

The Burger Court Opinion Writing Database

United States v. Euge

445 U.S. 707 (1980)

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

December 12, 1979

✓

RE: 78-1453 - United States v. Euge

MEMORANDUM TO THE CONFERENCE:

This case is re-assigned to Bill Rehnquist.

Regards,

WRB

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

CHAMBERS OF
THE CHIEF JUSTICE

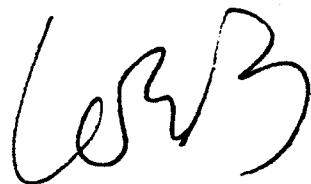
February 14, 1980

RE: No. 78-1453 United States v. Euge

Dear Bill:

I join.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

February 7, 1980

RE: No. 78-1453 United States v. Euge

Dear Bill:

In due course I shall circulate a dissent in
the above.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

1. The Chief Justice
 Mr. Justice Stevens
 Mr. Justice Powell
 Mr. Justice Black
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Rehnquist

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1453

United States et al., Petitioners, } On Writ of Certiorari to the
 v. } United States Court of
 Harvey F. Euge. } Appeals for the Eighth
 Circuit.

[February —, 1980]

MR. JUSTICE BRENNAN, dissenting.

The Internal Revenue Service, unlike common-law courts, has only such authority as Congress gives it. Cf. *United States v. LaSalle National Bank*, 437 U. S. 298, 307 (1978) (validity of Service summonses depends on "whether they were among those authorized by Congress"). Congress has granted the Service authority to summon individuals to "appear before the Secretary . . . at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to such inquiry. . . ." 26 U. S. C. § 7602. The Court holds today that this authority to compel "testimony" includes authority to compel the creation of handwriting exemplars.¹ The Court, however, is unable to point to anything in the statutory language or legislative history that even suggests that the obligation to "give testimony" includes an obligation to *create* a handwriting exemplar. Indeed, the Court concedes, as it must, that a handwriting exemplar is a kind of *nontestimonial* physical evidence.² Certainly, Congress has

¹ The Court also places some reliance on the word "appear," which the Court suggests "necessarily entails an obligation to display physical features to the summoning authority." *Ante*, at 6-7. Plainly "appear" adds nothing to the authority of the Service. The word is used only to indicate that the person summoned must deliver the requested testimony or documents at the designated time and place.

² The Court's use of the label "nontestimonial" is meaningful, for "[t]es-

1
2

To: The Chief Justice
Mr. Justice BRENNAN
Mr. Justice WHITE
Mr. Justice BLACKMUN
Mr. Justice MARSHALL
Mr. Justice POWELL
Mr. Justice REHNQUIST
Mr. Justice STONE

From: Mr. Justice BRENNAN

On Rec'd Date: 2/13/1980

Received by: FEB. 13, 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1453

United States et al., Petitioners, v. Harvey F. Euge. } On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[February —, 1980]

MR. JUSTICE BRENNAN, dissenting.

The Internal Revenue Service, unlike common-law courts, has only such authority as Congress gives it. Cf. *United States v. LaSalle National Bank*, 437 U. S. 298, 307 (1978) (validity of Service summonses depends on "whether they were among those authorized by Congress"). Congress has granted the Service authority to summon individuals to "appear before the Secretary . . . at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to such inquiry. . . ." 26 U. S. C. § 7602. The Court holds today that this authority to compel "testimony" includes authority to compel the creation of handwriting exemplars.¹ The Court, however, is unable to point to anything in the statutory language or legislative history that even suggests that the obligation to "give testimony" includes an obligation to *create* a handwriting exemplar. Indeed, the Court concedes, as it must, that a handwriting exemplar is a kind of *nontestimonial* physical evidence.² Certainly, Congress has

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² The Court's use of the label "nontestimonial" is meaningful, for "[t]es-

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

From: Mr. Justice Brennan

Circulated:

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1453

United States et al., Petitioners, } On Writ of Certiorari to the
 v, } United States Court of
 Harvey F. Euge. } Appeals for the Eighth
 Circuit.

[February —, 1980]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE STEVENS joins, dissenting.

The Internal Revenue Service, unlike common-law courts, has only such authority as Congress gives it. Cf. *United States v. LaSalle National Bank*, 437 U. S. 298, 307 (1978) (validity of Service summonses depends on "whether they were among those authorized by Congress."). Congress has granted the Service authority to summon individuals to "appear before the Secretary . . . at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to such inquiry. . . ." 26 U. S. C. § 7602. The Court holds today that this authority to compel "testimony" includes authority to compel the creation of handwriting exemplars.¹ The Court, however, is unable to point to anything in the statutory language or legislative history that even suggests that the obligation to "give testimony" includes an obligation to *create* a handwriting exemplar. Indeed, the Court concedes, as it must, that a handwriting exemplar is a kind

¹ The Court also places some reliance on the word "appear," which the Court suggests "necessarily entails an obligation to display physical features to the summoning authority." *Ante*, at 6-7. Plainly "appear" adds nothing to the authority of the Service. The word is used only to indicate that the person summoned must deliver the requested testimony or documents at the designated time and place.

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 7, 1980

Re: 78-1453 - United States v. Euge

Dear Bill:

I am glad to join your opinion for the
Court.

Sincerely yours,

PS.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 7, 1980

1453
Re: 78-~~1543~~ - United States v. Euge

Dear Bill,

I join.

Sincerely yours,



Mr. Justice Rehnquist

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 7, 1980

Re: No. 78-1453 - United States v. Euge

Dear Bill:

I await the dissent in this case.

