INDEX

CITATIONS

Cases:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 526

ADELL H. SHERBERT, *Appellant,*

v.

CHARLIE V. VERNER, ED. H. TATUM, ROBERT S. GALLOWAY, SR., as members of SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION and SPARTAN MILLS, *Respondents.*

ON APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA

BRIEF FOR THE APPELLANT

OPINIONS BELOW

The "decree" (opinion) of the Court of Common Pleas of Spartanburg County, South Carolina (R. 26-31) is not officially reported. The opinion of the Supreme Court of South Carolina (R. 34-49) and the dissenting opinion (R. 50-62) are reported in 240 S.C. 286, 125 S.E. 2d 737.

JURISDICTION

The "decree" (and opinion) of the Court of Common Pleas was entered June 27, 1960 (R. 3, 36). The opinion of the Supreme Court of South Carolina, which also constitutes its final [1] judgment was filed and entered May 17, 1962 (R. 34); notice of appeal was filed in that court August 15, 1960 (R. 62). This Court noted probable jurisdiction December 17, 1962 (R. 64). The jurisdiction of this court is invoked under 28 U.S.C. § 1257 (2) (1958).

QUESTIONS PRESENTED

Whether, where a state unemployment compensation law requires, as a condition precedent to eligibility for unemployment compensation, that an applicant be "available for work" and further provides for disqualification for a stated number of weeks if the applicant fails, without good cause, to "accept available suitable work," and such statute is construed and applied to require unrestricted availability except on Sunday so as to make ineligible and to disqualify a woman who, in the practice of her religious belief, as a member of the Seventh-day Adventist church, is unwilling to work on her Sabbath, from sundown on Friday to sundown on Saturday,—either for her employer, when he, 22 months after she became an Adventist, changed to a six-day work week, or for anyone else,—but who is willing to work at any decent job either in her accustomed textile industry or in any other industry, and who resides in a city where all the 150 other members of her church each week abstain from work during the same

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[1] The covering certificate of the record by the Clerk of the Supreme Court of South Carolina, in pertinent part, states that the "opinion [of the Supreme Court of South Carolina] is the final judgment of this court" (Tr., unnumbered first page).

Sabbath period, but are gainfully employed and experience no particular difficulty in obtaining jobs—Whether the state statute, as so construed and applied,

(1) Violates the First Amendment protection against impairment of the free exercise of religion as absorbed into the Fourteenth Amendment.

(2) Is so arbitrary and discriminatory as to violate the due process clause of the Fourteenth Amendment including the inhibitions of the First Amendment against abridgement of the free exercise of religion.

STATUTES INVOLVED

The South Carolina Unemployment Compensation Law (S.C. Code (1952), now supplanted by S.C. Code (1962)) provides:

> SEC. 68-113. BENEFITS ELIGIBILITY CONDITIONS
>
> An unemployed insured worked shall be eligible to receive benefits with respect to any week only if the Commission finds that:
>
> (3) He is able to work and is available for work . . .
>
> SEC. 68-114. DISQUALIFICATION FOR BENEFITS
>
> Any insured worker shall be ineligible for benefits:
>
> (2) "Discharge for misconduct." If the Commission finds that he has been discharged for misconduct connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with such ineligibility beginning with the effective date of such request and continuing

not less than one nor more than the next twenty-two consecutive weeks (in addition to the waiting period) . . .

(3) "Failure to accept work." If the Commission finds that he has failed, without good cause, (a) either to apply for available suitable work, when so directed by the employment office or the Commission, (b) to accept available suitable work when offered him by the employment office or the employer . . . such ineligibility shall continue for the week in which such failure occurred and for not less than one or more than five next following weeks (in addition to the waiting period) . . .

