

The Burger Court Opinion Writing Database

United States v. Vogel Fertilizer Co.
455 U.S. 16 (1982)

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

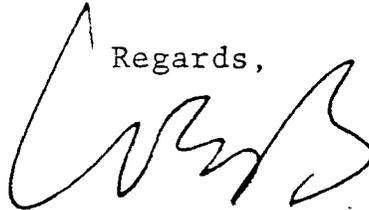
December 19, 1981

Re: No. 80-1251 - U.S. v. Vogel Fertilizer Co.

Dear Bill:

I join.

Regards,

A handwritten signature in cursive script, appearing to be 'W. Brennan', written in dark ink.

Justice Brennan

Copies to the Conference

page 14

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: DEC 11

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1251

UNITED STATES, PETITIONER *v.* VOGEL
FERTILIZER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
CLAIMS

[December —, 1981]

JUSTICE BRENNAN delivered the opinion of the Court.

Section 26 U. S. C. 1561(a) of the Internal Revenue Code of 1954 limits a "controlled group of corporations" to a single corporate surtax exemption.¹ Section 1563(a)(2) provides that a "controlled group of corporations" includes a "brother-sister controlled group," defined as "[t]wo or more corporations if 5 or fewer persons . . . own . . . stock possessing (A) at least 80 percent of the total combined voting power . . . or at least 80 percent of the total value . . . of each corporation, and (B) more than 50 percent of the total combined voting power . . . or more than 50 percent of the total value . . . of each corporation . . . , taking into account the stock ownership of each such person only to the extent such stock owner-

¹ For two of the tax years in question in this case—the years ending November 30, 1973 and 1974—the Code exempted the first \$25,000 of corporate earnings from the federal surtax on corporate income, 26 U. S. C. § 11(d) (1970 ed.), and for the third year—ending November 30, 1975—the Code exempted the first \$50,000. 26 U. S. C. § 11(d). For each of these tax years, however, § 1561 of the Code limited the members of a "controlled group" of corporations to a single shared surtax exemption. Amendments to the Code in 1978 replaced the surtax exemption with a graduated five-step tax rate structure on taxable corporate income. 26 U. S. C. § 11 (1976 ed., Supp. III). Now members of a controlled group must share a single rate schedule. 26 U. S. C. § 1561(a) (1976 ed., Supp. III).

Stylistic Changes Only

pp: 1, 3, 7, 14, 15

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: _____

Recirculated: DEC 21 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1251

UNITED STATES, PETITIONER *v.* VOGEL
FERTILIZER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
CLAIMS

[December —, 1981]

JUSTICE BRENNAN delivered the opinion of the Court.

Section 1561(a) of the Internal Revenue Code of 1954, 26 U. S. C. § 1561(a) limits a "controlled group of corporations" to a single corporate surtax exemption.¹ Section 1563(a)(2) provides that a "controlled group of corporations" includes a "brother-sister controlled group," defined as "[t]wo or more corporations if 5 or fewer persons . . . own . . . stock possessing (A) at least 80 percent of the total combined voting power . . . or at least 80 percent of the total value . . . of each corporation, and (B) more than 50 percent of the total combined voting power . . . or more than 50 percent of the total value . . . of each corporation . . . , taking into account the stock ownership of each such person only to the extent such stock

¹ For two of the tax years in question in this case—the years ending November 30, 1973 and 1974—the Code exempted the first \$25,000 of corporate earnings from the federal surtax on corporate income, 26 U. S. C. § 11(d) (1970 ed.), and for the third year—ending November 30, 1975—the Code exempted the first \$50,000. 26 U. S. C. § 11(d). For each of these tax years, however, § 1561 of the Code limited the members of a "controlled group" of corporations to a single shared surtax exemption. Amendments to the Code in 1978 replaced the surtax exemption with a graduated five-step tax rate structure on taxable corporate income. 26 U. S. C. § 11 (1976 ed., Supp. III). Now members of a controlled group must share a single rate schedule. 26 U. S. C. § 1561(a) (1976 ed., Supp. III).

