

The Burger Court Opinion Writing Database

Carleson v. Remillard

406 U.S. 598 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



3

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: The Chief Justice

Circulated: JUN 1 - 1972

Recirculated: _____

No. 70-250 -- Carleson v. Remillard

MR. CHIEF JUSTICE BURGER, concurring.

I join in the opinion and judgment of the Court but on the assumption, not expressly articulated in the opinion, that a state may administratively deduct from its total "need payment" such amount as is being paid out of the military pay of the head of the family. It would be curious, indeed, if two "pockets" of the same government would be required to make duplicating payments for welfare.

The administrative procedures to give effect to this process may be cumbersome, but the right of the state to avoid overlapping benefits for support should be clearly understood.

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: The Chief Justice

No. 70-250

Circulated: _____

Robert B. Carleson et al., } On Appeal from the United
Appellants, } States District Court for
v. } the Northern District of
Nancy Remillard, Etc., et al. } California.

Recirculated: JUN 5 1972

[June —, 1972]

MR. CHIEF JUSTICE BURGER, concurring.

I join in the opinion and judgment of the Court but on the assumption, not expressly articulated in the opinion, that a State may administratively deduct from its total "need payment" such amount as is being paid to the dependents under the military allotment system. It would be curious, indeed, if two "pockets" of the same government would be required to make duplicating payments for welfare.

The administrative procedures to give effect to this process may be cumbersome, but the right of the State to avoid overlapping benefits for support should be clearly understood.

February 25, 1972

Dear Chief:

I have talked with Judge Oliver Carter in San Francisco about Carmen L. Massey, of Richmond, California, whom the appellee in No. 70-250 wants to represent her.

Judge Carter tells me that he knows the man and that he enjoys a good reputation.

W. O. D.

The Chief Justice
cc: Clerk's Office

Wm. Doyle
Oct 11

Please see me

To: The Chief Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-250

From: Douglas
Circulated: 5-16

Robert B. Carleson et al.,
Appellants,
v.
Nancy Remillard, Etc., et al. } On Appeal from the United
States District Court for
the Northern District of
California.

[May —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Appellees are mother and child. The husband enlisted in the United States Army and served in Vietnam. The mother applied for AFDC benefits at a time when the amount of the monthly allotment she received by virtue of her husband's military service was less than her "need" as computed by the California agency and less than the monthly AFDC grant an adult with one child receives in California. She was denied relief because, although the Social Security Act, 42 U. S. C. § 301-1394, grants aid to families with "dependent children," the term "dependent child" is one "who has been deprived of parental support or care by reason of . . . continued absence from the home." 42 U. S. C. § 606 (a). And California construed "continued absence" as not including military absence. It is unquestioned that her child is in fact "needy."

When the husband's allotment check was stopped, appellee again applied for AFDC benefits. She again was denied the benefits, this time because California had adopted a regulation¹ which specifically prohibited the

¹ Calif. Dept. Soc. Welfare Reg. EAS 42-350.11 provides:
"When one parent is physically absent from the home on a temporary basis. Examples are visits, trips made in connection with

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7-3

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-250

Circulated: _____

Recirculated: 5-16

Robert B. Carleson et al.,
Appellants,
v.
Nancy Remillard, Etc., et al. } On Appeal from the United
States District Court for
the Northern District of
California.

[May —, 1972]

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"When one parent is physically absent from the home on a temporary basis. Examples are visits, trips made in connection with

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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Burger

5th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 70-250

Circulated:

Robert B. Carleson et al.,
Appellants,
v.
Nancy Remillard, Etc., et al. } On Appeal from the United
States District Court for
the Northern District of
California.

Circulated: 5-17

[May —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Appellees are mother and child. The husband enlisted in the United States Army and served in Vietnam. The mother applied for AFDC benefits at a time when the amount of the monthly allotment she received by virtue of her husband's military service was less than her "need" as computed by the California agency and less than the monthly AFDC grant an adult with one child receives in California. She was denied relief. Although the Social Security Act, 42 U. S. C. § 301-1394, grants aid to families with "dependent children," and includes in the term "dependent child" one "who has been deprived of parental support or care by reason of . . . continued absence from the home." 42 U. S. C. § 606 (a), California construed "continued absence" as not including military absence. It is unquestioned that her child is in fact "needy."

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"When one parent is physically absent from the home on a temporary basis. Examples are visits, trips made in connection with

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 17, 1972

RE: No. 70-250 - Carleson v. Remillard

Dear Bill:

I agree.

Sincerely,

Bill

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 17, 1972

No. 70-250, Carleson v. Remillard

Dear Bill,

I am glad to join your opinion for the
Court in this case.

Sincerely yours,

P.S.
✓

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

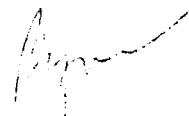
May 31, 1972

Re: No. 70-250 - Carleson v. Remillard

Dear Bill:

I give up. Please join me.

Sincerely,



Mr. Justice Douglas

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL


May 17, 1972

Re: No. 70-250 - Carleson v. Remillard

Dear Bill:

Please join me.

Sincerely,


T.M.

Mr. Justice Douglas

cc: Conference



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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

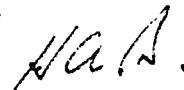
May 18, 1972

Re: No. 70-250 - Carleson v. Remillard

Dear Bill:

Unless any forthcoming dissent should otherwise persuade me, I am glad to join your opinion.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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3

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

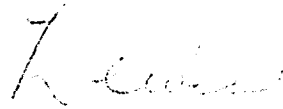
May 25, 1972

Re: No. 70-250 Carleson v. Remillard

Dear Bill:

Please join me in your opinion for the Court.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 31, 1972

Re: 70-250 - Carleson v. Remillard

Dear Bill:

Please join me in your opinion for the Court in
this case.

Sincerely,

Mr. Justice Douglas

Copies to the Conference