

# The Burger Court Opinion Writing Database

## *Carter v. Stanton*

405 U.S. 669 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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M

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

CHAMBERS OF  
THE CHIEF JUSTICE

December 15, 1971

Re: No. 70-5082 - Carter v. Stanton

Dear Byron:

Please join me.

Regards,

WRB

Mr. Justice White

cc: The Conference

B M —

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5082

Laverne Carter et al.,  
Appellants,  
v.  
Wayne Stanton et al. } On Appeal from the United  
States District Court for the  
Southern District of Indiana.

[December —, 1971]

MR. JUSTICE DOUGLAS.

The problem is simple and should be disposed of here.

The federal Act defines "a dependent child" as a "needy child . . . who has been deprived of parental support or care by reason of . . . continued absence from home."<sup>1</sup> Indiana by its Board of Public Welfare has adopted the federal definition of "needy child."<sup>2</sup>

The term "continued absence from home" is not defined in the federal Act, though HEW recommends "that no period of time be specified as a basis for establishing continued absence as an eligibility factor."<sup>3</sup> Indiana, however, has established by rule a definition of "continued absence" in case of "desertion or separation." In those two instances it makes "continued absence" mean that "the absence shall have been continuous" for at least six months,<sup>4</sup> except when the department of welfare finds there are "exceptional circumstances of need."

<sup>1</sup> 49 Stat. 629, 42 U. S. C. § 606 (a).

<sup>2</sup> Reg. 2-400 (a).

<sup>3</sup> Handbook of Public Assistance Administration (1968) § 3422.2.

<sup>4</sup> Admin. Rules & Rep., 52-1001-2 (1967): "When the continued absence is due to desertion or separation, the absence shall have been continuous for a period of at least six (6) months prior to the date of application for assistance to dependent children; except that under exceptional circumstances of need and where it is determined that the absence of a parent is actual and bona fide an application may be filed and a child may be considered immediately

P 3

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan ✓  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 70-5082

Circulate: 12/10/71

Laverne Carter et al.,  
Appellants,  
v.  
Wayne Stanton et al. } On Appeal from the United States District Court for the Southern District of Indiana.

[December —, 1971]

MR. JUSTICE DOUGLAS.

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<sup>2</sup> Reg. 2-400 (a).

<sup>3</sup> Handbook of Public Assistance Administration (1968) § 3422.2.

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W. J. Brennan  
Dec 11

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3M

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

3rd DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

No. 70-5082

Recirculated: 12-10

Laverne Carter et al.,  
 Appellants,  
 v.  
 Wayne Stanton et al. } On Appeal from the United  
 States District Court for the  
 Southern District of Indiana.

[December —, 1971]

MR. JUSTICE DOUGLAS.

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<sup>2</sup> Reg. 2-400 (a).

<sup>3</sup> Handbook of Public Assistance Administration (1968) § 3422.2.

<sup>4</sup> Admin. Rules & Rep., 52-1001-2 (1967): "When the continued absence is due to desertion or separation, the absence shall have been continuous for a period of at least six (6) months prior to the date of application for assistance to dependent children; except that under exceptional circumstances of need and where it is determined that the absence of a parent is actual and bona fide an application may be filed and a child may be considered immediately

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

13  
4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5082

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

Recirculated: 3-28

Laverne Carter et al.,  
Appellants,  
v.  
Wayne Stanton et al. } On Appeal from the United  
States District Court for the  
Southern District of Indiana.

[April —, 1972]

MR. JUSTICE DOUGLAS.

I agree that both this Court and the District Court have jurisdiction to entertain this case and that the appellants were not required to exhaust administrative remedies before launching their challenge. But, although the District Court should have made more complete findings of fact and conclusions of law, I would not remand simply on this score but would hold that the appellants are entitled to judgment.

The problem is simple and should be disposed of here.

The federal Act defines "a dependent child" as a "needy child . . . who has been deprived of parental support or care by reason of . . . continued absence from home."<sup>1</sup> Indiana by its Board of Public Welfare has adopted the federal definition of "needy child."<sup>2</sup>

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<sup>1</sup> 49 Stat. 629, 42 U. S. C. § 606 (a).

<sup>2</sup> Reg. 2-400 (a).

<sup>3</sup> Handbook of Public Assistance Administration (1968) § 3422.2.

(3) →  
minor changes  
+ this

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

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5082

Laverne Carter et al.,  
Appellants,  
v.  
Wayne Stanton et al. } On Appeal from the United  
States District Court for the  
Southern District of Indiana.

3/29/72

[April —, 1972]

MR. JUSTICE DOUGLAS.

I agree that both this Court and the District Court have jurisdiction to entertain this case and that the appellants were not required to exhaust administrative remedies before launching their challenge. But, although the District Court should have made more complete findings of fact and conclusions of law, I would not remand simply on this score but would hold that the appellants are entitled to judgment.

The problem is simple and should be disposed of here.

The federal Act defines "a dependent child" as a "needy child . . . who has been deprived of parental support or care by reason of . . . continued absence from home."<sup>1</sup> Indiana by its Board of Public Welfare has adopted the federal definition of "needy child."<sup>2</sup>

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<sup>1</sup> 49 Stat. 629, 42 U. S. C. § 606 (a).

<sup>2</sup> Md. State Bd. of Pub. Welfare Reg. 2-400 (a).

<sup>3</sup> Dept. of Health, Educ. & Welfare Handbook of Public Assistance Administration, pt. IV, § 3422.2 (1968).

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MM

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 7, 1971

RE: No. 70-5082 - Carter v. Stanton

Dear Byron:

I agree.

