

# The Burger Court Opinion Writing Database

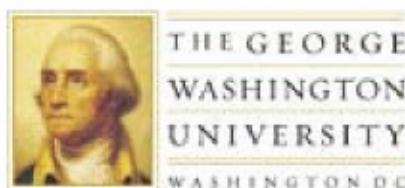
*Gillette v. United States*

401 U.S. 437 (1971)

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

February 19, 1971

Re: No. 85 - Gillette v. U. S.  
No. 325 - Negre v. Larsen

Dear Thurgood:

Please join me.

Regards,

WSE/B

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

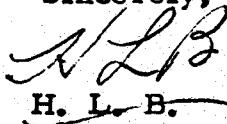
February 18, 1971

Dear Thurgood:

Re: Nos. 85-325  
Gillette v. U. S., etc.

I concur in the Court's judgment and in  
Part I of the Court's opinion.

Sincerely,



H. L. B.

Mr. Justice Marshall

cc: Members of the Conference

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

SUPREME COURT OF THE UNITED STATES

No. 85.—OCTOBER TERM, 1970

From: Douglas, J.

Circulated:

Guy Porter Gillette, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

2-13

[February —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

Gillette's objection is to combat service in the Vietnam war, not to wars in general, and the basis of his objection is his conscience. His objection does not put him into the statutory exemption which extends to one "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."<sup>1</sup>

He stated his views as follows:

"I object to any assignment in the United States Armed Forces while this unnecessary and unjust war is being waged, on the grounds of religious belief specifically "Humanism." This essentially means respect and love for man, faith in his inherent goodness and perfectability, and confidence in his capability to improve some of the pains of the human condition."

This position is substantially the same as that of Sisson in *United States v. Sisson*, 297 F. Supp. 902, appeal dismissed, 399 U. S. 267, where the District Court summarized the draftee's position as follows:

"... Sisson's table of ultimate values is moral and ethical. It reflects quite as real, pervasive, durable,

<sup>1</sup> Section 6 (j), Military Selective Service Act of 1967, 50 U. S. C. § 456 (j) (1964 ed., Supp. IV).

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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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES *Douglas, J.*

No. 85.—OCTOBER TERM, 1970

Guy Porter Gillette, Petitioner, *v.* United States. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

2/16/71

[February —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

Gillette's objection is to combat service in the Vietnam war, not to wars in general, and the basis of his objection is his conscience. His objection does not put him into the statutory exemption which extends to one "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."<sup>1</sup>

He stated his views as follows:

"I object to any assignment in the United States Armed Forces while this unnecessary and unjust war is being waged, on the grounds of religious belief specifically "Humanism." This essentially means respect and love for man, faith in his inherent goodness and perfectability, and confidence in his capability to improve some of the pains of the human condition."

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"... Sisson's table of ultimate values is moral and ethical. It reflects quite as real, pervasive, durable,

<sup>1</sup> Section 6 (j), Military Selective Service Act of 1967, 50 U. S. C. § 456 (j) (1964 ed., Supp. IV).

March 5, 1971

Re: No. 88 - Gillette v. U. S.  
325 - Negre v. Larsen

Dear Thurgood:

I agree with your opinion in these cases,  
and I am glad to join.

Sincerely,

J. M. H.

Mr. Justice Marshall

CC: The Conference

Supreme Court of the United States  
Washington, D. C. 20530

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 18, 1971

RE: Nos. 85 & 325 - Gillette v. United States  
& Negre v. Larsen

Dear Thurgood:

I agree.

Sincerely,

*Bill*  
W.J.B. Jr.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 16, 1971

Nos. 85 & 325 - - Gillette v. U.S.

Dear Thurgood,

I am glad to join your opinion  
for the Court in these cases.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 4, 1971

Re: Nos. 85 & 325 - Gillette v. U.S.

Dear Thurgood:

Please join me in your opinion  
in this case.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

FEB 12 1971

Nos. 85 & 325.—OCTOBER TERM, 1970

Circulated:

85	Guy Porter Gillette, Petitioner, <i>v.</i> United States.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.	Recirculated:
	Louis A. Negre, Petitioner, 325 <i>v.</i> Stanley R. Larsen et al.		On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

These cases present the question whether conscientious objection to a particular war, rather than objection to war as such, relieves the objector from responsibilities of military training and service. Specifically, we are called upon to decide whether conscientious scruples relating to a particular conflict are within the purview of established provisions<sup>1</sup> relieving conscientious objectors to war from military service. Both petitioners also invoke constitutional principles barring government interference with the exercise of religion and requiring governmental neutrality in matters of religion.

In No. 85, petitioner Gillette was convicted of wilful failure to report for induction into the armed forces. Gillette defended on the ground that he should have been ruled exempt from induction as a conscientious objector to war. In support of his unsuccessful request for classi-

<sup>1</sup> The relevant provisions are set down *infra*, at nn. 4, 5, and 6, and at accompanying text.

February 16, 1971

Re: No. 85 - Gillette v. United States

Dear Thurgood:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Marshall

cc: The Conference