

# The Burger Court Opinion Writing Database

## *McDonnell Douglas Corp. v. Green*

411 U.S. 792 (1973)

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

Dear Lewis.

I can join in  
your opinion in 72-490  
but it seems to me some  
crucial facts need pointing  
up. Green was not just "one  
of the boys"; he was the  
ringleader.

See pages 10, 11, & 13.

Also on the final sentence  
page 14 the "standard" closing is  
generally

"remanded for further

consideration consistent  
with this opinion.

REVERSED and REMANDED

Being a kindly man, you  
were very gentle with the  
arrogant majority of CAs  
and their patent efforts  
to "launder" their <sup>first</sup> opinion  
without change in result.

Regards  
WEB

49

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 8, 1973

Re: No. 72-490 - McDonnell Douglas Corp. v. Green

Dear Lewis:

Please join me.

Regards,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

May 3, 1973

Dear Lewis:

Please join me in your  
opinion in 72-490, McDonnell v. Green.

1200  
William O. Douglas

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 4, 1973

RE: No. 72-490 McDonnell Douglas Corp.  
v. Green

Dear Lewis:

I agree.

Sincerely,



**Mr. Justice Powell**

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 3, 1973

72-490, McDonnell Douglas Corporation  
v. Green

Dear Lewis,

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

Sincerely yours,

P.S.

Mr. Justice Powell

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 7, 1973

Re: No. 72-490 - McDonnell Douglas Corporation  
v. Green

Dear Lewis:

Please join me in your opinion in  
this case.

Sincerely,



Mr. Justice Powell

Copies to The Conference



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 3, 1973

Re: No. 72-490 - McDonnell Douglas v. Green

Dear Lewis:

Please join me.

Sincerely,



T.M.

Mr. Justice Powell

cc: Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 7, 1973

Re: No. 72-490 - McDonnell Douglas Corp. v. Green

Dear Lewis:

I am about ready to join your opinion, but I am somewhat troubled by footnote 19 beginning on page 12. I suspect that on remand, Green will not be able, in his endeavor to establish pretextuality, to demonstrate past conduct by McDonnell in hiring whites who have engaged in similar illegal action, or even past discriminatory action by McDonnell against Green while he was in McDonnell's employ. If I am correct as to this, Green will be remitted to endeavoring to present statistical proof as to McDonnell's employment policy and practice. This being so, I would feel more comfortable if the second sentence of footnote 19 could be changed to read substantially as follows:

"We caution that such general determinations, while helpful, may not, in and of themselves, be controlling as to an individualized hiring decision, particularly in the presence of ~~a specific reason, such as appears to have been present here,~~ for refusing to rehire."

Inasmuch as I am sending you this note, perhaps I should point out three typographicals: (1) The name of McDonnell is misspelled in the citation at the end of footnote 2 on page 1. (2) Judge Johnsen's name is misspelled in the next to the last paragraph of footnote 3 on page 3 (he is somewhat sensitive as to this). (3) I think the date of the Garner case, appearing in the last line of footnote 21 on page 14, is 1951.

Sincerely,

*Harm*

Mr. Justice Powell

*an otherwise  
justifiable reason*

S

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 9, 1973

Re: No. 72-490 - McDonnell Douglas Corp. v. Green

Dear Lewis:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Powell

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LEP  
Please see me

OK

For The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
☒ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J. MAY 3 1973

No. 72-490

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

McDonnell Douglas Corpora- } On Writ of Certiorari to  
tion, Petitioner, } the United States Court  
v. } of Appeals for the  
Percy Green. } Eighth Circuit.

[May —, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

The case before us raises significant questions as to the proper order and nature of proof in actions under Title VII of the Civil Rights Act of 1964.

Petitioner, McDonnell Douglas Corporation, is an aerospace and aircraft manufacturer headquartered in St. Louis, Missouri, where it employs over 30,000 people. Respondent, a black citizen of St. Louis, worked for petitioner as a mechanic and laboratory technician from 1956 until August 28, 1964<sup>1</sup> when he was laid off in the course of a general reduction in petitioner's work force.

Respondent, a long-time activist in the civil rights movement, protested vigorously that his discharge and the general hiring practices of petitioner were racially motivated.<sup>2</sup> As part of this protest, respondent and other members of the Congress on Racial Equality

<sup>1</sup> His employment during these years was continuous except for 21 months of service in the military.

<sup>2</sup> The Court of Appeals noted that respondent then "filed formal complaints of discrimination with the President's Commission on Civil Rights, the Justice Department, the Department of the Navy, the Defense Department, and the Missouri Commission on Human Rights." *Green v. McDonnell Douglas Corporation*, — F. 2d — (1972).

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pp 12, 13, 14  
minor stylistic changes

joined  
5/3  
file

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

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 72-490

circulated:

MAY 8 1973

McDonnell Douglas Corporation, Petitioner,  
v.  
Percy Green.

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

[May —, 1973]

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<sup>2</sup> The Court of Appeals noted that respondent then "filed formal complaints of discrimination with the President's Commission on Civil Rights, the Justice Department, the Department of the Navy, the Defense Department, and the Missouri Commission on Human Rights." *Green v. McDonnell Douglas Corporation*, — F. 2d — (1972).

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 8, 1973

Re: No. 72-490 - McDonnell Douglas v. Green

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference