

# The Burger Court Opinion Writing Database

## *Indiana Employment Security Division v. Burney*

409 U.S. 540 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



3 114  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

January 12, 1973

Re: No. 71-1119 - Indiana Employment Security  
Division v. Burney

Dear Potter:

Please join me.

Regards,

WRB

Mr. Justice Stewart

cc: The Conference

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U.S. SUPREME COURT RECORDS

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 21, 1972

Dear Potter:

In No. 71-1119, Indiana Employment  
Security Division, et al. v. Burney please  
join me.

WCD  
William O. Douglas

Mr. Justice Stewart

cc: Conference

You have not  
acted. There  
are 5 joins to  
P.S. P.C.

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SSSERNOC OF ADVANCE

*my*

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. January 9, 1973

RE: No. 71-1119 - Indiana Employment  
Security Division v. Burney

Dear Thurgood:

Please join me in your dissent.

Thanks very much for your consideration of my suggestion.

Sincerely,

*Brennan*

Mr. Justice Marshall

cc: The Conference

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U.S. DEPARTMENT OF JUSTICE

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From: Stewart, J.

Circulated: 75 23 1972

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UNITED STATES OF AMERICA

PER CURIAM.

The settlement of Mrs. Burney's claim raises the question whether there continues to be a case or con-

\*The three-judge court was convened pursuant to 28 U. S. C. § 2281, to consider the prayer for an injunction against enforcement of the Indiana statute, Ind. Ann. Stat. § 52-1542a (3) (Burns 1970 Supp.), on the grounds that it violated the appellee's right to due process under the Fourteenth Amendment. The District Court did not reach this issue.

*3*  
*— M*  
*You have not acted.*  
*There are 5 joins*

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

2nd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

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

No. 71-1119

Recirculated: DEC 22 1972

Indiana Employment Security Division et al., Appellants, v. Essie D. Burney	}	On Appeal from the United State District Court for the Northern District of Indiana.
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[January —, 1973]

PER CURIAM.

We noted probable jurisdiction in this case, 406 U. S. 956, to review the judgment of a three-judge district court, holding that Indiana's system of administering unemployment insurance was in conflict with § 303 (a)(1) of the Social Security Act, 42 U. S. C. § 503 (a)(1).<sup>1</sup> Before the three-judge court entered its injunction, Indiana's practice was to discontinue unemployment benefits upon a determination of ineligibility, that determination taking place without the benefit of a full hearing for the erstwhile beneficiary.

After several months of effort, however, the class representative in this litigation, Mrs. Burney, succeeded in obtaining a reversal of the initial determination of ineligibility.<sup>2</sup> She has now received full retroactive compensation.

<sup>1</sup> The three-judge court was convened pursuant to 28 U. S. C. § 2281, to consider the prayer for an injunction against enforcement of the Indiana statute, Ind. Ann. Stat. § 52-1542a (3) (Burns 1970 Supp.), on the grounds that it violated the appellee's right to due process under the Fourteenth Amendment. The District Court did not reach this issue.

<sup>2</sup> The District Court entered a temporary restraining order against the appellants on May 7, 1971. Presumably the appellee's payments

by —

p. 2

*You have a dissent.*

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

3rd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

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

Recirculated: JAN 3 1973

No. 71-1119

Indiana Employment Security Division et al.,  
Appellants,  
v.  
Essie D. Burney

On Appeal from the United  
State District Court for  
the Northern District of  
Indiana.

[January —, 1973]

PER CURIAM.

We noted probable jurisdiction in this case, 406 U. S. 956, to review the judgment of a three-judge district court, holding that Indiana's system of administering unemployment insurance was in conflict with § 303 (a)(1) of the Social Security Act, 42 U. S. C. § 503 (a)(1).<sup>1</sup> Before the three-judge court entered its injunction, Indiana's practice was to discontinue unemployment benefits upon a determination of ineligibility, that determination taking place without the benefit of a full hearing for the erstwhile beneficiary.

After several months of effort, however, the class representative in this litigation, Mrs. Burney, succeeded in obtaining a reversal of the initial determination of ineligibility.<sup>2</sup> She has now received full retroactive compensation.

<sup>1</sup> The three-judge court was convened pursuant to 28 U. S. C. § 2281, to consider the prayer for an injunction against enforcement of the Indiana statute, Ind. Ann. Stat. § 52-1542a (3) (Burns 1970 Supp.), on the grounds that it violated the appellee's right to due process under the Fourteenth Amendment. The District Court did not reach this issue.

