

# The Burger Court Opinion Writing Database

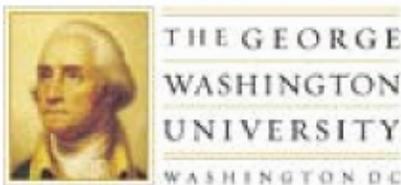
## *Wheeler v. Montgomery*

397 U.S. 280 (1970)

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

November 25, 1969

MEMORANDUM FOR THE CONFERENCE

Re: ✓ No. 14 - Wheeler v. Montgomery  
No. 62 - Goldberg v. Kelly

I intend to dissent in these cases and will  
await Justice Black's opinion.



W. E. B.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

No. 14 - Wheeler v. Montgomery

No. 62 - Goldberg v. Kelly

To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan ✓  
Mr. Justice Stewart  
Mr. Justice White  
~~Mr. Justice Fortas~~  
Mr. Justice Marshall

From: The Chief Justice  
MR. CHIEF JUSTICE BURGER, dissenting.

Circulated: 2/12/70

Recirculated: \_\_\_\_\_

I agree in large part with Mr. Justice Black. I would dis-  
*the writ*  
miss <sup>A</sup> as prematurely and therefore improvidently granted. The  
procedures for review of administrative action in the "welfare"  
are in a relatively early stage of development. It is not imperative  
that Federal and State courts achieve instant uniformity or instant  
perfection; nor is it necessary or desirable that this Court sub-  
stitute its own theories of perfection for the considered views of  
the local, State and Federal agencies which are primarily entrusted  
with administering welfare programs. These agencies should be  
permitted to experiment rather than be forced into a rigid mold  
of questionable and untested adequacy. Additional time is needed  
before the dimensions of the problem or the appropriate means of  
achieving basic fairness to both the recipients and the public can  
be determined. Whatever procedural safeguards are needed can  
be better fashioned and experimented with in the first instance by  
administrators who have, as we do not, some knowledge of the  
realities of relief administration.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
THE CHIEF JUSTICE

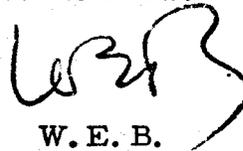
March 3, 1970

Re: No. 14 - Wheeler v. Montgomery  
No. 62 - Goldberg v. Kelly

MEMORANDUM TO THE CONFERENCE:

My dissent has been revised and reorganized; hence, it is not possible to mark changes from the earlier draft.

Justice Black joined the earlier dissent, and I anticipate he will join in this since the essence is the same. However, he can let me know.

  
W. E. B.

To: Mr. Justice Black  
 Mr. Justice Douglas  
 Mr. Justice Harlan  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
~~Mr. Justice Fortas~~  
 Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: The Chief Justice

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

Nos. 14 AND 62.—OCTOBER TERM, 1969

Recirculated: 3/3/70

|  |   |  |
|--|---|--|
| Mae Wheeler et al., Appellants,<br>14<br>v.<br>John Montgomery, Director of<br>the State Department of<br>Social Welfare, et al. | } | On Appeal from the<br>United States Dis-<br>trict Court for the<br>Northern District of<br>California. |
|--|---|--|

|  |   |  |
|--|---|--|
| Jack R. Goldberg, Commissioner<br>of Social Services of the City<br>of New York, Appellant,<br>62<br>v.<br>John Kelly et al. | } | On Appeal from the<br>United States Dis-<br>trict Court for the<br>Southern District of<br>New York. |
|--|---|--|

[March —, 1970]

MR. CHIEF JUSTICE BURGER, dissenting.

Although I agree in large part with MR. JUSTICE BLACK, there are additional factors I wish to mention in dissent from today's unwise and precipitous constitutional holding.

The procedures for review of administrative action in the "welfare" area are in a relatively early stage of development; HEW has already taken the initiative by promulgating regulations requiring that AFDC payments be continued until a final decision after a "fair hearing" is held.<sup>1</sup> The net effect would be to provide a hearing prior to a termination of benefits. Indeed, the HEW administrative regulations go far beyond the result reached today since they require recipients be given the right to appointed counsel, a position expressly rejected by the majority.<sup>2</sup> As the majority notes, see

<sup>1</sup> 45 CFR 205.10, 34 Fed. Reg. 1144 (1969).

<sup>2</sup> 45 CFR 220.25, 34 Fed. Reg. 1356 (1969). See also HEW Handbook, Pt. IV, §§ 2300 (d) (5), 6200-6400.

by  
TCG  
GDW

*Mr. Justice Black*  
*Mr. Justice Douglas*  
*Mr. Justice Harlan*  
*Mr. Justice Brennan*  
*Mr. Justice Stewart*  
*Mr. Justice White*  
*Mr. Justice Marshall*

To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
~~Mr. Justice Fortas~~  
Mr. Justice Marshall ✓

SUPREME COURT OF THE UNITED STATES

From: The Chief Justice

Nos. 14 AND 62.--OCTOBER TERM, 1969

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

Recirculated: 3/5/70

Mae Wheeler et al., Appellants, } On Appeal from the  
14 v. } United States Dis-  
John Montgomery, Director of } trict Court for the  
the State Department of } Northern District of  
Social Welfare, et al. } California.

