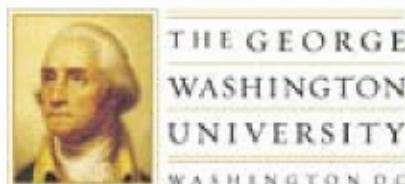


The Burger Court Opinion Writing Database

Batterton v. Francis

432 U.S. 416 (1977)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

June 13, 1977

Re: 75-1181 - Batterton v. Francis

Dear Harry:

I join.

Regards,

WB

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM.J. BRENNAN, JR.

June 14, 1977

RE: No. 75-1181 Batterton v. Francis

Dear Byron:

Please join me in the dissenting opinion you have
prepared in the above.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 1, 1977

75-1181, Batterton v. Francis

Dear Harry,

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

Sincerely yours,

P.S.
1/

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 1, 1977

Re: No. 75-1181 - Batterton v. Francis

Dear Harry:

As presently disposed I shall file a dissent in this case--in due course as they say in the trade.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

From: Mr. Justice White

Circulated: 6-13-77

Recirculated: _____

FIRST DRAFT

No. 75-1181 — Batterton v. Francis

MR. JUSTICE WHITE, dissenting.

The regulation under review in this case, 45 C.F.R. § 233.100(a)(1), provides that for purposes of the AFDC-UF program, the definition of unemployment need not include, "at the option of the State," a father whose unemployment results from a labor dispute or some conduct that would disqualify him under the State's unemployment compensation law. (Emphasis added.) The Court today sustains this regulation notwithstanding its recognition that "a major purpose of the 1968 amendment was to retract some of the authority previously delegated to the States under § 407(a)." Ante, at 19-20. The Court reasons, without citation to legislative authority, that "the goal of greater uniformity can be met without imposing identical standards on each State." Ante, at 22. Contrary to the majority, I do not believe that the legislative history reflects a Congressional intent to achieve merely "greater uniformity" in the definition of unemployment; the legislative record plainly reveals that Congress

JULY 18 1977

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

From: Mr. Justice White

Circulated: _____

Recirculated: 6/27/77

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1181

Richard A. Batterton, etc., et al.,
 Petitioners, } On Writ of Certiorari to
 v. } the United States Court
 Robert Francis, etc., et al. } of Appeals for the Fourth
 Circuit.

[June —, 1977]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN,
 MR. JUSTICE MARSHALL, and MR. JUSTICE STEVENS join,
 dissenting.

The regulation under review in this case, 45 CFR § 233.100 (a)(1), provides that for purposes of the AFDC-UF program, the definition of unemployment need not include, "at the option of the State," a father whose unemployment results from a labor dispute or some conduct that would disqualify him under the State's unemployment compensation law. (Emphasis added.) The Court today sustains this regulation notwithstanding its recognition that "a major purpose of the 1968 amendment was to retract some of the authority previously delegated to the States under § 407 (a)." *Ante*,

14 at 19-20. The Court reasons, without citation to legislative authority, that "the goal of greater uniformity can be met without imposing identical standards on each State." *Ante*,

15 at 22. Contrary to the majority, I do not believe that the legislative history reflects a congressional intent to achieve merely "greater uniformity" in the definition of unemployment; the legislative record plainly reveals that Congress contemplated a federal definition of unemployment applicable to all States that adopt the AFDC-UF program. Since I do not believe that the subject regulation conforms to this congressional mandate, I would affirm the judgment of the Court of Appeals.

The Court acknowledges that the legislative history is "at some variance" with its position. *Ante*, at 20. This understates the case; literally *all* of the relevant legislative

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

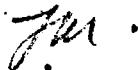
June 14, 1977

Re: No. 75-1181, Batterton v. Francis

Dear Byron:

Please join me.

Sincerely,



T. M.

Mr. Justice White

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: MAY 31 1977

Recirculated: _____

No. 75-1181 - Batterton, et al. v. Francis

MR. JUSTICE BLACKMUN delivered the opinion of the
Court.