Sincerely,

Bill

Mr. Justice White

cc: The Conference



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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 7, 1971

70-5082 - Carter v. Stanton

Dear Byron,

I am glad to join your Per Curiam  
in this case.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

BM

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 27, 1972

70-5082 - Carter v. Stanton

Dear Byron,

I am glad to join your Per Curiam  
circulated today in this case.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

To: The Chief Justice  
 Mr. Justice Black  
 Mr. Justice Douglas  
 Mr. Justice Harlan  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 ✓ Mr. Justice Marshall  
 Mr. Justice Blackmun

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: 12-2-71

No. 70-5082

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

Laverne Carter et al.,  
 Appellants,  
 v.  
 Wayne Stanton et al. } On Appeal from the United  
 States District Court for the  
 Southern District of Indiana.

[December —, 1971]

PER CURIAM.

Appellants are women who contend that an Indiana welfare regulation governing eligibility for state and federal aid to dependent children contravenes the Fourteenth Amendment and the Social Security Act, 42 U. S. C. § 602 (a)(10). The regulation provides that a person who seeks assistance due to separation or the desertion of a spouse is not entitled to aid until the spouse has been continuously absent for at least six months. Burns Ind. Rules and Regs. (52-1001)-2 (1967). Appellants brought this action in the United States District Court for the Southern District of Indiana, basing jurisdiction on 42 U. S. C. § 1983, 28 U. S. C. § 1343, and seeking both declaratory and injunctive relief. A three-judge court was convened pursuant to 28 U. S. C. § 2281. After a "preliminary hearing on defendant's" motion to dismiss "at which the court" received evidence upon which to resolve the matter, the court dismissed the complaint on the ground that none of the claimants had exercised her right under Indiana law to appeal from a county decision denying welfare assistance, Burns Ind. Stat. Ann § 52-1246 (1964), and therefore appellants had failed to exhaust administrative remedies. In the alternative, the court held that the pleadings did not present a substantial federal question and that the court lacked jurisdiction under 28 U. S. C.

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p. 1

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
~~Mr. Justice Marshall~~  
Mr. Justice Blackmun

3rd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

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

No. 70-5082

Recirculated: 12-11-71

Laverne Carter et al. }  
Appellants. } On Appeal from the United  
v. } States District Court for the  
Wayne Stanton et al. } Southern District of Indiana.

[December —, 1971]

PER CURIAM.

Appellants are women who contend that an Indiana welfare regulation governing eligibility for state and federal aid to dependent children contravenes the Fourteenth Amendment and the Social Security Act, 42 U. S. C. § 602 (a)(10). The regulation provides that a person who seeks assistance due to separation or the desertion of a spouse is not entitled to aid until the spouse has been continuously absent for at least six months, unless there are exceptional circumstances of need. Burns Ind. Rules and Regs. (52-1001)-2 (1967). Appellants brought this action in the United States District Court for the Southern District of Indiana, basing jurisdiction on 42 U. S. C. § 1983, 28 U. S. C. § 1343, and seeking both declaratory and injunctive relief. A three-judge court was convened pursuant to 28 U. S. C. § 2281. After a "preliminary hearing on defendant's" motion to dismiss "at which the court" received evidence upon which to resolve the matter, the court dismissed the complaint on the ground that none of the claimants had exercised her right under Indiana law to appeal from a county decision denying welfare assistance, Burns Ind. Stat. Ann § 52-1246 (1964), and therefore appellants had failed to exhaust administrative remedies. In the alternative, the court held that the pleadings did not present a substantial federal question and that the court lacked jurisdiction under 28 U. S. C.

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M / *Technical changes*

- To: The Chief Justice
- Mr. Justice Douglas
- Mr. Justice Brennan
- Mr. Justice Stewart
- ☒ Mr. Justice Marshall
- Mr. Justice Blackmun
- Mr. Justice Powell
- Mr. Justice Rehnquist

4th DRAFT

SUPREME COURT OF THE UNITED STATES *From: White, J.*

No. 70-5082

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

Recirculated: 3-27-72

Laverne Carter et al.,  
Appellants,  
v.  
Wayne Stanton et al. } On Appeal from the United  
States District Court for the  
Southern District of Indiana.

[March —, 1972]

PER CURIAM.

Appellants are women who contend that an Indiana welfare regulation governing eligibility for state and federal aid to dependent children contravenes the Fourteenth Amendment and the Social Security Act, 42 U. S. C. § 602 (a)(10). The regulation provides that a person who seeks assistance due to separation or the desertion of a spouse is not entitled to aid until the spouse has been continuously absent for at least six months, unless there are exceptional circumstances of need. Burns Ind. Rules and Regs. (52-1001)-2 (1967). Appellants brought this action in the United States District Court for the Southern District of Indiana, basing jurisdiction on 42 U. S. C. § 1983, 28 U. S. C. § 1343, and seeking both declaratory and injunctive relief. A three-judge court was convened pursuant to 28 U. S. C. § 2281. After a "preliminary hearing on defendant's" motion to dismiss "at which the court" received evidence upon which to resolve the matter, the court dismissed the complaint on the ground that none of the claimants had exercised her right under Indiana law to appeal from a county decision denying welfare assistance. Burns Ind. Stat. Ann. § (52-1211)-1 (Supp. 1970), and therefore appellants had failed to exhaust administrative remedies. In the alternative, the court held that the pleadings did not present a substantial federal question and that the court lacked jurisdiction under 42

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL


December 9, 1971

Re: No. 70-5082 - Carter v. Stanton

Dear Byron:

Please join me in your per curiam.

Sincerely,

  
T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 9, 1971

Re: No. 70-5082 - Carter v. Stanton

Dear Byron:

I, too, agree with the Per Curiam you have  
prepared for this case.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference

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