

The Burger Court Opinion Writing Database

Gutknecht v. United States

396 U.S. 295 (1970)

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

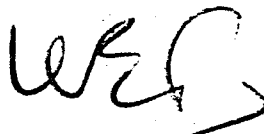
January 15, 1970

MEMORANDUM TO THE CONFERENCE:

Re: No. 71 - Gutknecht v. U. S.

I concur in the result reached by the Court generally
for the reasons set out in the separate opinions of Mr.

Justice Stewart.



W.E.B.

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

December 24, 1969

Dear Bill,

In Re: No. 71 - Gutknecht v.
United States.

I am glad to agree.

Sincerely,


Hugo

Mr. Justice Douglas

cc: Members of the Conference

9 April

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

5

SUPREME COURT OF THE UNITED STATES

No 71.—OCTOBER TERM, 1969

Circulated: 12-19-69

Recirculated: _____

David Earl Gutknecht, } On Writ of Certiorari to the
Petitioner, } United States Court of
v. } Appeals for the Eighth
United States. } Circuit.

[January —, 1970]

MR. JUSTICE DOUGLAS delivered the opinion the Court.

This case presents an important question under the Military Selective Service Act of 1967. 81 Stat. 100.

Petitioner registered with his Selective Service Local Board and was classified I-A. Shortly thereafter he received a II-S (student) classification. In a little over a year he notified the Board that he was no longer a student and was classified I-A. Meanwhile he had asked for an exemption as a conscientious objector and shortly after his re-classification as I-A the Board denied that exemption and he appealed to the State Board. While that appeal was pending, he surrendered his registration certificate and notice of classification by leaving them on the steps of the Federal Building in Minneapolis with a statement explaining he was opposed to the war in Vietnam. That was on October 16, 1967. On November 22, 1967, his appeal to the State Board was denied. On November 27, 1967, he was notified that he was I-A.

On December 20, 1967, he was declared delinquent by the local board. On December 26, 1967, he was ordered to report for induction on January 24, 1968. He reported at the induction center but in his case the normal procedure of induction was not followed. Rather, he signed a statement "I refuse to take part in any or all of the pre-

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

134.11

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

6

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No 71.—OCTOBER TERM, 1969

Circulated: 1/8/70

David Earl Gutknecht, } On Writ of Certiorari to the
Petitioner, } United States Court of
v. } Appeals for the Eighth
United States. } Circuit.

[January —, 1970]

MR. JUSTICE DOUGLAS delivered the opinion the Court.

This case presents an important question under the Military Selective Service Act of 1967. 62 Stat. 604, as amended, 65 Stat. 75, 81 Stat. 100.

Petitioner registered with his Selective Service Local Board and was classified I-A. Shortly thereafter he received a II-S (student) classification. In a little over a year he notified the Board that he was no longer a student and was classified I-A. Meanwhile he had asked for an exemption as a conscientious objector. The Board denied that exemption, reclassifying him as I-A, and he appealed to the State Board. While that appeal was pending, he surrendered his registration certificate and notice of classification by leaving them on the steps of the Federal Building in Minneapolis with a statement explaining he was opposed to the war in Vietnam. That was on October 16, 1967. On November 22, 1967, his appeal to the State Board was denied. On November 27, 1967, he was notified that he was I-A.

On December 20, 1967, he was declared delinquent by the local board. On December 26, 1967, he was ordered to report for induction on January 24, 1968. He reported at the induction center, but in his case the normal procedure of induction was not followed. Rather, he signed a statement, "I refuse to take part or all [sic] of the pre-

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Marshall~~
Mr. Justice Marshall

7

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Circulated: _____

No 71.—OCTOBER TERM, 1969

Recirculated: 1-12

David Earl Gutknecht, } On Writ of Certiorari to the
Petitioner, } United States Court of
v. } Appeals for the Eighth
United States. } Circuit.

[January —, 1970]

MR. JUSTICE DOUGLAS delivered the opinion the Court.

This case presents an important question under the Military Selective Service Act of 1967. 62 Stat. 604, as amended, 65 Stat. 75, 81 Stat. 100.

Petitioner registered with his Selective Service Local Board and was classified I-A. Shortly thereafter he received a II-S (student) classification. In a little over a year he notified the Board that he was no longer a student and was classified I-A. Meanwhile he had asked for an exemption as a conscientious objector. The Board denied that exemption, reclassifying him as I-A, and he appealed to the State Board. While that appeal was pending, he surrendered his registration certificate and notice of classification by leaving them on the steps of the Federal Building in Minneapolis with a statement explaining he was opposed to the war in Vietnam. That was on October 16, 1967. On November 22, 1967, his appeal to the State Board was denied. On November 27, 1967, he was notified that he was I-A.

On December 20, 1967, he was declared delinquent by the local board. On December 26, 1967, he was ordered to report for induction on January 24, 1968. He reported at the induction center, but in his case the normal procedure of induction was not followed. Rather, he signed a statement, "I refuse to take part or all [sic] of the pre-

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Back
O.K. for
Monday

CIRC(?)

