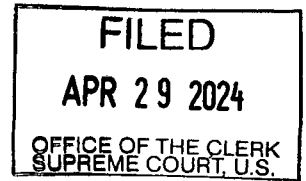


No: 23 - 7434



IN THE
Supreme Court of the United States

SAMUEL T. WHATLEY, II,

PETITIONER,

V.

Waffle House, Inc.,

RESPONDENT.

On Petition for a Writ of Certiorari
to United States Court of Petitions
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Samuel T. Whatley, II
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QUESTIONS PRESENTED

1. Does the Founding Father's documentation of individual rights, such as the Bill of Rights, Declaration of Independence, and Constitution, provide protective measures against lack or delay of employment wage payment(s) as required by law?
2. Can the jurisdiction of the lower courts dismiss the responsibilities of the oath taken by the lower courts? *Follow-Up Question:* Can the lower courts, which may have conflicts of interest by the judges involved, dismiss and or deny, the right to jury trial for the individual employee?
3. Does the Constitution provide protected employment rights for an individual to be paid the wages agreed upon during the timetable of employment?
4. Does the Constitution allow other state and or federal laws to be implemented in additional protections and relief if an employer violates those additional laws beyond the Constitutional protections? *Follow-Up Question:* If federal law prohibits any employer to violate employment wage payment(s), does the Constitution promote relief to be awarded to the individual employee who had their rights violated by that organization?
5. If evidence shows that both federal and state employment-protected agencies issue citation against an employer and provide documentation that additional relief be awarded to the individual employee, are the courts responsible under the oath of office to impose and enforce those federal and state laws to provide award and relief to the individual employee?
6. If an organization and or corporation accepts federal funding from a federal agency such as the Federal Emergency Management Agency (FEMA), does oversight of use of funding fall under federal jurisdiction?
7. Does preventing, and or denying, the right to jury trial violate individual rights of due process guaranteed under the Federal Constitution, Bill of Rights, and Declaration of Independence?

LIST OF PARTIES

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

RELATED CASES

Whatley v. Waffle House, Inc., Charleston, SC, No. 23-1998 (4th Cir. 2024)

Whatley v. Waffle House, Inc., Charleston, SC, Civil Action 2:22-cv-04143 (D.S.C. Sept. 14, 2023)

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at U.S.D.C. CHARLESTON, SOUTH CAROLINA; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

OPINIONS BELOW

The decision by the U.S. Court of Appeals denying Whatley's direct appeal is reported as *Whatley v. Waffle House, Inc., Charleston, SC*, No. 23-1998 (4th Cir. 2024; see Appendix A), which the order of denial and dismissal is attached at the Appendix Section. The U.S. Federal Court of South Carolina Charleston Division denied and dismissed Whatley's complaint reported in *Whatley v. Waffle House, Inc., Charleston SC*, Civil Action 2:22-cv-04143 (D.S.C. Sept. 14, 2023; see Appendix B), was denied and dismissed.

JURISDICTION

Whatley's appeal was denied on February 2, 2024, by the U.S. Court of Appeals for the Fourth Circuit. Whatley invokes this Court's jurisdiction under 28 U.S.C. § 1257 and 1254(1), having timely filed this petition for a writ of certiorari within ninety days of the U.S. Court of Appeal Court's judgment.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

South Carolina Constitution, Article I Section 3:

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.).

South Carolina Constitution, Article IX Section 2:

The General Assembly shall provide by general law for the formation, organization, and regulation of corporations and shall prescribe their powers, rights, duties, and liabilities, including the powers, rights, duties, and liabilities of their officers and stockholders or members. (1970 (56) 2690; 1971 (57) 47.)

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1257 - U.S. Code - Unannotated Title 28. Judiciary and Judicial Procedure § 1257.
29 U.S.C. § 215 – U.S. Code – Prohibited acts; prima facie evidence § 215.
29 U.S.C. § 218b – U.S. Code - Notice to employees § 218b.
29 U.S.C. § 218 – U.S. Code Relation to other laws § 218.
29 U.S.C. § 2107(a) Worker Adjustment and Retraining Notification Act.
29 U.S.C. § 206(d)(3) – Minimum wage; Equal Pay Act of 1963.
29 U.S.C. § 203 Fair Labor Standards Act of 1938.