Jack R. Goldberg, Commissioner } On Appeal from the  
of Social Services of the City } United States Dis-  
of New York, Appellant, } trict Court for the  
62 v. } Southern District of  
John Kelly et al. } New York.

[March —, 1970]

MR. CHIEF JUSTICE BURGER, dissenting.

Although I agree in large part with MR. JUSTICE BLACK, there are additional factors I wish to mention in dissent from today's unwise and precipitous constitutional holding.

The procedures for review of administrative action in the "welfare" area are in a relatively early stage of development; HEW has already taken the initiative by promulgating regulations requiring that AFDC payments be continued until a final decision after a "fair hearing" is held.<sup>1</sup> The net effect would be to provide a hearing prior to a termination of benefits. Indeed, the HEW administrative regulations go far beyond the result reached today since they require recipients be given the right to appointed counsel,<sup>2</sup> a position expressly rejected by the majority. As the majority notes, see

<sup>1</sup> 45 CFR 205.10, 34 Fed. Reg. 1144 (1969).

<sup>2</sup> 45 CFR 220.25, 34 Fed. Reg. 1356 (1969). See also HEW Handbook, Pt. IV, §§ 2300 (d) (5), 6200-6400.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

November 25, 1969

MEMORANDUM FOR THE CONFERENCE

Re: No. 14 - Mae Wheeler, et al. v. John  
Montgomery, etc., et al. and  
62 No. ~~14~~ - Jack R. Goldberg, Commissioner  
v. John Kelly, et al.

In due course I expect to circulate  
a dissent in these two cases.

Respectfully,

Hugo L. Black

hlb:fl

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

November 25, 1969

Memorandum for the Secretaries

From: Frances Lamb

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Earlier today a memorandum to the conference was circulated indicating that Justice Black would shortly circulate a dissent in Nos. 14 and 16. The correct numbers should have been No. 14 (Wheeler v. Montgomery) and No. 62 (Goldberg v. Kelly). Please change your copy of our memo.

Thanks very much.

*FL*

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

February 13, 1970

Dear Chief,

Re: No. 14 - Wheeler v. Montgomery  
No. 62 - Goldberg v. Kelly

I like your opinion in the above cases and  
therefore want to join it.

Sincerely,



H. L. B.

The Chief Justice

cc: Members of the Conference

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

March 12, 1970

MEMORANDUM FOR THE CONFERENCE

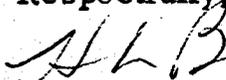
I have joined the following opinions:

No. 14 - Wheeler v. Montgomery  
62 - Goldberg v. Kelley  
(Chief Justice's dissent)

No. 282 - U. S. v. Davis, et ux.  
(Marshall, J., Op. Ct.)

No. 403 - U. S. v. Van Leeuwen  
(Douglas, J., Op. Ct.)

Respectfully,



H. L. B.

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

CHAMBERS OF  
JUSTICE JOHN M. HARLAN

February 19, 1970

Re: No. 14 - Wheeler v. Montgomery  
No. 62 - Goldberg v. Kelly

Dear Bill:

What I am about to say reflects my overnight consideration following our telephone conversation of yesterday.

In your Goldberg opinion, I would like to see the last two sentences in the run-over paragraph on page 7 changed to read something like this: "We noted probable jurisdiction, 394 U. S. 971 (1969), to decide important issues which have been the subject of disagreement ~~in principle~~ between the three-judge court in the present case and that convened in No. 14, Wheeler v. Montgomery, also decided today. We affirm here." This suggestion is prompted by the tone of the two dissenting opinions which are being filed.

*already done →*  
In Wheeler, I think the phrase, on page 2, "trial-type hearing" should be changed to "evidentiary hearing" to conform with Goldberg.

I have decided to do no separate writing in either case myself. However, I submit for your consideration a concluding paragraph in Goldberg, something along the following lines:

"In reaching these conclusions, we wish to add that we, no less than the ~~minority~~, recognize the importance of not imposing upon the states or the federal government in this developing field of the law any procedural requirements beyond those demanded by rudimentary due process."

*dissenters  
at end  
of 1st full  
¶ on p 12  
perhaps*

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I am content to leave this last suggestion in your hands, but for myself would consider it an appropriate thought to add.

Sincerely,

A handwritten signature in dark ink, appearing to be "JFK", written in a cursive style.

