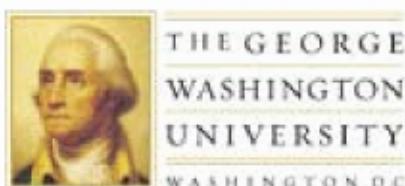


The Burger Court Opinion Writing Database

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 CA 8
and their ^{palate} ~~palate~~ efforts
to "dawdle" their ^{first} opinion
without change in result.

Regards

MEB

3

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,

WB

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.

W^{WD}illiam O. Douglas

Mr. Justice Powell

cc: The Conference

9

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

6

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

Copies to the Conference

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,

Harry

Mr. Justice Powell

*an otherwise
justifiable reason*

S

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Supreme Court of the United States

Washington, D. C. 20543

May 9, 1973

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

Dear Lewis:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Powell

Copies to the Conference

B

CFP
Please send me

OK

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell J. MAY 3 1973.

Circulated: _____

No. 72-490

Recirculated: _____

McDonnell Douglas Corpora-
tion, Petitioner,
v.
Percy Green.

On Writ of Certiorari to
the United States Court
of Appeals for the
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, 1964¹ 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.² As part of this protest, respondent and other members of the Congress on Racial Equality

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

² 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).

3 pp 12, 13, 14
minor stipulative changes

2nd DRAFT

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

From: Powell, J.

No. 72-490

Scalated:

~~MAY 8 1973~~

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

[May —, 1973]

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3
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,

3

Mr. Justice Powell

Copies to the Conference