

23-7368 ORIGINAL
No.

IN THE

FILED
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SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

DENISE JOAN JOHNSON,

Petitioner

Vs.

MARK WITCHER,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES OF APPEALS EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DENISE JOAN JOHNSON

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QUESTIONS PRESENTED

The United States District Court Western District of Arkansas and the United States Court of Appeals, Eighth Circuit, refused to hear Denise Johnson's case. Johnson alleges that Mark Witcher engaged in religious discrimination in violation of Title VII of the Civil Rights Act of 1964 and the First Amendment of the United States Constitution. The questions presented are:

1. Whether the respondent's termination of the petitioner for observing the Seventh-Day Adventist Sabbath day (Saturday) constitutes religious discrimination in violation of Title VII of the Civil Rights Act.
2. Whether the First Amendment's freedom of religion element protects citizens against religious discrimination in the workplace.
3. Whether a person can be terminated the day after keeping religious observations and retaliated against by being banned from future employment companywide without giving detailed cause.
4. Whether it is lawful for the respondent to use "personal" as a justified explanation for terminating the petitioner.

LIST OF PARTIES

x All parties appear in the caption of the case on the cover page.

RELATED CASES

None Listed

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APPENDIX A – U.S. DISTRICT COURT WESTERN DISTRICT OF
ARKANSAS (FORT SMITH) CIVIL DOCKET FOR CASE #: 2:23-CV-02084-
PKH 24 pages.

APPENDIX B – United States Court of Appeals for the Eighth Circuit No: 23-
3137 ORDER Petition for Rehearing Denied dated December 28, 2024. 1 page

APPENDIX C – United States Court of Appeals for the Eighth Circuit No: 23-
3137 MANDATE dated January 05, 2024. 1 page

TABLES OF AUTHORITIES CITED

Scriptural Authorities

Leviticus 23:3	8
Exodus 20:8	8

IN THE SUPREME COURT OF THE UNITED STATES PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals Eighth Circuit appears in Appendix B to the petition and is unpublished.

The opinion of the United States District Court appears in Appendix A to the petition document 12 and is unpublished.

JURISDICTION

The date on which the United States District Court Western District decided my case was August 7, 2023.

A timely petition for hearing my case was denied by the United States Court of Appeals on November 27, 2023, and a copy of the order appears in Appendix B.

The jurisdiction of the Court is invoked under 28 U.S.C. 1254 (1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional

Title VII of The Civil Rights Act of 1964

Statutory

42 U.S.C. §12111

42 U.S.C. §2000e

Regulations

29 C.F.R. §1605.1

29 C.F.R. §1605.3

STATEMENT OF THE CASE

A. Background of Religious Belief

Sabbath Day is an observance in the Seventh-day Adventist faith. As the church's name highlights, the observance of a seventh-day Sabbath, from sundown Friday until sundown Saturday, is "foundational" and holds "great significance for Adventists."

The Seventh-day Adventist Church originated in the mid-1800s when a group of Christians engaged in rigorous Bible study during the Second Great Awakening. From that study, they came to understand the great significance of the fourth commandment: "Remember the Sabbath day, to keep it holy." Exodus 20:8 (ESV). As they studied the Bible, they found no evidence that the fourth commandment was to be altered in any way.

They, therefore, began to observe the Sabbath on the seventh day, contrary to the prevailing tradition among Christians of observing Sunday as the day of rest and worship. Despite many challenges where most of "society's calendar [is] structured to give preference to Sunday"—or increasingly to no holy day at all—"honoring the commandment of God *** remains a priority to their day." A crucial aspect of Sabbath observance in the Adventist faith is the biblical commandment to refrain from secular work: "Six days shall work be done, but on the seventh day is a Sabbath of solemn rest, a holy convocation. You shall do no work. It is a Sabbath to the Lord in all your dwelling places." Leviticus 23:3 (ESV).

The co-founder of the Seventh-day Adventist church stated: "The law forbids secular labor on the rest day of the Lord; the toil that gains a livelihood must cease; no labor for worldly pleasure or profit is lawful upon that day; but as God ceased his labor of creating, and rested upon the Sabbath and blessed it, so man is to leave the occupations of her daily life, and devote those sacred hours to healthful rest, to worship, and to holy deeds." Adventists believe that, in the last days, "[t]he Sabbath will be the great test of loyalty. When the issue is brought before the world, those who reject God's memorial of creatorship—the Bible Sabbath—will receive the 'mark of the beast.'" By contrast, those who keep the seventh-day Sabbath, by "choosing the token of allegiance to divine authority, will receive the seal of God." For Adventists, keeping the Sabbath is of the greatest importance.

B. Events

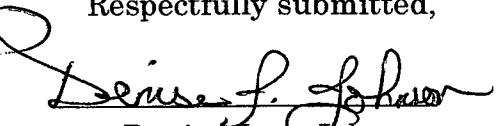
The petitioner was an employee of the respondent, a store manager for Dollar General Corporation; the petitioner expressed her religious beliefs to the respondent at the time of hire. On September 2, 2022, the petitioner was asked to come in to work prior to the setting of the sun. The petitioner remained at work until 5 minutes before sunset. The lead manager on shift was unwilling to let the petitioner end her shift. The petitioner left work to honor her beliefs. The petitioner's date of termination was the next day. The petitioner filed a case with the United States Equal Employment Opportunity Commission (EEOC). The commission did not take the case. A letter was sent to the petitioner stating the commission's decision and the petitioner's right to sue. The petitioner filed a federal lawsuit against the respondent in the U.S. District Court Western District of Arkansas in Fort Smith, Arkansas, within the required timeframe. The petitioner received a judgment of dismissal from the U.S. District Court. She then proceeded to appeal the decision of the U.S. District Court through the U.S. Courts of Appeals Eighth Circuit in St. Louis, Missouri. The Court of Appeals upheld the decision of the U.S. District Court which has led to this petition of writ of certiorari to this Court.

REASONS FOR GRANTING THE PETITION

- I. The dismissal without prejudice in cases of alleged religious discrimination raises important legal questions about access to justice and the enforcement of federal protections against religious discrimination.
- II. This case was filed under the wrong federal statute, which ultimately led to the decision to dismiss it. However, it is still in the context of religious discrimination claims consistent with the application of the law across federal and state courts.
- III. Given the importance of preventing religious discrimination and protecting religious freedom, this case warrants the Court's review to ensure that individuals have effective means to challenge discriminatory practices.

CONCLUSION

Mrs. Johnson respectfully requests that this Court grant the petition for a writ of certiorari.

Respectfully submitted,

Denise Joan Johnson
Pro Se

March 20, 2024