STATEMENT OF THE CASE

The basic briefing of this Petition of Writ is grounded on the narrative of how an employer mistreated and presented misconduct against an employee for violating both state and federal law. The employer failed to provide written notification of termination, failed to pay the employee within the required time, and failed to maintain adequate recordkeeping standards at the store location due to having a broken timeclock during time of employment. The respondent/defendant has a history of Occupational Safety and Health Administration safety and wage violations according to the Department of Labor. Further, the representative of the respondent/defendant admitted an affidavit to the court past the deadline of the discovery period as required by the scheduling order from the first assigned Magistrate.

This Petition of Writ is based on the importance of every employee who labored for an employer and how the courts reflect the laws of protection for an employee, focusing on any relief that should be maintained and rewarded for any violations that an employee may subject against an employee (*Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697 (1945); 29 U.S.C.A. § 216; *Rekhi v. Wildwood Industries, Inc.*, 816 F. Supp. 1308 (1992); 145 NLRB No. 64 (N.L.R.B.), 145 NLRB 663, 55 L.R.R.M. (BNA) 1015, 1963 NLRB Dec. P 12796, 1963 WL 16396). The Fair Labor Standards Act (FLSA or the Act) states, “While labor laws for salaried employees are designed to afford the same sorts of protections and benefits to all American workers, the implementation of these protections differs depending on whether someone is paid on an hourly or salary basis” (Thelawdictionary.org). Further supportive elements are outlined by the Department of Labor concerning the Fair Labor Standards Act as follows:

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at not less than time and one-half

the regular rate of pay for all hours worked over 40 hours in a workweek. Being paid on a “salary basis” means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee’s work (DOL.gov).

Additionally, the Department of Labor explains, “*The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and Federal, State, and local governments*” (DOL.gov).

It should be important for the Supreme Court to address and consider the importance of Constitutional Law, as this Writ Petition outlines, that the courts, both lower and supreme, provide accountability protective measures for employees, to prevent modern-day slavery. A prime relation to the *Complaint and Petition of Writ* for this case is the class action lawsuit filed by *Jones v. Waffle House, Inc.* (2015):

A former Waffle House employee who was denied further employment after a background check is asking a federal court to certify his proposed plaintiff, Class. Plaintiff William Jones filed this Waffle House class action lawsuit in October 2015. Despite having worked for Waffle House ‘without issue’ for more than 20 years, he claims the company denied him a job that he reapplied for based on the results of a background check that showed he had a criminal history (Topclassactions.com).

Notwithstanding is to highlight the public statement by the Department of Labor as follows:

On January 10, 2024, the U.S. Department of Labor published a final rule Employee or Independent Contractor Classification Under the Fair Labor Standards Act, effective March 11, 2024, revising the Department’s guidance on how to analyze who is an

employee or independent contractor under the Fair Labor Standards Act (FLSA). This final rule rescinds the Independent Contractor Status Under the Fair Labor Standards Act rule (2021 IC Rule, 86 FR 1168), which was published on January 7, 2021.

Historical Merits to Labor Liberties and Freedom.

Worth mentioning to support this *Writ of certiorari*, is the historical accounting of Robert Smalls, as noted, was born on April 5, 1839, Beaufort, South Carolina, U.S., and died on February 23, 1915, in Beaufort. Smalls was an American war hero and politician who, during the American Civil War, commandeered a Confederate ship to escape from the South and later became the first half Black and half White captain of a vessel in U.S. service. He served multiple terms in 1875–79, 1882–83, and 1884–87 as a US congressman from South Carolina during Reconstruction. Smalls's mother was enslaved, and his father was an unknown white man, but believed to be fathered by his mother's slave master. In 1851 Smalls was taken by his enslaver to Charleston, South Carolina, where he was hired out to work as a hotel waiter, hack driver, and rigger. In 1861, at the outbreak of the Civil War, he was forced to work aboard the steamship CSS Planter, which operated as an armed transport and dispatch vessel, carrying guns and ammunition for the Confederate army, pretending to be the captain one night, escaped with the ship to freedom, and joining the Union to fight. Later being elected to government leadership, Smalls became a voice for freedom and liberty, and the importance of salary paid labor for everyone (Britannica.com).