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CHANGES PP 13, 14-15

To: The Chief Justice
Justice White
Justice Marshall
Justice Brennan
Justice Stevens
Justice O'Connor
Justice Souter
Justice Ginsburg
Justice Breyer

From: Justice Brennan

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1251

**UNITED STATES, PETITIONER *v.* VOGEL
FERTILIZER COMPANY**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
CLAIMS**

[January —, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

Section 1561(a) of the Internal Revenue Code of 1954, 26 U. S. C. § 1561(a), limits a "controlled group of corporations" to a single corporate surtax exemption.¹ Section 1563(a)(2) provides that a "controlled group of corporations" includes a "brother-sister controlled group," defined as "[t]wo or more corporations if 5 or fewer persons . . . own . . . stock possessing (A) at least 80 percent of the total combined voting power . . . or at least 80 percent of the total value . . . of each corporation, and (B) more than 50 percent of the total combined voting power . . . or more than 50 percent of the total value . . . of each corporation . . . , taking into account the stock ownership of each such person only to the extent such stock

¹For two of the tax years in question in this case—the years ending November 30, 1973 and 1974—the Code exempted the first \$25,000 of corporate earnings from the federal surtax on corporate income, 26 U. S. C. § 11(d) (1970 ed.), and for the third year—ending November 30, 1975—the Code exempted the first \$50,000. 26 U. S. C. § 11(d). For each of these tax years, however, § 1561 of the Code limited the members of a "controlled group" of corporations to a single shared surtax exemption. Amendments to the Code in 1978 replaced the surtax exemption with a graduated five-step tax rate structure on taxable corporate income. 26 U. S. C. § 11 (1976 ed., Supp. III). Now members of a controlled group must share a single rate schedule. 26 U. S. C. § 1561(a) (1976 ed., Supp. III).

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 11, 1982

MEMORANDUM TO THE CONFERENCE

RE: Case held for United States v. Vogel Fertilizer Co. -- 80-1251

Commissioner v. Delta Metalforming Co., No. 80-1499, is being held for United States v. Vogel Fertilizer Co. which is to be announced on Wednesday, January 13th. We hold in Vogel Fertilizer that Treas. Reg. §1.1563-1(a) (3) is invalid insofar as it takes into account for purposes of the 80-percent requirement in the definition of a "brother-sister controlled group," 26 U.S.C. §1563 (a) (2), stock ownership of a shareholder who does not own stock in the other corporations within the controlled group. The Court of Appeals for the Fifth Circuit reached the same result in Delta Metalforming Co. and I therefore recommend that we now deny certiorari in that case.

W.J.B., Jr.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

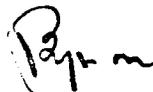
December 30, 1981

Re: 80-1251 - U.S. v. Vogel
Fertilizer Company

Dear Harry,,

Please join me in your dissent from
the Court's Bumpers-type opinion.

Sincerely,



Justice Blackmun

Copies to the Conference

bkh

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 14, 1981

Re: No. 80-1251 - United States v. Vogel
Fertilizer Company

Dear Bill:

Please join me.

Sincerely,

JM.

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 14, 1981

Re: No. 80-1251 - United States v. Vogel Fertilizer Co.

Dear Bill:

I shall attempt a dissent in this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice Brennan

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Solicitor General
Clerk of the Court

From: Justice Blackmun

Circulated: DEC 30 1981

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1251

UNITED STATES, PETITIONER *v.* VOGEL
FERTILIZER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
CLAIMS

[December —, 1981]

JUSTICE BLACKMUN, dissenting.

I cannot deny that the Court's opinion persuasively defends a possible interpretation of 26 U. S. C. § 1563(a)(2). In my view, however, the Court has totally failed to establish that the *Commissioner's* interpretation is incorrect. Because I believe that the only certainty about the language and history of § 1563(a)(2) is that both are ambiguous, I would defer to the Commissioner's judgment.

The Court begins by declaring that the statutory language, "while not completely unambiguous, is in closer harmony with the taxpayer's interpretation than with the Commissioner's Regulation" because the term "brother-sister controlled group"—connotes a close horizontal relationship *between* two or more corporations." *Ante*, at 8 (emphasis in original). In taking this approach, however, the Court simply assumes its conclusion. The 50-percent test of Part (B) already ensures a horizontal relationship between the corporations that constitute the controlled group; nothing in the language of the statute suggests that Part (A) was designed directly to serve the same purpose. At most, § 1563(a)(2) can be read to require that the same *set* of five or fewer persons must satisfy the 50- and 80-percent tests; the statute is entirely silent as to whether each *member* of the set must own stock in each corporation. And, unlike the Court, I have difficulty infer-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 7, 1981

Re: No. 80-1251 - United States v. Vogel Fertilizer Co.

Dear Bill:

In view of the additions you have made in your third draft, I am now eliminating the words "in a passage not discussed by the Court" that appear on page 5 of the dissent.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 12, 1981

80-1251 United States v. Vogel Fertilizer Company

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

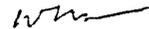
December 15, 1981

Re: No. 80-1251 United States v. Vogel Fertilizer Co.

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 14, 1981

Re: 80-1251 - United States v. Vogel
Fertilizer

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 4, 1982

No. 80-1251 United States v. Vogel Fertilizer Co.

Dear Bill,

Please join me in your opinion in the
referenced case.

Sincerely,



Justice Brennan

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