

No. _____

In the Supreme Court of the United States

DARYL K. WASHINGTON, SUNDAY PLAYERS, INC.,
Petitioners,

v.

KELLWOOD COMPANY,
Respondent.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Second Circuit*

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case asks the Court to consider questions left open in several previous cases: whether it is unconstitutional to permit U.S. judge magistrates to issue final judgments, unchecked by Article III district courts, that create legal precedent not unlike that of article III judges; whether consent is valid under 28 U.S.C. § 636 when obtained through coercive trial delays; whether 28 U.S.C. § 636 requires that a magistrate overseeing a trial possess a trial skill level comparable to that of an article III judge.

In addition, this case presents equally important—but distinct—factual and legal questions whether a magistrate’s vacatur of a jury verdict, despite the presence of undisputed industry evidence; and blanket exclusion of all expert and business owner testimony is erroneous when the rulings conflict with decisions in virtually every other circuit.

This case involves the second circuit’s dramatic expansion of the powers of a non-article III magistrate judge, with little or no trial experience in a judicial capacity, to vacate a valid jury verdict by a wholesale exclusion of a previously vetted expert and categories of evidence that are admissible in virtually every other circuit. It also involves a scenario where the alleged consent by the parties was less than ideally obtained and the magistrate did not allow the article III district court to decide a motion to vacate her assignment or to review the final judgment. Although this Court has referred to consent authority on occasions, it has not addressed directly the questions of (i) the

constitutionality of a magistrate assignment where the district judge maintains no reviewing authority over the magistrate's dispositive rulings; (ii) the constitutionality of apparent coerced consent; (iii) the constitutionality of allowing a magistrate judge's rulings to create legal precedent for the respective circuit, merely upon the consent of private parties; and (iv) the right of parties to have a magistrate judge with trial experience in a judicial capacity equivalent to that of the Article III judges who direct parties to agree that a magistrate should try a case.

Thus, this case presents the following formal questions:

1. Whether it is constitutional under 28 U.S.C. § 636 for a district court to assign, with or without consent, a dispositive function to a magistrate judge where the district court retains no authority to review the magistrate's final decision or to vacate the assignment.

2. Whether 28 U.S.C. § 636 permits a magistrate judge to conduct a trial where the parties were pressured to litigate involuntarily before a non-Article III magistrate.

3. Whether 28 U.S.C. § 636 permits a case to be reassigned, with or without objection, from a magistrate judge with substantial trial experience to a magistrate judge with little or no trial experience in a judicial capacity.

4. Whether the second Magistrate Judge's vacatur of the jury verdict and blanket exclusion of any expert or business owner testimony conflicts with the decisions of other United States courts of appeals departs from the accepted and usual course of judicial proceedings.

LIST OF PARTIES

Petitioners, who were Plaintiffs-Appellants-Cross-Appellees below, are Daryl K. Washington and Sunday Players, Inc.

Respondent, who was Defendant-Appellee-Cross-Appellee below, is Kellwood Company.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29 of this Court's Rules, Petitioners certify that Sunday Players, Inc. is a privately held corporation organized under the laws of Texas and does not have a parent company, nor does a publicly traded company hold more than 10% of its stock.

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