

No. _____

IN THE
Supreme Court of the United States

THE ESTATE OF EVA PALMER,

Applicant,

v.

LIBERTY UNIVERSITY, INC.,

Respondent.

**APPLICATION FOR AN EXTENTION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and
Circuit Justice for the Fourth Circuit:

1. Pursuant to Supreme Court Rules 13.5, 22, and 30, applicant The Estate of Eva Palmer, by its Executor Laura Barbour Bowes, (“the Estate”) respectfully requests a thirty-six (36) day extension of time, up to and including Friday, December 1, 2023, to file a petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit, seeking review of that court’s judgment in this case.

2. The Fourth Circuit entered its judgment on June 30, 2023. Copies of the Fourth Circuit’s amended opinion¹ and judgment order are attached as **Exhibits A and B**. The Estate filed a Petition for Panel Rehearing and Rehearing en Banc on July 14, 2023, and the Fourth Circuit denied the Petition on July 28, 2023. The Fourth Circuit’s Order denying The Estate’s Petition is attached as **Exhibit C**. As such, unless extended, the time to file a petition for certiorari will expire on October 26, 2023. Pursuant to Supreme Court Rule 13.5, this application is being filed more than ten days before a petition for certiorari would otherwise be due. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

3. This case raises two exceptionally important federal issues.

4. First, it raises the question of whether the Fourth Circuit’s longstanding federal employment law jurisprudence regarding the strict evidentiary threshold it requires for a plaintiff to show a “prima facie” case of employment discrimination under the first stage of the *McDonnell Douglas* inquiry improperly imports the later stages of the *McDonnell Douglas* inquiry into its analysis. Specifically, the issue is whether the Fourth Circuit’s *McDonnell Douglas* rule of law improperly conflates the “employer’s legitimate expectations” prong of the prima facie case test (for the first step of the *McDonnell Douglas* inquiry) with the second and third *McDonnell*

¹On July 5, 2023, the Fourth Circuit entered an order amending its published opinion in this case in order to

Douglas steps in situations where, as here, the employer's reason for terminating an employee is the same reason for saying the employee is not meeting expectations.

5. The Estate contends that the Fourth Circuit's jurisprudence does indeed improperly merge the *McDonnell Douglas* steps together and, in this regard, is in direct and irreconcilable conflict with this Court's precedents, including *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), *U.S. Postal Service Bd. of Governors v. Aikens*, 460 U.S. 711 (1983), and *St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993).

6. The Fourth Circuit's jurisprudence also conflicts with Circuit precedents from at least the Sixth and Eighth Circuits such that plaintiffs in states such as Virginia, Maryland and North Carolina are necessarily subject to a harsher standard of proof for the first stage of the *McDonnell Douglas* inquiry than those in states such as Ohio, Kentucky, Tennessee, Missouri and Nebraska. Even District Courts in the Fourth Circuit have taken notice of the variance between the Fourth Circuit's strict rule of law on this issue and the relaxed rules of law applied in other Circuits, *Cupples v. AmSan, LLC d/b/a Maintenance Supply Cop.* 2007 WL 1075178 at *6 (W.D. N.C. Mar. 30, 2007). In short, the Fourth Circuit's rule of law improperly sets the bar too high for plaintiffs to prove an initial prima facie case of employment discrimination under federal law.

7. Second, this case involves the question of whether Eva Palmer, a former art professor at Liberty University, Inc. who was not required to teach any religious topics or Bible study classes as part of her job duties at the University, is a “minister” under the First Amendment’s “ministerial exception.” Two members of the Fourth Circuit panel below wrote concurrences sharply disagreeing on this specific issue, and its application would have been dispositive for Judge Richardson. This issue has been repeatedly bedeviling lower courts in the wake of this Court’s decision in *Our Lady of Guadalupe v. Morrissey-Berru*, 140 S.Ct. 2014 (2020) and is an issue of exceptional importance.

8. Given the complexity of the issues in this case and given undersigned counsel’s professional obligations in other matters², the Estate respectfully requests a 36-day extension of time, up to and including Friday, December 1, 2023, to file a petition for a writ of certiorari.

WHEREFORE, for the reasons stated above, The Estate requests that an order be entered extending the time to file a petition for a writ of certiorari to December 1, 2023.

Dated: October 16, 2023

² Among other things, counsel has a Memorandum in Opposition to a Motion to Dismiss that is due in the Eastern District of Virginia on October 25, 2023 that will interfere with counsel’s ability to file the petition on or before October 26, 2023.

Respectfully submitted,

By: /s/ Richard F. Hawkins, III
Richard F. Hawkins, III
Virginia Bar Number: 40666
THE HAWKINS LAW FIRM, PC
2222 Monument Avenue
Richmond, Virginia 23220
(804) 308-3040 (telephone)
(804) 308-3132 (facsimile)
rhawkins@thehawkinslawfirmpc.com

*Counsel for the Estate of Eva Palmer by its
Executor Laura Barbour Bowes*