREME COURT OF THE UNITED STATES

No. 70-61

Douglas, J.

1/30/72

Securities and Exchange
Commission, Petitioner,
v.
Medical Committee for
Human Rights. } On Writ of Certiorari to the
United States Court of Appeals for the District of
Columbia Circuit.

[January —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

With all respect, I must dissent from the judgment of the Court that this case has become moot because the Dow Chemical Company acquiesced in the decision of the Court of Appeals below. The underlying dispute in this case is essentially a private one, between Dow and the Medical Committee for Human Rights though it has large public overtones. In 1969, Dow refused to submit to its shareholders the Medical Committee's proposal that Dow amend its corporate charter to forbid the manufacture of napalm. Dow refused again in 1970. Only in 1971, after the decision of the Court of Appeals now under review, did Dow permit such a proposal to be submitted for a vote. In doing so, however, Dow resolutely affirmed its right to reject the proposal at any future time.

This gratuitous conduct did not, in my view, moot the controversy. "Mere voluntary cessation of allegedly illegal conduct does not moot a case." *United States v. Concentrated Phosphate Export Assn.*, 393 U. S. 199, 203. If it could, then a defendant would always be "free

SD / AM

4, 5

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

2nd DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES *5th ed.*

Recirculated: *1-4*

No. 70-61

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Commission, Petitioner,
v.
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On Writ of Certiorari to the
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[January —, 1972]

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5/11
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 27, 1971

RE: No. 70-61 - Sec. & Exchange Comm.
v. Medical Comm. for Human Rights

Dear Thurgood:

I agree.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 21, 1971

70-61, SEC v. Medical Committee

Dear Thurgood,

I agree with the conclusion reached in your opinion in this case, but have one important reservation about the opinion: I could not join the language at the top of page 5 indicating a view on the merits. My reasons are two-fold. First, I think the Court of Appeals was probably wrong, both on the issue of appealability of the SEC's "no action recommendation" and on the includability of the proxy material. Second, even if I agreed on the merits, I think it is inappropriate to express our views in a case that we are disposing of as moot.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

Dear Thurgood,

I have a couple of other minor suggestions that I have taken the liberty of asking my law clerk, Bill Jeffress, to relay to your law clerk.

P.S.

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 22, 1971

70-61 - SEC v. Medical Committee

Dear Thurgood,

I am glad to join your opinion for the Court, as recirculated today.

Sincerely yours,

OS

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 3, 1972

Re: No. 70-61 - SEC v. Medical
Committee for Human Rights

Dear Thurgood:

Please join me in your
circulation of December 22.

Sincerely,

B.R.W.

Mr. Justice Marshall

Copies to Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-61

Securities and Exchange
Commission,
Petitioner,
v.
Medical Committee for
Human Rights. } On Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit.

[January —, 1972]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The Medical Committee for Human Rights acquired by gift five shares of stock in Dow Chemical Co. In March 1968, the Committee's national chairman wrote a letter to the company expressing concern over its policy with respect to the production and sale of napalm. The letter also requested that there be included in the company's proxy statement for 1968 a proposal to amend Dow's Certificate of Incorporation to prohibit the sale of napalm unless the purchaser gives reasonable assurance that the napalm will not be used against human beings. Dow replied that the proposal was too late for inclusion in the 1968 proxy statement and for discussion at that year's annual meeting, but that it would be reconsidered the following year.

In an exchange of letters with Dow in 1969, the Committee indicated its belief that it had a right under Rule 14a-8 of the Securities and Exchange Commission, 17 CFR § 240.14a-8 (1970) (promulgated pursuant to § 14(a) of the Securities-Exchange Act of 1934, 48 Stat. 895, as amended, 15 U. S. C. § 78n (a)), to have its proposal

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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On Writ of Certiorari to the
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3rd DRAFT

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2
H
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 22, 1971

Re: No. 70-61 - SEC v. Medical Committee
for Human Rights

Dear Thurgood:

If your proposed opinion were to end with the 11th line on page 4 (plus, of course, the last three lines on page 5), I could join it.

If you do not wish thus to shorten it, could you then divide it into Parts I and II, the latter to begin with the 12th line on page 4. In that case, I would like to have you add at the end:

"Mr. Justice Blackmun concurs in Part I of the opinion and in the judgment of the Court."

Sincerely,

H.A.B.

—

Mr. Justice Marshall

cc: The Conference

B
M

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 22, 1971

Re: No. 70-61 - SEC v. Medical Committee
for Human Rights

Dear Thurgood:

I join your recirculation of December 22.

Sincerely,

H.A.B.

Mr. Justice Marshall

cc: The Conference