(a) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals . . .[2]

STATEMENT

Appellant filed her petition in the Court of Common Pleas for Spartanburg County, South Carolina (R. 18-20)

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[2] This subsection (a) was added to section 68-114 by amendment in 1955. S.C. Acts 1955, No. 254, secs. 17 and 18, 49 Stats. at L. 480. Apparently through oversight, it was not carried into the Code until the new S.C. Code (1962) was adopted, January 9, 1962. The sections as they appear in the S.C. Code (1952) are here retained because they are the references of the opinion of the court below. The new Code (S.C. Code (1962)), aside from minor changes in rubrics and interior lettering and numbering, makes no change in the sections of the Unemployment Compensation Law here involved. (See Appendix, *infra,* pp. 33-36.)

The Sunday laws, sections 64-4, 64-5 (S.C. Code (1952)) to which the opinion of the South Carolina Supreme Court refers are set out in the Appendix to the Statement as to Jurisdiction. As carried into the 1962 Code they, and section 64-6 as well, are set out in the Appendix, *infra,* pp. 34-36.

under section 68-165, S.C. Code (1952) to review and reverse the decision of the state Employment Security Commission (R. 16-17) that plaintiff was:

(1) ineligible for benefits in that she refused to take work on Saturdays because of her religious belief as a Seventh-day Adventist and hence was not "available for work" as required by sec. 68-113, S.C. Code (1952);

(2) disqualified for five weeks benefits because she had been "discharged for misconduct"—unexcused absences on Saturday rendering her ineligible for benefits under sec. 68-114, S.C. Code (1952).

The Court of Common Pleas affirmed the decision of the Commission (R. 26-31). The Supreme Court of South Carolina affirmed by an opinion which also constitutes its judgment (R. 34-49). Bussey, J., filed a dissenting opinion (R. 50-62).

THERE IS NO CONFLICT IN THE FACTS OF RECORD.—Plaintiff-appellant, aged fifty-seven, had been employed in the Beaumont plant of Spartan Mills in Spartanburg, South Carolina as a spool-tender for thirty-five years (R. 4-8) and had been so employed without interruption since August 8, 1938 (R. 6). From the end of World War II and until June 6, 1959, Saturday work in this plant had been on voluntary basis (R. 5) and appellant worked only five days a week, Monday through Friday, on the first shift—7 a.m. to 3 p.m. (R. 8).

On August 6, 1957, while employed by Spartan Mills, appellant became a member of the Seventh-day Adventist church (R. 6, 11).[3] The religious teaching of that church is that the Sabbath commanded by God commences at sun-

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[3] At the hearing held October 2, 1959 (R. 6) she testified that she became a member of the Seventh-day Adventist church "two years ago the 6th day of this past August" (R. 117).

down Friday evening and ends at sundown on Saturday evening (R. 10) and labor or common work during that period is forbidden (R. 10, 13). Appellant, as a member of the denomination, shares that belief and in the practice of her religious belief (R. 11, 12) did not work during her Sabbath after she joined the church August 6, 1957.

For twenty-two months after so joining the Seventh-day Adventist church, without being required to work, and not working, on Saturday, she continued her uninterrupted employment with Spartan Mills until June 5, 1959 (R. 5). Her employer changed to a mandatory six-day week on that day, posting a notice that all employees would be required to work on Saturdays thereafter (R. 5, 8). Appellant explained to her employer that she could not work on Saturday because it was her Sabbath, revealed by God (R. 11), and thereafter, refusing and failing to work on Saturdays, she missed work on six successive Saturdays (R. 5, 9). She was discharged on July 27, 1959 (R. 9) solely because of her refusal to work on Saturday, her Sabbath (R. 9, 11). Thereafter she applied to three other mills for employment but they were on a six-day week basis, as were most mills in the area (R. 9-10) and she remained unwilling to take any work that would require her to work on her Sabbath (R. 10). Appellant has at all times been willing to work in another mill or in any other industry so long as she was not required to work on her Sabbath (R. 11).