Mr. Justice Brennan

Not Circulated

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SUPREME COURT OF THE UNITED STATES

No. 14.—OCTOBER TERM, 1969

|   |   |  |
|---|---|--|
| <p>Mae Wheeler et al., Appellants,<br/> v.<br/> John Montgomery, etc., et al.</p> | } | <p>On Appeal From the<br/> United States District<br/> Court for the Northern<br/> District of California.</p> |
|---|---|--|

[November —, 1969]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This is a companion case to No. 62—*Goldberg v. Kelly, ante*. A three-judge District Court for the Northern District of California held that the California procedure for pre-termination review of terminations of aid in welfare cases satisfies the requirements of the Due Process Clause, 296 F. Supp. 138 (1968).<sup>1</sup> This procedure requires notice to the recipient of the proposed discontinuance or suspension at least three days prior to its effective date, together with reasons for the intended action and a statement of what information or action is required to re-establish eligibility, advice that the recipient may meet his caseworker within the three days “[t]o discuss the matter informally for purposes of clarification and, where possible, resolution,” and assurance that there will be “prompt investigation” of the case and restoration of payments “as soon as there is eligibility” to receive

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<sup>1</sup> But see *McCullough v. Terzian*, No. 379,011 (Cal. Super. Ct. May 2, 1968). Appellant Wheeler was 75 years old when her Old Age Security Welfare benefits, 91 U. S. C. § 301, were discontinued.

m BL 62

To: The Chief Justice  
✓ Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

**SUPREME COURT OF THE UNITED STATES** Com: Brennan, J.

No. 14.—OCTOBER TERM, 1969

Circulated: 10.24-69

Mae Wheeler et al., Appellants,  
v.  
John Montgomery, Director of  
the State Department of  
Social Welfare, et al. } On Appeal From the  
United States District  
Court for the Northern  
District of California.

[November —, 1969]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This is a companion case to No. 62—*Goldberg v. Kelly, ante*. It is a class action brought by all recipients of old age benefits who are subject to California welfare termination provisions. A three-judge District Court for the Northern District of California held that the California procedure for pre-termination review in welfare cases satisfies the requirements of the Due Process Clause, 296 F. Supp. 138 (1968), and we noted probable jurisdiction, 394 U. S. 970 (1969). This procedure requires notice to the recipient of the proposed discontinuance or suspension at least three days prior to its effective date, together with reasons for the intended action and a statement of what information or action is required to re-establish eligibility, advice that the recipient may meet his caseworker within the three days “[t]o discuss the matter informally for purposes of clarification and, where possible, resolution,” and assurance that there will be “prompt investigation” of the case and restoration of payments “as soon as there is eligibility” to receive them.\* The procedure does not, however, afford the

\*California State Department of Social Welfare, Public Social Services Manual, Reg. 44-325 (effective April 1, 1968). The pertinent provisions of the regulation state:

“The recipient . . . shall be notified, in writing, immediately upon the initial decision being made to withhold a warrant beyond its usual delivery date . . . and in no case less than three . . . mail

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**SUPREME COURT OF THE UNITED STATES**

No. 14.—OCTOBER TERM, 1969

|   |   |   |
|---|---|---|
| Mae Wheeler et al., Appellants,<br><i>v.</i><br>John Montgomery, Director of<br>the State Department of<br>Social Welfare, et al. | } | On Appeal From the<br>United States District<br>Court for the Northern<br>District of California. |
|---|---|---|

[February —, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This is a companion case to No. 62—*Goldberg v. Kelly, ante*. It is a class action brought by all recipients of old age benefits who are subject to California welfare termination provisions. A three-judge District Court for the Northern District of California held that the California procedure for pre-termination review in welfare cases satisfies the requirements of the Due Process Clause, 296 F. Supp. 138 (1968), and we noted probable jurisdiction, 394 U. S. 970 (1969). This procedure requires notice to the recipient of the proposed discontinuance or suspension at least three days prior to its effective date, together with reasons for the intended action and a statement of what information or action is required to re-establish eligibility, advice that the recipient may meet his caseworker before his benefits are terminated “[t]o discuss the entire matter informally for purposes of clarification and, where possible, resolution,” and assurance that there will be “prompt investigation” of the case and restoration of payments “as soon as there is eligi-

BN  
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GAW  
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To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice White  
~~Mr. Justice Fortas~~  
~~Mr. Justice Marshall~~

**SUPREME COURT OF THE UNITED STATES**

Nos. 14 AND 62.—OCTOBER TERM, 1969

From: Stewart, J.

Circulated: FEB 17 1970

Mae Wheeler et al., Appellants, } On Appeal from the  
14 v. } United States Dis-  
John Montgomery, Director of } trict Court for the  
the State Department of } Northern District of  
Social Welfare, et al. } California.

Jack R. Goldberg, Commissioner } On Appeal from the  
of Social Services of the City } United States Dis-  
of New York, Appellant, } trict Court for the  
62 v. } Southern District of  
John Kelly et al. } New York.

[February —, 1970]

MR. JUSTICE STEWART, dissenting.

Although the question is for me a close one, I do not believe that the procedures that New York and California now follow in terminating welfare payments are violative of the United States Constitution. See *Cafeteria & Restaurant Workers Union v. McElroy*, 367 U. S. 886, 894-897.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 2, 1969

Re: No. 14 - Wheeler v. Montgomery

Dear Bill:

Please join me.

Sincerely,

  
B.R.W.

Mr. Justice Brennan

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

November 25, 1969

Re: No. 14 - Wheeler v. Montgomery  
and  
No. 62 - Goldberg v. Kelly

Dear Bill:

Please join me in both of  
these.

Sincerely,

T.M.

Mr. Justice Brennan  
et: The Conference