WOD
Desk Copy
1/16/70

SUPREME COURT OF THE UNITED STATES

No 71.—OCTOBER TERM, 1969

David Earl Gutknecht,	} On Writ of Certiorari to the
Petitioner,	
v.	
United States.	} United States Court of Appeals for the Eighth Circuit.

19

[January —, 1970]

MR. JUSTICE DOUGLAS delivered the opinion the Court.

This case presents an important question under the Military Selective Service Act of 1967. 62 Stat. 604, as amended, 65 Stat. 75, 81 Stat. 100.

Petitioner registered with his Selective Service Local Board and was classified I-A. Shortly thereafter he received a II-S (student) classification. In a little over a year he notified the Board that he was no longer a student and was classified I-A. Meanwhile he had asked for an exemption as a conscientious objector. The Board denied that exemption, reclassifying him as I-A, and he appealed to the State Board. While that appeal was pending, he surrendered his registration certificate and notice of classification by leaving them on the steps of the Federal Building in Minneapolis with a statement explaining he was opposed to the war in Vietnam. That was on October 16, 1967. On November 22, 1967, his appeal to the State Board was denied. On November 27, 1967, he was notified that he was I-A.

On December 20, 1967, he was declared delinquent by the local board. On December 26, 1967, he was ordered to report for induction on January 24, 1968. He reported at the induction center, but in his case the normal procedure of induction was not followed. Rather, he signed a statement, "I refuse to take part or all [sic] of the pre-

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

3

SUPREME COURT OF THE UNITED STATES

From: Harlan, Jr.

No 71.—OCTOBER TERM, 1969

Circulated: **JAN 8 1970**

David Earl Gutknecht, } On Writ of Certiorari to the
Petitioner, } United States Court of
v. } Appeals for the Eighth
United States. } Circuit.

Re-circulated: _____

[January —, 1970]

MR. JUSTICE HARLAN, concurring.

I join the Court's opinion with the following observations. First, as I see it, nothing in the Court's opinion prevents a selective service board, under the present statute and existing regulations, from classifying as I-A a registrant who fails to provide his board with information essential to the determination of whether he qualifies for a requested exemption or deferment. Section 1622.10 of 32 CFR provides that: "In Class I-A shall be placed every registrant who has failed to establish to the satisfaction of the local board, subject to the appeal hereinafter provided, that he is eligible for classification in another class." I assume, of course, that under this regulation a board has no authority to keep a registrant classified I-A once it has information which justifies some lower classification.

Second, I think it entirely possible that consistent with our opinion today the President might promulgate new regulations, restricted in application to cases in which a registrant fails to comply with a duty essential to the classification process itself, that provide for accelerated induction under the existing statute. However, in order to avoid those punitive features now found to be unauthorized under existing legislation, any new regulations would have to give to a registrant being subjected to accelerated induction the right (like a person held in

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 30, 1969

RE: No. 71 - Gutknecht v. United States

Dear Bill:

I agree with your opinion in the above
case.

Sincerely,


W. J. B. Jr.

Mr. Justice Douglas

cc: The Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
~~Mr. Justice Fortas~~
Mr. Justice Marshall

3

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 71.—OCTOBER TERM, 1969

Circulated: JAN 13 1970

David Earl Gutknecht, } On Writ of Certiorari to the
Petitioner, } United States Court of
v. } Appeals for the Eighth
United States. } Circuit.

Recirculated: _____

[January —, 1970]

MR. JUSTICE STEWART, concurring in the judgment.

I do not reach the question whether Congress has authorized the delinquency regulations, because even under the regulations the petitioner's conviction cannot stand. After the petitioner's local board declared him delinquent, he had 30 days as a matter of right to seek a personal appearance before the board and to take an appeal from its ruling. Yet the board gave him no chance to assert either of those rights. Instead, it ordered him to report for induction only five days after it had mailed him a notice of the delinquency declaration.

The local board thus violated the very regulations it purported to enforce. Those provisions seek to induce Selective Service registrants to satisfy their legal obligations by presenting them with the alternative prospect of induction into the armed forces. The personal appearance and appeal are critical stages in the delinquency process. They enable the registrant declared delinquent by his local board to contest the factual premises on which the delinquency declaration rests, to correct his oversight if the breach of duty has arisen merely from neglect, or to purge himself of his delinquency if his violation has been willful. In any event, the regulatory objective is remedial. The board's authority to reclassify a registrant based on his delinquency and to accelerate his induction is analogous to the age-old power of the

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

January 5, 1970

Re: Mr. W. L. Armstrong v. U. S.

Dear Bill:

Please note the following at the foot of your opinion:

Mr. Justice White joins the opinion of the Court insofar as it holds that Congress had not delegated to the President the authority to promulgate the delinquency regulations involved in this case.

Sincerely,

B.R.V.

Mr. Justice Douglas

cc: Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 30, 1969

Re: No. 71 - Gutknecht v. United States

Dear Bill:

Please join me.

Sincerely,


T.M.

Mr. Justice Douglas

cc: The Conference