Sincerely,



T.M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 14, 1980

Re: No. 78-1453 - United States v. Euge

Dear Bill:

Please join me in your dissent.

Sincerely,

J.M.

T.M.

Mr. Justice Brennan

cc: The Conference

14 FEB 1980

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1453

United States et al., Petitioners, } On Writ of Certiorari to the
v. } United States Court of
Harvey F. Euge. } Appeals for the Eighth
Circuit.

[February —, 1980]

MR. JUSTICE MARSHALL, dissenting.

In my view, the Fifth Amendment's privilege against compulsory self-incrimination prohibits the Government from requiring a person to provide handwriting exemplars. As I stated in my dissenting opinion in *United States v. Mara*, 410 U. S. 19, 33 (1973), "I cannot accept the notion that the Government can compel a man to cooperate affirmatively in securing incriminating evidence when that evidence could not be obtained without the cooperation of the suspect." The Fifth Amendment privilege is rooted in "the basic stream of religious and political principle[...] . . . reflects the limits of the individual's attorneyment to the state," *In re Gault*, 387 U. S., 1, 47 (1967), and embodies the "respect a government—state or federal—must accord to the dignity and integrity of its citizens," *Miranda v. Arizona*, 384 U. S. 436, 460 (1966). I continue to believe, then, that "[i]t is only by prohibiting the Government from compelling an individual to cooperate affirmatively in securing incriminating evidence which could not be obtained without his active assistance, that 'the inviolability of the human personality' is assured." *United States v. Mara*, *supra*, at 34-35 (dissenting opinion) (quoting *Miranda v. Arizona*, *supra*, at 460).

In order to avoid this constitutional problem, I agree with my Brother BRENNAN, see *ante*, that 26 U. S. C. § 7602 should be construed not to permit Internal Revenue Service personnel to compel the production of handwriting exemplars. Accordingly, I dissent.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 7, 1980

Re: No. 78-1453 - United States v. Euge

Dear Bill:

Are not the citations in footnote 1 somewhat confusing?
If this could be corrected, I go along with your proposed
opinion.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 8, 1980

78-1453 U.S. v. Euge

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

Mr. Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: 6 FEB 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1453

United States et al., Petitioners, } On Writ of Certiorari to the
 v.
 Harvey F. Euge. } United States Court of Appeals for the Eighth
 Circuit.

[February —, 1980]

MR. JUSTICE REHNQUIST delivered the opinion of the Court, The United States sued in the District Court seeking enforcement of an Internal Revenue Service summons requiring respondent to appear and provide handwriting exemplars. Enforcement was denied by the Court of Appeals for the Eighth Circuit, *United States v. Euge*, 587 F. 2d 25 (CA8 1978) (en banc), and we granted certiorari. We now hold that Congress has empowered the IRS to compel handwriting exemplars under its summons authority conferred by 26 U. S. C. § 7602.¹

I

The facts are not in dispute. In October 1977, an agent in the Intelligence Division of the Internal Revenue Service was assigned to investigate respondent's income tax liability for the years 1973 through 1976. Respondent had not filed any tax returns for those years. The Service sought to employ the "bank deposits method" of reconstructing respondent's income for those years, as a means of calculating his tax liability. Under this method of proof, the sums deposited in the

¹ The Fourth Circuit reached a contrary result in *United States v. Rosinsky*, 547 F. 2d 249 (CA4 1977). The Sixth Circuit decided this issue in accord with the Eighth Circuit. *United States v. Brown*, 536 F. 2d 117 (CA6 1976).

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 7, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 78-1453 United States v. Euge

At Harry's suggestion, with which I agree, the bracket in the text for footnote 1 will be moved to the end of the first sentence of the opinion, in order to make clear that the Fourth Circuit reached a result consistent with that which we reach in this case.

Sincerely,



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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 17, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 78-1453 - United States v. Euge

I have checked with the Clerk of the Court, and the mandate in this case directs that the case be "reversed and remanded". I therefore think that the motion by the respondent for clarification on this point should be denied.

Sincerely,



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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 7, 1980

Re: 78-1453 - United States v. Euge

Dear Bill:

Your opinion is persuasive but I am still inclined to stick to my conference vote and therefore will await Bill's dissent.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Personal

February 12, 1980

Re: 78-1453 - United States v. Euge

Dear Bill:

In addition to joining your dissent, I am thinking about adding the enclosed additional paragraph. If you would like to incorporate it in your opinion, I would be happy to quitclaim the thought to you.

Respectfully,



Mr. Justice Brennan

Enclosure

(Draft #1-JPS) (0530A)

78-1453 - United States v. Euge

MR. JUSTICE STEVENS, dissenting.

I thought the statute were ambiguous, I would read the statute as follows.
Even if one should disagree with MR. JUSTICE BRENNAN'S result, in my view, the most natural reading of the rather plain language of this statute, the most reasonable construction that can be said in support of the Court's position is that the statute is not entirely clear. But if we assume ambiguity, I think it is reasonable to strongly believe that "until Congress has stated otherwise, our duty to protect the rights of the individual should hold sway over the interest in more effective law enforcement." Dalia v. United States, 441 U.S. 238, 263 (STEVENS, J., dissenting).

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 12, 1980

Re: 78-1453 - United States v. Euge

Dear Bill:

Please join me in your dissenting opinion.

Respectfully,



Mr. Justice Brennan

Copies to the Conference