Another American Historical figure who echoed the importance of Liberty, Fairness, and Justice, and a framer of this awesome and great nation of nations of the United States of America, was the accounting of President Samuel Huntington:

Samuel Huntington was the very first President of the US in Congress, and display how important liberty, fairness and equality of freedom and Justice must be maintained for a nation to thrive and grow as a civilization. Samuel Huntington was a Signer of the Declaration of Independence and Articles of Confederation. He also served as President of the Continental Congress and Governor of Connecticut. Huntington jumped into politics in his mid-30s, receiving election to the Connecticut Assembly before becoming King's Attorney (comparable to today's Attorney General). In 1773 he was promoted to the colonial Supreme Court but was removed from this position shortly thereafter due to his outspoken support for the American Revolution. In October of 1775, Samuel was sent to the Continental Congress where he would spend most of the next decade. Huntington was an early supporter of independence, and he signed the Declaration in the Summer of '76. Three years later, he would replace John Jay as President of the Continental Congress. Also, a signatory of the Articles of Confederation, Samuel was serving as President when that document was finally ratified. As such, he became the first President of the United States in Congress Assembled (Founderoftoday.com).

One historical farmer who believed in fair payment salary and the protective measures of the law for employees is Agrippa Hull, "Was a friend of liberty and believed in fair payment and salary for those who labored in employment" (Founderoftoday.com). The importance of mentioning these historical American framers is to point out how they were supporters of Liberty and Individual Freedoms, employment should follow the laws governed and monitored by the formulated government of this nation of nations.

CORE LOGIC FOR THE PETITION

1. The lower courts are in error and violated the rights of the Petitioners as outlined in arguments by the Petitioners, *“Pro se litigants are supposed to have a right to appeal a decision and provided instructions. There was none in the closure order, nor any details about deadlines for the appeal process which violates the federal rules for pro se Plaintiffs.”*
2. The lower courts violated the rights of the Petitioners by issuing an unconstitutional, *“closure order claiming that the case was closed because it was not in federal jurisdiction.”*

Accordingly, the Department of Labor highlights the following:

- Hours Worked: Hours worked ordinarily include all the time during which an employee is required to be on the employer’s premises, on duty, or at a prescribed workplace.
- Recordkeeping: Employers must display an official poster outlining the requirements of the FLSA. Employers must also keep employee time and pay records.
- Child Labor: These provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being.

As the details listed and highlighted by the Department of Labor suggest, the primary merits of this Petition of Writ are based on the reading and understanding of the law as described by the Supreme Court and governmental agencies such as, but not limited to, the Federal Register as follows:

The FLSA requires covered employers to pay their nonexempt employees at least the Federal minimum wage for every hour worked and overtime pay for every hour worked over 40 in a workweek, and it mandates that employers keep certain records regarding their employees. Enacted in 1938, the FLSA requires that, among other things, covered employers pay their nonexempt employees at least the Federal minimum wage for every hour worked and overtime pay for every hour worked over 40 in a workweek, and it mandates that employers keep certain records regarding their employees. 29 U.S.C. 206(a), 207(a) (minimum wage and overtime pay requirements); 29 U.S.C. 211(c) (record-keeping requirements). The FLSA does not define the term “independent contractor.” The Act defines “employer” in section 3(d) to “include [] any person acting directly or indirectly in the interest of an employer about an employee,” “employee” in section 3(e)(1) to mean, subject to certain exceptions, “any individual employed by an employer,” and “employ” in section 3(g) to include “to suffer or permit to work.”

