

The Burger Court Opinion Writing Database

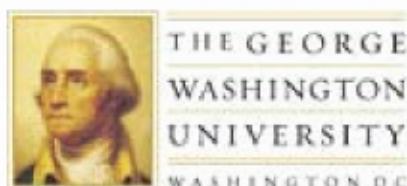
Indiana Employment Security Division v. Burney

409 U.S. 540 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



3
M
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

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 21, 1972

you have not
acted there
are 5 joins
P.D.

Dear Potter:

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

W.W.

William O. Douglas

Mr. Justice Stewart

cc: Conference

WJ
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

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

1st DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES Circulated: 1/26/1972

No. 71-1119

Recirculated: _____

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).* 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. In this case, however, the appellee, Mrs. Burney, did have a hearing after her benefits had been terminated. The initial determination was then reversed, and Mrs. Burney has received full retroactive compensation.

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.

P
You have not acted.
There are 5 copies.

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

From: Stewart, J.

2nd DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

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.

[January —, 1973]

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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.² She has now received full retroactive compensation.

¹ 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.

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

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

p.2

You have a dissent

3rd DRAFT

From: Stewart, J.

Circulated: _____

Recirculated: JAN 3 1973

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.

[January —, 1973]

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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.² She has now received full retroactive compensation.

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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

Dear Potter:

Please join me.

Sincerely,

Byron

Mr. Justice Stewart

Copies to Conference

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.

[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.¹

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.

¹ 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.

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.

IRS Circulated:

No. 71-1119

Recirculated: JAN 8 1973

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

MR. JUSTICE MARSHALL, dissenting.

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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,¹ she invoked the existing Indiana appeal

¹ 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

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

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

WJD

B 21
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,

Lew

Mr. Justice Stewart

cc: The Conference

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,

W.W.

Mr. Justice Stewart

Copies to the Conference

WD