<sup>2</sup> The District Court entered a temporary restraining order against the appellants on May 7, 1971. Presumably the appellee's payments

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 21, 1972

Re: No. 71-1119 - Indiana Employment Security  
Division v. Burney

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Dear Potter:

Please join me.

Sincerely,

*Byron*

Mr. Justice Stewart

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U.S. DEPARTMENT OF JUSTICE



1/2/73

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1119

Indiana Employment Security Division et al., Appellants, v. Essie D. Burney	}	On Appeal from the United State District Court for the Northern District of Indiana.
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[January —, 1973]

MR. JUSTICE MARSHALL, dissenting.

I consider the remand ordered by the Court to be pointless. The only issue in this case is the right of a recipient of unemployment insurance benefits to a full evidentiary hearing before those benefits are terminated as the result of an administrative determination of ineligibility. The Court evidently concludes that this action may be moot as to Mrs. Burney, since she has now received a full evidentiary hearing, and as to the affected class, since Mrs. Burney is its only named representative in this action. I think it clear, however, on the record before us that nothing has occurred at either the administrative or judicial level since Mrs. Burney entered this suit that would suffice to moot her claim.<sup>1</sup>

Mrs. Burney has, to be sure, received a full administrative hearing of her claim that her unemployment benefits were improperly suspended. Mrs. Burney's benefits were suspended beginning the week of March 23, 1971. On April 2, 1971, some three weeks before Mrs.

<sup>1</sup> Thus, I find it unnecessary to consider whether the mootness of Mrs. Burney's individual claim would render this entire class action moot simply because Mrs. Burney is the only named representative of the affected class.

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OFFICE OF THE CLERK OF THE SUPREME COURT

*Change throughout*

to: The Chief Justice  
 Mr. Justice Douglas  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

3rd DRAFT

From: Marshall, J.

## SUPREME COURT OF THE UNITED STATES

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

No. 71-1119

Recirculated: JAN 8 1973

Indiana Employment Se-  
 curity Division et al.,  
 Appellants,  
 v.  
 Essie D. Burney

On Appeal from the United  
 State District Court for  
 the Northern District of  
 Indiana.

[January —, 1973]

MR. JUSTICE MARSHALL, dissenting.

I consider the remand ordered by the Court to be pointless. The only issue in this case is the right of a recipient of unemployment insurance benefits to a full evidentiary hearing before those benefits are terminated as the result of an administrative determination of ineligibility. The Court evidently concludes that this action may be moot as to Mrs. Burney, since she has now received a full evidentiary hearing and settlement of her claim, and as to the affected class, since Mrs. Burney is its only named representative in this action. I think it clear on the record before us, however, that nothing has occurred at either the administrative or judicial level since Mrs. Burney entered this suit that would suffice to moot her claim or that of the class.

Mrs. Burney's benefits were suspended beginning the week of March 23, 1971. On April 2, 1971, some three weeks before Mrs. Burney sought leave to intervene in this action,<sup>1</sup> she invoked the existing Indiana appeal

<sup>1</sup> This action was originally brought to declare invalid the Indiana statutory provision that an unemployed individual found initially to be eligible by the Division would have his benefits suspended upon appeal by the employer of the eligibility determination. That issue was effectively resolved against the Division by this Court's

*wB*

January 8, 1973

Re: No. 71-1119 - Indiana Employment  
Security Division v. Burney

Dear Bill:

I have moved the discussion of the injunction into text as you suggested. This new material seemed to me to fit best immediately following the discussion of the class on p. 4. I hope that you will agree. As always, I appreciate your useful suggestions.

Sincerely,

T.M.

Mr. Justice Brennan

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U.S. DEPARTMENT OF JUSTICE

5  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 21, 1972

Re: No. 71-1119 - Indiana Employment Security  
Division v. Burney

Dear Potter:

Please join me in your proposed per curiam  
for this case.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference

WJ

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 21, 1972

Re: No. 71-1119 Indiana Employment Security  
Division v. Burney

Dear Potter:

Please join me in your per curiam.

Sincerely,

*Lewis*

Mr. Justice Stewart

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 21, 1972

Re: No. 71-1119 - Indiana Employment v. Burney

Dear Potter:

Please join me in your draft Per Curiam in the  
above-entitled case.

Sincerely,

*WRM*

Mr. Justice Stewart

Copies to the Conference

*WD*