The unquestioned evidence showed that, other than appellant and one other,[4] all of the approximately one hundred and fifty members of the Seventh-day Adventist church in Spartanburg are gainfully employed in that area

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[4] In *Sally W. Lloyd* v. *Charlie V. Verner et al.,* pending on appeal to the Supreme Court of South Carolina, the facts are identical and the parties have stipulated to abide the result in this case (R. 1).

and experience no particular difficulty in obtaining jobs although none works on the Saturday Sabbath (R. 12).

There was no evidence that in the area there were not numerous jobs requiring no Sabbath work and otherwise suitable for appellant; neither was there any evidence to suggest that any such jobs were presently open, or that appellant had been referred to them or had failed to apply or accept any such jobs.

THE ADMINISTRATIVE DETERMINATIONS.—Appellant on July 29, 1959, filed her claim with the South Carolina Employment Security Commission for unemployment compensation benefits under the law. Title 68, S.C. Code (1952) (R. 4). The claims examiner found the appellant uneligible for compensation benefits under sec. 68-113 (3) because not "available for work" in that her refusal to work on Saturday made her "not available for work during the regular work week observed in the industry and area" in which she had worked (R. 4-5). He also held her "disqualified" under sec. 68-114 (2) for a period of five weeks because discharged for misconduct—her unexcused Saturday absences (R. 4-5).

The affirming decision of the Referee or Appeal Tribunal (R. 14-16) was affirmed by the appellee Commission (R. 16-17).

THE JUDICIAL REVIEW.—On the petition of the appellant (R. 18-20), the answers of the state commission (R. 20-22) and of the employer, Spartan Mills (R. 23-25), both appellees here, and on the basis of the record made in the administrative proceedings, the Court of Common Pleas of Spartanburg County, affirmed (R. 26-31).

On appeal to the Supreme Court of South Carolina, appellant's exceptions asserted that the pertinent sections of the Unemployment Compensation Law, as construed, vio-

lated the free exercise of religion clause of the First Amendment as absorbed into the Fourteenth Amendment and as well violated the same amendment by denying appellant the protection and benefits available to those who observe Sunday as the Sabbath (R. 33).

In its opinion and judgment here under review, the South Carolina supreme court held (R. 34-49):

As to initial eligibility for unemployment benefits under § 68-113(3) regard must be had for the declared public policy of the Unemployment Compensation Law (§ 68-36, S.C. Code (1952)) establishing as the fundamental purpose protection against economic insecurity due to involuntary unemployment because of the inability of industry to provide stable employment (R. 29). It held that the purpose of the "available for work" test was to determine whether a claimant was actually and currently "attached to the labor market" (R. 41, 42), and held that this required "unrestricted availability," except for Sunday (R. 41, 48).

The court also held that "available for work" means "available for suitable work"[5] (R. 41, 42) but that "suitable work" includes work in the employee's usual occupa-

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[5] The court thus accepted appellant's contention that "available for work" in § 68-113(3) must mean the same as "available for suitable work" in the disqualification provision of § 68-114(3). It would be senseless to protect against disqualification for refusal of available work on the ground that it was not "suitable", and yet leave a claimant ineligible initially because unwilling to take the same work because not protected by § 68-113(3) against the necessity of being willing to take work regardless of whether it was "suitable". Cf. *In re Miller,* 243 N.C. 509, 91 S.E.2d 241 (1955). But the South Carolina court refuses to give "suitable" the content that appellant contends results from § 68-114(3)(a), requiring consideration of degree of risk to the claimant's morals in determining whether work is "suitable". The South Carolina court holds that this does not contemplate reference to the religious convictions of the individual but refers only to permissible rejection of "work, the character of which would be morally objectionable to any employee" (R. 46).

tion under the usual and customary conditions at or under which the trade works (R. 39, 41-44).

The court concluded appellant was not "available for work" within the meaning of § 68-113(3) as so construed because she was unwilling to work in her usual occupation for the usual and customary days and hours under which the textile industry works (R. 44, 48). Ignoring that the change of days by her employer was the occasion for the disruption, it held her refusal to work on Saturdays (and impliedly her unemployment) arose, not from anything connected with her employment, but because she "attempted to limit or restrict her willingness to work to certain days and a certain shift not usual in the textile industry in the Spartanburg area." (R. 44, 48).