[1] The Supreme Court has recognized that “there is in the [FLSA] no definition that solves problems as to the limits of the employer-employee relationship under the Act.” *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 728 (1947). The Supreme Court has interpreted the “suffer or permit” language to define FLSA employment to be broad and more inclusive than the common law standard. See *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326 (1992). However, the Court also recognized that the Act’s “statutory definition[s] . . . have [their] limits.” *Tony & Susan Alamo Found. v. Sec’y of Labor*, 471 U.S. 290, 295 (1985)

(internal citation omitted); see also *Walling v. Portland Terminal Co.*, 330 U.S. 148, 152 (1947) (“The definition ‘suffer or permit to work’ was obviously not intended to stamp all persons as employees.”). The Supreme Court specifically recognized that “[t]here may be independent contractors who take part in production or distribution who would alone be responsible for the wages and hours of their employees.” *Rutherford Food*, 331 U.S. at 729.

The complaint and Petition are believed to be on the foundational importance of employment law as a factual functionality of the Constitutional rights of individuals to be granted the salaries originally agreed upon by an employer and relief as the law allows for the suffering caused against an employee [Whatley, II] by the employer [Waffle House, Inc.].

REASONS FOR GRANTING THE WRIT

The Constitution and U.S. Supreme Court are to provide additional clarity to hold intergovernmental entities accountable (*Whatley v Richland County, et al.*, 2024; *Whatley v North Charleston, et al.*, 2024). Whereas the lower court decisions are not supposed to be the ultimatum body to decide the constitutional protections of U.S. citizens. This nation of nations we call the United States of America is to allow greater insight into the rights granted by King Jesus Christ and the protections and to provide every American the ability to be paid their salaries as their labor and time had been agreed and directed by the laws and rights to due process as employees (*idem et seq.*).

The state and federal Constitutions and Supreme Courts are to affirm and uphold law, liberty, and justice by granting a basis to protect the Constitutional Republic from tyranny at all levels. To deter and prevent the misuse, abuse, and fraud of federal government, organizations, and conflicts of interest of federal judges protecting the special interest, and to ensure adequate

oversight of the way the government, organizations, courts, and federal judges maintain the freedoms, liberties, and protective measures of employment labor laws. *Petition should be granted and overturn the decisions of the South Carolina Circuit Court and the U.S. Court of Appeals 2024*. The core principles, and foundational concepts of this Petition, are expressed from various depths, and explanations, of the underlying issues that are directly explained within the pages of the original Complaint, and other supporting documentation which includes a wave of preponderance or *prima facie* of the evidence in *argumentum a fortiori*, that was the submission of *Exhibits* within the Complaint court docket. The Order and Recommendations Report both are fallacious in nature and error, because neither address the core factual attributes of the Complaint nor did it address the Constitutional Questions and merits of the Complaint and Petition by the Petitioner and employee [Whatley, II]. This Petition objects to the reasoning of the initial order because it fails to recognize the merits of the Complaint. Petitioner holds within their inner teachings from the Book Genesis 49:15 “*And he saw that rest was good, and the land that it was pleasant; and bowed his shoulder to bear, and became a servant unto tribute.*”

It should be noted that the federal court has made several errors, such as, but not limited to, wrongfully titling documents to the case file under incorrect codes, delay in filed documentation, assigned judges being reassigned and making decisions after a case has closed, having investments and special interests with representatives of opposing counsels, and or ignoring direct laws and rules that clearly state that the right to due process [which must be upheld and allowed for any Petitioner as a U.S. citizen]. The employer did not pay salaried amount, plus penalties of the exact amount as required by law, which outlined within the citation from the government investigation, that found Waffle House, Inc., in violation of S.C. Payment Statute and S.C. Code Ann. § 41-10-30. It was not until after numerous complaints were filed

and served on Waffle House, Inc., that the employer attempted to bypass their legal liability and by snowballing the law and gaslighting the complaint by issuing the minimal check amount without the full amount as required by law (*idem et seq.*). The petitioner is entitled to three times the unpaid wages, court costs, and legal fees as the hired management position as advertised and employed (see Appendix C).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Samuel Whatley II

Petitioner's Signature
Samuel Whatley, II

Date: APRIL 29, 2024