

# The Burger Court Opinion Writing Database

*Kokoszka v. Belford*

417 U.S. 642 (1974)

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

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**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 73-5265

Henry A. Kokoszka,  
Petitioner,  
v.  
Richard Belford,  
Trustee, Etc. } On Writ of Certiorari to the United  
States Court of Appeals for the  
Second Circuit.

[June —, 1974]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to resolve the conflict among the courts of appeals on the questions of whether an income tax refund is "property" under § 70 (a)(5) of the Bankruptcy Act<sup>1</sup> and whether, assuming that all or part of such tax refund is property which passes to the trustee, the Consumer Credit Protection Act's<sup>2</sup> limitation

<sup>1</sup> The pertinent parts of § 70 (a)(5) of the Bankruptcy Act, 11 U. S. C. § 110 (a)(5), read as follows:

"(a) The trustee of the estate of a bankrupt . . . [shall] be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition initiating a proceeding under this title . . . to all of the following kinds of property wherever located . . . (5) property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded, or sequestered . . ."

It is undisputed that the refunds could have been transferred under Connecticut law at the time of the filing of the petition, cf. *Segal v. Rochelle*, 382 U. S. 375, 381-385 (1966).

<sup>2</sup> 82 Stat. 146, 15 U. S. C. § 1601 *et seq.*

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 19, 1974

Re: No. 73-289 - Michelman v. Kingswood  
(held for 73-5265 - Kokoszka v. Belford)

MEMORANDUM TO THE CONFERENCE:

This case was held for our decision in No. 73-5265, Kokoszka v. Belford. Here, in April 1971, respondents filed voluntary petitions in bankruptcy and were ordered to turn over to the Trustee refunds from their 1970 federal and New York State income tax returns. They later filed an application to reclaim the tax refunds, contending that they were not "property" within the meaning of § 70 of the Bankruptcy Act. The Referee denied the application. The District Court affirmed. The Court of Appeals reversed in one sentence, citing In re Cedor, 470 F.2d 996 (9 Cir. 1972), affirming on the basis of the opinion of the District Court, 337 F. Supp. 1103 (N.D. Cal. 1972).

In his petition for certiorari, petitioner Trustee raised the same issues which were decided in Kokoszka: (1) whether a tax refund is "property" within the meaning of § 70(a)(5) of the Bankruptcy Act; and (2) whether, assuming the refund is not "property," the Trustee's action amounts to a garnishment under the Consumer Credit Protection Act.

In Kokoszka, the Second Circuit expressly declined to follow the Ninth Circuit's reasoning here. Since we have affirmed the Second Circuit, the decision in this case is thus now in conflict with our resolution of the issues in Kokoszka. Accordingly, the petition should be granted and the judgment reversed on the authority of Kokoszka.

Regards,

*JSB*

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

May 31, 1974

Dear Chief:

In 73-5265, KOKOSZKA v. BELFORD  
please join me in your opinion.

*W.W.D.*  
WILLIAM O. DOUGLAS

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. May 31, 1974

RE: No. 73-5265 Kokoszka v. Belford

Dear Chief:

I agree.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 3, 1974

Re: 73-5265, Kokoszka v. Belford

Dear Chief,

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

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 4, 1974

Re: No. 73-5265 - Kokoszka v. Belford

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 11, 1974

Re: No. 73-5265 -- Henry A. Kokoszka v. Belford

Dear Chief:

Please join me.

Sincerely,

*T.M.*  
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 31, 1974

Dear Chief:

Re: No. 73-5265 - Kokoszka v. Belford

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 2, 1974

No. 73-5265 Kokoszka v. Belford

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

1fp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 30, 1974

Re: No. 73-5265 - Kokoszka v. Belford

Dear Chief:

Please join me in the opinion for the Court you have prepared in this case.

Sincerely,

W.W.

The Chief Justice

Copies to the Conference