As to disqualification for five weeks benefits (somewhat redundant in this case) the court relied on § 68-114(3), S.C. Code (1952) and its holding that "available suitable work" as there used permitted of no consideration of the effect of Saturday work on appellant's morals because of her belief in the Saturday Sabbath from sundown Friday to sundown Saturday (R. 44, 46). It concluded that she had failed to accept, without good cause, available suitable work offered by her employer, within the meaning of § 68-114(3) (R. 48-49).

SUMMARY OF ARGUMENT

I. Under the First Amendment the freedom of religious belief is absolute and cannot in any way be invaded by either Federal or State legislation. *Cantwell* v. *Connecticut,* 310 U.S. 296, 303; *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624, 642; *Braunfeld* v. *Brown,* 366 U.S. 599, 603. In the exercise of that absolute right, appellant believes that it is the commandment of God that she abstain from labor on the Sabbath—from sunset Friday to

sunset Saturday. The South Carolina Unemployment Compensation Law, as construed and applied in this case, conditions appellant's eligibility for benefits thereunder upon her being willing to accept work on Saturday and disqualifies her for her refusal to accept a job involving work on Saturday. In effect this requires her to repudiate her religious belief by professing a willingness to do something in conflict with the tenets of her church. This is not mere regulation of conduct. It invades the sphere of belief and intellect. Conditioning of unemployment compensation benefits on surrender of constitutional rights has the same deterrent effect as a denial of a tax exemption or denial of right to public office. *Speiser* v. *Randall,* 357 U.S. 513; *Torcaso* v. *Watkins,* 367 U.S. 488. The law, therefore, violates appellant's absolute freedom of belief under the First Amendment. *West Virginia State Board of Education* v. *Barnette, supra.*

II. Even if the requirement of unrestricted availability on the Saturday Sabbath be regarded as regulation of conduct, the statute, as so construed and applied here, nevertheless violates the "free exercise" clause of the First Amendment. The stated purpose of the requirement of the challenged sections of the law that claimants be "available for work" is to insure that the claimant is genuinely attached to the labor market and that his unemployment is involuntary and the result of failure of industry to supply stable employment. Here the unquestioned evidence shows that 150 other co-religionists, observing the same Sabbath, are nevertheless gainfully employed in the same locality and experience no difficulty in obtaining jobs. Appellant is willing to accept a job in any industry. The requirement of Sabbath work, construed into the statute by the state court, in effect prohibits appellant's free exercise of religion without any compelling reason. Other and

more effective means are available to determine whether a claimant is attached to the labor market and thus achieve the end purpose of the requirement of "availability for work". One way would be to require a showing that services such as those offered by plaintiff, restricted by non-labor on the Sabbath, are being offered and hired in the local labor market. Because the statute, as construed and applied, is unnecessarily broad and destroys appellant's free exercise of religion, no compelling reason justifies the subordination of appellant's constitutional rights. *Schneider* v. *State,* 308 U.S. 147. *Shelton* v. *Tucker,* 364 U.S. 479, 488-489; *Louisiana* v. *N.A.A.C.P.,* 366 U.S. 293, 296-297.

III. The state court construes the "unrestricted availability" requirement not to include requirement of Sunday work. This is based on Sunday laws that prohibit textile and other manufacturing establishments from working employees on Sunday. But such statutes contain an exception as to work on Government contracts during emergency periods and expressly state that no Sunday work shall be required of an employee who is "conscientiously opposed to Sunday work". This confirms that the Sunday exemption is based on religious grounds. The First Amendment, as part of the Fourteenth, permits no partiality, but requires absolute neutrality on the part of the State as between religions. *Everson* v. *Board of Education,* 330 U.S. 1, 15-16; *Zorach* v. *Clauson,* 343 U.S. 306, 313. The Unemployment Compensation Law of South Carolina is therefore unconstitutional because of this discrimination between religions.