1/
This case concerns the validity of 45 CFR § 233.100(a)(1),
a regulation promulgated by the Secretary of Health, Education and
Welfare [HEW] pursuant to a delegation of rulemaking authority in
§ 407(a) of the Social Security Act, 42 U.S.C. § 607(a). The
issue is whether the regulation is a proper exercise of the Secretary's
statutory authority.

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: JUN 2 1977

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1181

Richard A. Batterton, etc., et al., Petitioners, v. Robert Francis, etc., et al. On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[June —, 1977]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case concerns the validity of 45 CFR § 233.100 (a) (1),¹ a regulation promulgated by the Secretary of Health, Education, and Welfare (HEW) pursuant to a delegation of rulemaking authority in § 407 (a) of the Social Security Act, 42 U. S. C. § 607 (a).² The issue is whether the regulation is a proper exercise of the Secretary's statutory authority.

¹ § 233.100. Dependent children of unemployed fathers.

"(a) *Requirements for State Plans.* If a State wishes to provide AFDC for children of unemployed fathers, the State plan under Title IV—Part A of the Social Security Act must, except as specified in paragraph (b) of this section:

"(1) Include a definition of an unemployed father which shall apply only to families determined to be needy in accordance with the provisions in § 233.20 of this chapter. Such definition must include any father who:

"(i) Is employed less than 100 hours a month; or

"(ii) Exceeds that standard for a particular month, if his work is intermittent and the excess is of a temporary nature as evidenced by the fact that he was under the 100-hour standard for the prior 2 months and is expected to be under the standard during the next month; except that, at the option of the State, such definition need not include a father whose unemployment results from participation in a labor dispute or who is unemployed by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State's unemployment compensation law."

² § 607. Dependent children of unemployed fathers; definition.

"(a) The term 'dependent child' shall, notwithstanding section 606 (a)

app. 14.15

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

From: Mr. Justice Blackmun

Circulated: _____

2nd DRAFT Recirculated: JUN 14 1977

SUPREME COURT OF THE UNITED STATES

No. 75-1181

Richard A. Batterton, etc., et al., Petitioners, *v.* Robert Francis, etc., et al., On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[June —, 1977]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case concerns the validity of 45 CFR § 233.100 (a) (1),¹ a regulation promulgated by the Secretary of Health, Education, and Welfare (HEW) pursuant to a delegation of rulemaking authority in § 407 (a) of the Social Security Act, 42 U. S. C. § 607 (a).² The issue is whether the regulation is a proper exercise of the Secretary's statutory authority.

¹ § 233.100. Dependent children of unemployed fathers.

"(a) *Requirements for State Plans.* If a State wishes to provide AFDC for children of unemployed fathers, the State plan under Title IV—Part A of the Social Security Act must, except as specified in paragraph (b) of this section:

"(1) Include a definition of an unemployed father which shall apply only to families determined to be needy in accordance with the provisions in § 233.20 of this chapter. Such definition must include any father who:

"(i) Is employed less than 100 hours a month; or

"(ii) Exceeds that standard for a particular month, if his work is intermittent and the excess is of a temporary nature as evidenced by the fact that he was under the 100-hour standard for the prior 2 months and is expected to be under the standard during the next month; except that, at the option of the State, such definition need not include a father whose unemployment results from participation in a labor dispute or who is unemployed by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State's unemployment compensation law."

² § 607. Dependent children of unemployed fathers; definition.

"(a) The term 'dependent child' shall, notwithstanding section 606 (a),

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 1, 1977

No. 75-1181 Batterson v. Francis

Dear Harry:

Please join me.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 10, 1977

Re: No. 75-1181 - Batterton v. Francis

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 13, 1977

RE: 75-1181 Batterton v. Francis

Dear Byron:

Please join me in your dissent.

Respectfully,



Mr. Justice White

Copies to the Conference