

# 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

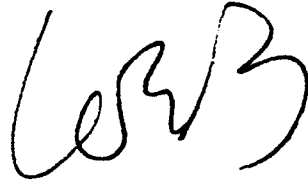
February 14, 1980

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

Dear Bill:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WRB', written in a cursive, stylized script.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. 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

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1  
To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Black  
Mr. Justice Brennan  
Mr. Justice Marshall  
Mr. Justice Burger  
Mr. Justice Rehnquist

From: Mr. Justice Brennan  
Dated: FEB 11 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 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.<sup>1</sup> 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.<sup>2</sup> Certainly, Congress has

<sup>1</sup> 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.

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

2

Mr. Chief Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice

From Mr. Justice

Circulation

RECEIVED FEB 13 1980

2/13/1980

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.<sup>1</sup> 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.<sup>2</sup> Certainly, Congress has

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

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

From: Mr. Justice Brennan

3rd DRAFT

Circulated: \_\_\_\_\_

Recirculated: FEB 13 1980

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.<sup>1</sup> 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

<sup>1</sup>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,

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

February 7, 1980

Re: <sup>1453</sup>78-~~1543~~ - United States v. Euge

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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 attornment 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

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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,

A handwritten signature in cursive script, appearing to read "Lewis".

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

Re-circulated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-1453

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

[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.<sup>1</sup>

### 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

<sup>1</sup>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

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(Draft #1-JPS) (0530A)

78-1453 - United States v. Euge

MR. JUSTICE STEVENS, dissenting.

*I thought the statute were ambiguous, I would reach the same result because*  
Even if one should disagree with MR. JUSTICE BRENNAN'S  
reading of the rather plain language of this statute, the most  
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  
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