ARGUMENT

The South Carolina Unemployment Compensation Law, as here construed and applied violates the First Amendment as absorbed into the due process clause of the Fourteenth Amendment by unduly infringing her religious freedom

and by arbitrarily discriminating in favor of those who observe Sunday as a day of worship.

We believe the state court erred in its narrow construction of the South Carolina statute, particularly in its refusal to give section 68-114(3)(a), S. C. Code (1952), full application so as to require the Commission to consider the degree of risk involved to appellant's morals in requiring her to be available for work on her Saturday Sabbath.[6] See *Tary* v. *Board of Review,* 161 Ohio St. 251, 119 N.E. 2d 56; *In re Miller,* 243 N.C. 509, 91 S.E. 2d 241. We recognize, however, that the state court's interpretation of the South Carolina statute becomes the statute in this Court. *Hebert* v. *Louisiana,* 272 U.S. 312, 317.

As to appellant's assertion that the First and Fourteenth Amendments were violated by the statute, as construed, the state court held (R. 49):

> "However, our Unemployment Compensation Act, as is hereinbefore construed, places no restriction upon the appellant's freedom of religion nor does it in any way prevent her in the exercise of her right and freedom to observe her religious beliefs in accordance with the dictates of her conscience."

This disregards the established principle of unconstitutional conditions.

So far as the decision below rests upon conclusions of fact as to appellant's willingness to work in her usual occupation, this court is not bound thereby and remains free to reexamine the evidentiary basis for such conclusions.

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[6] For brevity, the Seventh-day Adventist Sabbath, commencing with sunset on Friday evening and ending with sunset on Saturday evening, will sometimes be hereinafter referred to as the "Saturday Sabbath" or "Sabbath".

Niemotko v. *Maryland,* 340 U.S. 268, 271; *Feiner* v. *New York,* 340 U.S. 315, 316.

I

THE SOUTH CAROLINA LAW, AS CONSTRUED AND APPLIED, VIOLATES THE FIRST AMENDMENT BECAUSE IT VIOLATES THE INDIVIDUAL'S FREEDOM OF BELIEF.

The portion of the First Amendment here involved is addressed primarily to action or conduct. It provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

Appellant relies on the "free exercise" clause. But this Court has long recognized that the clause affords protection of the right to believe, a right that is absolute in nature.

In *Cantwell* v. *Connecticut,* 310 U.S. 296, 303, the Court stated:

> "The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. *Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law.* On the other hand, it safeguards the free exercise of the chosen form of religion. *Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute* but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society." (Emphasis supplied.)

Appellant here relies primarily on the first concept—her freedom to believe. She is claiming no right affirmatively to act or to do anything that conflicts with the interests of others. She does assert her absolute freedom of belief and, in the exercise of that freedom, her right to be let alone on her Sabbath. She complains only that the state law, by the coercion of withheld unemployment compensation, invades the realm of her religious belief and requires her, in derogation of that belief and contrary to the tenets of her church, not only to profess a willingness to work on Saturday, but as well to accept a job involving work on Saturdays.

A. Coercion to work or to express willingness to work on appellant's Sabbath violates her absolute freedom to believe.

Because her freedom of religious belief is absolute, appellant may not be coerced by penalties, fines or other sanctions to do acts or engage in conduct that violates her conscientiously held views as to her duty to God.

In *Davis* v. *Beason,* 133 U. S. 333, 342, this Court recognized that the First Amendment—

> "was intended to allow every one under the jurisdiction of the United States . . . to exhibit his sentiment in such form of worship as he may think proper, not injurious to the equal rights of others."

