

# The Burger Court Opinion Writing Database

*United States v. American Friends Service Committee*  
419 U.S. 7 (1974)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

October 23, 1974

Re: 73-1791 - U. S. v. American Friends Service Comm.

Dear Bill:

Please join me in your per curiam.

Regards,

L. V. T.

Mr. Justice Rehnquist

Copies to the Conference



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

1st DRAFT

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## SUPREME COURT OF THE UNITED STATES

UNITED STATES v. AMERICAN FRIENDS  
SERVICE COMMITTEE ET AL. Recirculated: 10-22

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

No. 73-1791. Decided October —, 1974

MR. JUSTICE DOUGLAS, dissenting.

The sole question on the merits is whether the provision of the Internal Revenue Code, 26 U. S. C. § 3402, which requires employers to deduct and withhold from wages federal income taxes, is constitutional as applied to appellees, who on religious grounds object to the withholding taxes on their salaries which represent that portion of the federal budget allocated to military expenditures.<sup>1</sup> They invoke the Free Exercise Clause of the First Amendment as they are Quakers who are opposed to participation in war in any form and who claim that this method of collection directly forecloses their ability freely to express that opposition, *i. e.*, to bear witness to their religious scruples.

There is no evidence that questions the sincerity of appellees religious beliefs. Nor is there any issue raised as to whether that religious belief would give appellees a defense against ultimate payment of the tax. The District Court held that the withholding was unconstitutional as to appellees, 368 F. Supp. 1176, a conclusion with which I agree.

The withholding process<sup>2</sup> forecloses appellees from

<sup>1</sup> The District Court found that 51.6 percent was the proportion of the federal budget expended for military and war purposes based on the appropriations made by Congress in the calendar year of 1968.

<sup>2</sup> Objections to withholding are not restricted to Quakers. Some federal judges have passionately opposed the withholding of taxes on their salaries, not on the basis that the tax is unconstitutional as

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1, 2, 3

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

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

UNITED STATES v. AMERICAN FRIENDS  
SERVICE COMMITTEE *et al.* Circula. *et al.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 73-1791. Decided October —, 1974

MR. JUSTICE DOUGLAS, dissenting.

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There is no evidence that questions the sincerity of appellees' religious beliefs. Nor is there any issue raised as to whether that religious belief would give appellees a defense against ultimate payment of the tax. The District Court held that the withholding was unconstitutional as to appellees, 368 F. Supp. 1176, a conclusion with which I agree.

The withholding process<sup>2</sup> forecloses appellees from

<sup>1</sup> The District Court found that 51.6 percent was a reasonable estimate of the proportion of the federal budget expended for military and war purposes based on the appropriations made by Congress in the calendar year of 1968, according to a computation by the Friends Committee on National Legislation.

<sup>2</sup> Objections to withholding are not restricted to Quakers. Some

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13  
4/5

To : The Chief Justice  
Mr. Justice ~~John~~ <sup>W.</sup> Harlan  
Mr. Justice ~~John~~ <sup>W.</sup> Harlan  
Mr. Justice ~~John~~ <sup>W.</sup> Harlan

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

UNITED STATES v. AMERICAN FRIENDS  
SERVICE COMMITTEE ET AL.  
Circuit

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

10-25  
No. 73-1791. Decided October —, 1974

MR. JUSTICE DOUGLAS, dissenting.

The sole question on the merits is whether the provision of the Internal Revenue Code, 26 U. S. C. § 3402, which requires employers to deduct and withhold from wages federal income taxes, is constitutional as applied to appellees, who on religious grounds object to the withholding taxes on their salaries which represent that portion of the federal budget allocated to military expenditures.<sup>1</sup> They invoke the Free Exercise Clause of the First Amendment, as they are Quakers who are opposed to participation in war in any form and who claim that this method of collection directly forecloses their ability freely to express that opposition, *i. e.*, to bear witness to their religious scruples.

There is no evidence that questions the sincerity of appellees' religious beliefs. Nor is there any issue raised as to whether that religious belief would give appellees a defense against ultimate payment of the tax. The District Court held that the withholding was unconstitutional as to appellees, 368 F. Supp. 1176, a conclusion with which I agree.

The withholding process<sup>2</sup> forecloses appellees from

<sup>1</sup> The District Court found that 51.6 percent was a reasonable estimate of the proportion of the federal budget expended for military and war purposes based on the appropriations made by Congress in the calendar year of 1968, according to a computation by the Friends Committee on National Legislation.

<sup>2</sup> Objections to withholding are not restricted to Quakers. Some



Mr. John Chadwick  
Mr. Justus Wright  
Mr. George Wright

## 4th DRAFT

SUPREME COURT OF THE UNITED STATES

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UNITED STATES *v.* AMERICAN FRIENDS:  
SERVICE COMMITTEE ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

No. 73-1791. Decided October 29, 1974

MR. JUSTICE DOUGLAS, dissenting.

The sole question on the merits is whether the provision of the Internal Revenue Code, 26 U. S. C. § 3402, which requires employers to deduct and withhold from wages federal income taxes, is constitutional as applied to appellees, who on religious grounds object to the withholding taxes on their salaries which represent that portion of the federal budget allocated to military expenditures.<sup>1</sup> They invoke the Free Exercise Clause of the First Amendment, as they are Quakers who are opposed to participation in war in any form and who claim that this method of collection directly forecloses their ability freely to express that opposition, *i. e.*, to bear witness to their religious scruples.

