

The Burger Court Opinion Writing Database

United States v. Baggot

463 U.S. 476 (1983)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **The Chief Justice**

Circulated: JUN 8 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1938

UNITED STATES, PETITIONER *v.* JAMES E. BAGGOT
 ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SEVENTH CIRCUIT

[June —, 1983]

CHIEF JUSTICE BURGER, dissenting.

The Court today holds that administrative agencies may not inspect grand jury materials unless the "primary purpose of disclosure" is "to assist in preparation or conduct of a judicial proceeding, . . ." *Ante*, at 4. This holding is not compelled by either the language or history of Rule 6(e), and it ignores the vital public interest in effective law enforcement in noncriminal cases. I therefore dissent.

Rule 6(e)(3)(C)(i), Fed. Rules Crim. Proc., provides that a District Court may in its discretion order disclosure of grand jury materials "*preliminary to or in connection with a judicial proceeding.*" It is evident from the language of the rule that disclosure prior to the actual filing of a complaint was contemplated by the Congress. Disclosure "*in connection with a judicial proceeding*" encompasses those situations where a suit is pending or about to be filed. The words "*preliminary to*" necessarily refer to judicial proceedings not yet in existence, where, for example, a claim is under study. The Court's interpretation of this language effectively reads the words "*preliminary to*" out of the Rule. The Court interprets the Rule to apply only to cases where the "actual use" of the materials sought is to prepare for or conduct litigation. *Ante*, at 4. If this were indeed Congress' intent, then it would have sufficed to allow disclosure "*in connection with judicial proceedings*" without the added words permitting

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

From: **Justice Brennan**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1938

UNITED STATES, PETITIONER *v.* JAMES E. BAGGOT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SEVENTH CIRCUIT

[May —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

In *United States v. Sells Engineering, Inc.*, *ante*, we decide today that in some circumstances the Government may obtain disclosure of grand jury materials for civil uses under Federal Rule of Criminal Procedure 6(e)(3)(C)(i) (hereinafter sometimes referred to as "(C)(i)"). The question in this case is whether an Internal Revenue Service investigation to determine a taxpayer's civil tax liability is "preliminar[y] or in connection with a judicial proceeding" within the meaning of that Rule. We agree with the Court of Appeals that it is not.

In May 1976, a special grand jury began investigating certain commodity futures transactions on the Chicago Board of Trade. Respondent James E. Baggot became a target of the investigation. He was never indicted; instead, after interviews with IRS agents and plea negotiations with the Government, he pleaded guilty to two misdemeanor counts of violating the Commodities Exchange Act.¹ The substance of Baggot's crime was a scheme to use sham commodities transactions to create paper losses, which he deducted on his tax returns. A fraction of the "losses" was then recovered in cash kickbacks which were not reported as income.

About eight months after Baggot's plea, the Government

¹7 U. S. C. § 6c(a)(A).

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES 3

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

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Recirculated: JUN 09 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1938

UNITED STATES, PETITIONER *v.* JAMES E. BAGGOT
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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Supreme Court of the United States
Washington, D. C. 20543

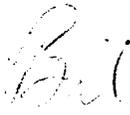
CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

June 14, 1983

Dear Chief,

You have listed No. 81-1938, United States v. Baggott, as a possible announcement for Friday. I think it cannot come down until No. 81-1032, United States v. Sells Engineering, is ready. The Baggott circulation refers to Sells in its opening sentence.

Sincerely,



The Chief Justice

Copies to the Conference

Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

Stylistic changes

From: **Justice Brennan**

Circulated: _____

Recirculated: **JUN 20 1983**

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1938

UNITED STATES, PETITIONER *v.* JAMES E. BAGGOT
 ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SEVENTH CIRCUIT

[June —, 1983]

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About eight months after Baggot’s plea, the Government

¹ 7 U. S. C. § 6c(a)(A).

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 12, 1983

Re: 81-1938 - United States v. Baggot

Dear Bill,

I shall await the dissent.

Sincerely,



Justice Brennan

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 9, 1983

Re: 81-1938 - United States V. Baggot

Dear Bill,

Please join me.

Sincerely yours,



Justice Brennan

cc: The Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 9, 1983

Re: No. 81-1938 - United States v. Baggot

Dear Bill:

Please join me.

Sincerely,

T.M.
T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 17, 1983

Re: No. 81-1938 - United States v. Baggot

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 11, 1983

81-1938 United States v. Baggot

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Brennan

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LFP/vde

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

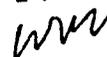
May 9, 1983

Re: No. 81-1938 United States v. Baggot

Dear Bill:

I will await further writing in this case.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 10, 1983

Re: No. 81-1938 United States v. Baggott

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 6, 1983

Re: 81-1938 - United States v. Baggot

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 9, 1983

No. 81-1938 United States v. Baggot

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

Copies to the Conference