Even before the First Amendment rights were expressly recognized as part of the liberties protected by the Fourteenth, this Court in *Meyer* v. *Nebraska,* 262 U. S. 390, said (p. 399):

> "Without doubt, it [the liberty guaranteed by the Fourteenth Amendment] denotes not merely freedom from bodily restraint but also the right of the individ-

> ual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, *to worship God according to the dictates of his own conscience,* and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."[7]

In *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, the Court held that the absolute freedom to believe (*Cantwell* v. *Connecticut,* 310 U. S. 296, 303) necessarily means, as a corollary, that no one can be compelled affirmatively by word or act to do an act in conflict with his religious belief. Speaking for the Court, Mr. Justice Jackson said (p. 642):

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribed what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.
>
> "We think the action of the local authorities in *compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."* (Emphasis supplied.)

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[7] Forbearance from labor on the Saturday Sabbath in the religious belief that it is the commandment of God is plainly a form of worship. "Worship" is defined as "Act of paying divine honors to a deity; religious reverence and homage; adoration or reverence paid to God, a being viewed as God, or something held as sacred from a reputed connection with God." Webster, Unabridged Dictionary (2nd ed.), p. 2955.

In *Watson* v. *Jones,* 13 Wall. 679 (1869), the rule was stated as follows (p. 728):

> "In this country the *full and free right to entertain any religious belief,* to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all."

In *Everson* v. *Board of Education,* 330 U. S. 1, the opinion points out (p. 11) that the First Amendment embodies the common conviction that—

> ". . . individual religious liberty could be achieved best under a government which was *stripped of all power* to tax, to support, or otherwise to assist any or all religions, or *to interfere with the beliefs of any religious individual or group.*" (Emphasis supplied.)

In the same case, it was said (p. 15) that the "establishment of religion" clause means, inter alia,—

> "Neither [a state nor the Federal Government] can force or influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion.

and at p. 16, the same opinion of the Court states

> "On the other hand, other language of the amendment commands that New Jersey cannot hamper its citizens in the free exercise of their own religion. Consequently, it cannot exclude individual Catholics, Lutherans, Mohammedans, Nonbelievers, Presbyterians, or the members of any other faith, because of their faith, or

> lack of it, from receiving the benefits of public welfare legislation."

In the more recent Sunday law cases, the same absolute nature of the freedom to believe (in contrast with the conditioned nature of the freedom to act) was recognized. In *Braunfeld* v. *Brown,* 366 U. S. 599, the Court took as its initial premise (p. 603):

> "Certain aspects of religious exercise cannot in any way be restricted or burdened by either federal or state legislation."

There, distinguishing the *Barnette* case on the same ground, the Court said (p. 603):

> ". . . nor does it [the Pennsylvania Sunday law] force anyone to . . . say or believe anything in conflict with his religious tenets."

In *Torcaso* v. *Watkins,* 367 U. S. 488, the Court did not even pause to mention, much less evaluate, the alleged competing interests of the State in preserving assurance of moral accountability by its public officers. It was enough to say (p. 495):

> "We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion'."

As exemplified in the flag salute case, the basic liberty of conscience or liberty of religious belief includes as a minimum the negative liberty or right not to be compelled by speech or act, to profess a disbelief in one's religion, or thereby to profess another religious belief. This is the very

essence of religious freedom. In the first flag salute case (*Minersville District* v. *Gobitis,* 310 U. S. 586) Mr. Justice Frankfurter, speaking for the Court, even while upholding the salute requirement, said (p. 594):

> "But, because in safeguarding conscience we are dealing with interest so subtle and so dear, every possible leeway should be given to the claims of religious faith.[8]

Because the South Carolina law here involved coerces appellant by affirmative act to repudiate her religious belief, it unconstitutionally impairs the guaranteed freedom.[9]

B. Denial of unemployment compensation benefits under a public welfare program constitutes prohibited coercion.

Referring to appellant's assertion that denial of unemployment compensation benefits under the circumstances violated the Federal Constitution, the state court held (R. 49):

> "However, our Unemployment Compensation Act, as is hereinbefore construed, places no restriction upon

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[8] The requirement that appellant be willing to work on her Sabbath, to the extent that it resulted in her actually working on that day, would appear as well to impair her freedom of association, i.e. to join with her co-religionists on that day for public devotions to God and instruction in the teachings of her church. Since ministerial imparting of instruction in doctrines of facts and moral precepts is so essential a part of the exercise of religion, this right is also apparently recognized as a freedom that can be impaired only by the most compelling secular interests. *Davis* v. *Beason,* 133 U. S. 333, 342; *Minersville District* v. *Gobitis,* 310 U. S. 586, 593, 600; *N.A.A.C.P.* v. *Alabama,* 357 U. S. 449, 460-461.