There is no evidence that questions the sincerity of appellees' religious beliefs. Nor is there any issue raised as to whether that religious belief would give appellees a defense against ultimate payment of the tax. The District Court held that the withholding was unconstitutional as to appellees, 368 F. Supp. 1176, a conclusion with which I agree.

The withholding process forecloses appellants from

<sup>1</sup> The District Court found that 51.5 percent was a reasonable estimate of the proportion of the federal budget expended for military and war purposes based on the appropriations made by Congress in the calendar year of 1968, according to a computation by the Friends Committee on National Legislation.

<sup>2</sup> Objections to withholding are not restricted to Quakers. Some

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 18, 1974

RE: No. 73-1791 United States v. American  
Friends Service Committee, et al.

Dear Bill:

I agree with the Per Curiam you have  
prepared in the above.

Sincerely,

*Bill*

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

October 21, 1974

No. 73-1791, U.S. v. American Friends Service  
Committee, et al.

Dear Bill,

I agree with the Per Curiam you have  
circulated in this case.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference



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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

October 21, 1974

Re: No. 73-1791 - United States v. American  
Friends Service Committee

Dear Bill:

I join your suggested opinion in this  
case.

Sincerely,



Mr. Justice Rehnquist

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Sanford, California 94305-6010



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 22, 1974

Re: No. 73-1791 -- United States v. American Friends  
Service Committee

Dear Bill:

I agree with your Per Curiam in this case.

Sincerely,

*T.M.*  
T. M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 21, 1974

No. 73-1791 United States v. American  
Friends Service Committee

Dear Bill:

Please join me in your Per Curiam.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

1fp/ss

cc: The Conference

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

UNITED STATES v. AMERICAN FRIENDS  
SERVICE COMMITTEE ET AL. 10-17

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

No. 73-1791. Decided October —, 1974

PER CURIAM.

Appellee American Friends Service Committee ("Employer") is a religious corporation, whose principal operation is philanthropic work and many of whose employees are conscientious objectors to war performing alternate civilian service. Appellees Lorraine Cleveland and Leonard Cadwallader ("employees") are present or past employees of the employer.

Because of their religious belief, employees ~~in 1969~~ requested their employer to cease withholding 51.6%<sup>1</sup> of the portion of their wages required to be withheld under § 3402 of the Internal Revenue Code.<sup>2</sup> Although they conceded that these amounts were legally due to the Government, they wished to bear witness to their beliefs by reporting the amounts as income on their annual income tax report but refusing to pay the taxes due. They would thus compel the Government to levy in order to collect the taxes.

In response to the employees' request, the employer ceased withholding from the employees' salaries 51.6% of that amount required to be withheld under § 3402

<sup>1</sup> This figure represents their estimate of the percentage of the federal budget which is military-related.

<sup>2</sup> 26 U.S.C. § 3402. The provision provides in part that "... every employer making payment of wages shall deduct and withhold upon such wages (except as otherwise provided in this section) a tax determined in accordance with the following tables. . . ." There is no dispute as to the applicability of the provision to appellees' wages.

Chase, Chaplin, Jr.

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

UNITED STATES v. AMERICAN FRIENDS  
SERVICE COMMITTEE ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

No. 73-1791. Decided October —, 1974

PER CURIAM.

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Because of their religious belief, employees in 1969 requested their employer to cease withholding 51.6%<sup>1</sup> of the portion of their wages required to be withheld under § 3402 of the Internal Revenue Code.<sup>2</sup> Although they conceded that these amounts were legally due to the Government, they wished to bear witness to their beliefs by reporting the amounts as income on their annual income tax report but refusing to pay the taxes due. They would thus compel the Government to levy in order to collect the taxes.

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AMERICAN FRIENDS SERVICE COMMITTEE  
ON WAR, REVOLUTION AND PEACE  
Stanford, California 94305-6000



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AMERICAN FRIENDS

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

UNITED STATES *v.* AMERICAN FRIENDS  
SERVICE COMMITTEE ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

No. 73-1791. Decided October —, 1974

PER CURIAM.

Appellee American Friends Service Committee ("Employer") is a religious corporation, whose principal operation is philanthropic work and many of whose employees are conscientious objectors to war performing alternate civilian service. Appellees Lorraine Cleveland and Leonard Cadwallader ("employees") are present or past employees of the employer.

Because of their religious beliefs, employees in 1969 requested their employer to cease withholding 51.6%<sup>1</sup> of the portion of their wages required to be withheld under § 3402 of the Internal Revenue Code.<sup>2</sup> Although they conceded that these amounts were legally due to the Government, they wished to bear witness to their beliefs by reporting the amounts as taxes owed on their annual income tax returns but refusing to pay such amounts. They would thus compel the Government to levy in order to collect the taxes.

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Chancery 10/10/74

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4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

UNITED STATES v. AMERICAN FRIENDS  
SERVICE COMMITTEE ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

No. 73-1791. Decided October —, 1974

PER CURIAM.

Appellee American Friends Service Committee ("Employer") is a religious corporation, whose principal operation is philanthropic work and many of whose employees are conscientious objectors to war performing alternate civilian service. Appellees Lorraine Cleveland and Leonard Cadwallader ("employees") are present or past employees of the employer.

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