

# 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

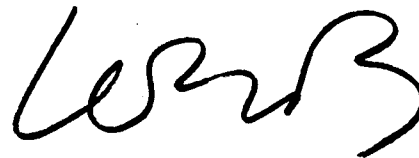
June 13, 1977

Re: 75-1181 - Batterton v. Francis

Dear Harry:

I join.

Regards,



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,

A handwritten signature in cursive script, appearing to read "Bill", is written in dark ink.

Mr. Justice White  
cc: The Conference

1  
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.  
/

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

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

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1st PRINTED 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 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 regula-  
tion 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 unemploy-  
ment; 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

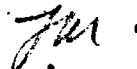
June 14, 1977

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

*Wait for  
Brew*

MR. JUSTICE BLACKMUN delivered the opinion of the  
 Court.

This case concerns the validity of 45 CFR § 233.100(a)(1), <sup>1/</sup>  
 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). <sup>2/</sup> 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

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1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 75-1181

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

[June —, 1977]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case concerns the validity of 45 CFR § 233.100 (a) (1),<sup>1</sup> 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).<sup>2</sup> The issue is whether the regulation is a proper exercise of the Secretary's statutory authority.

<sup>1</sup> § 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."

<sup>2</sup> § 607. Dependent children of unemployed fathers; definition.

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

pp. 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: \_\_\_\_\_

Recirculated: JUN 14 1977

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1181

Richard A. Batterton, etc., et al.,	} On Writ of Certiorari to
Petitioners,	
v.	
Robert Francis, etc., et al.	} 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),<sup>1</sup> 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).<sup>2</sup> The issue is whether the regulation is a proper exercise of the Secretary's statutory authority.

<sup>1</sup> § 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."

<sup>2</sup> § 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

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