[9] Because expressly held not to be included within the scope of religious freedom, the compulsion to bear arms in defense of the United States does not trench upon liberty of conscience. *Hamilton* v. *Board of Regents,* 293 U. S. 245; *West Virginia Board of Education* v. *Barnette,* 319 U. S. 624, 632. Neither is there here involved any grave and immediate danger to health of the community such as justified the compulsory vaccination in *Jacobson* v. *Massachusetts,* 197 U. S. 11; cf. *West Virginia Board of Education* v. *Barnette,* 319 U. S. 624, 639.

> the appellant's freedom of religion nor does it in any way prevent her in the exercise of her right and freedom to observe her religious beliefs in accordance with the dictates of her conscience."

This appears to be nothing more than the assertion of right to impose an unconstitutional condition on enjoyment of unemployment compensation benefits.

In *Frost Trucking Co.* v. *Railroad Comm.,* 271 U. S. 583 this Court held (p. 593-594):

> "It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited; and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all."

This rule was applied in *Jamison* v. *Texas,* 318 U. S. 413. Refusing to apply *Davis* v. *Massachusetts,* 167 U. S. 43, the Court there held (p. 416)

> "But one who is rightfully on a street which the State has left open to the public carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. This right extends to the communication of ideas by handbills and literature as well as by the spoken word."

Whether a right or only a privilege, public employment may not be conditioned on surrender or waiver of the constitutional protection against arbitrary denial of the

right of association (*Wieman* v. *Updegraff,* 344 U. S. 183, 191-192); or of the right to due process. *Slochower* v. *Board of Education,* 350 U. S. 551, 556-557.

In *Speiser* v. *Randall,* 357 U. S. 513, this Court held (p. 518):

> "It cannot be gainsaid that a discriminatory denial of a tax exemption for engaging in speech is a limitation on free speech. . . . To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. Its deterrent effect is the same as if the State were to fine them for this speech. The appellees are plainly mistaken in their argument that, because a tax exemption is a 'privilege' or 'bounty', its denial may not infringe speech."

To the same point is *Torcaso* v. *Watkins,* 367 U. S. 488, 495:

> "The fact, however, that a person is not compelled to hold public office cannot possibly be an excuse for barring him from office by state-imposed criteria forbidden by the Constitution."

Courts in other jurisdictions have applied the same principle as to withholding of an annuity (*Steinberg* v. *United States,* 143 C. Cl. 1, 163 F. Supp. 590, 591 (1958)); of use of school buildings (*Danskin* v. *San Diego Unified School District,* 28 Cal. 2d 536, 545-546, 171 P. 2d 885 (1946)); of privilege of public housing (*Lawson* v. *Housing Authority of Milwaukee,* 270 Wis. 269, 273-278, 70 N.W. 2nd 605, cert. denied 350 U. S. 882); and of unemployment insurance (*Syrek* v. *California Unemployment Insurance App. Bd.,* 54 Cal. 2d 519, 532, 354 P. 2d 625, 632 (1960)).

The denial of unemployment compensation could well

result in the destitution against which the program was intended to guard. To some the deterrent effect on their exercise of religious freedom might be greater than would be a sentence to jail. The latter would carry with it at least some sort of housing and food.

It is submitted that, having embarked on its program of unemployment compensation, whether participation therein by an unemployed claimant be termed a "privilege," a "right" or a "bounty," South Carolina may not dispense those benefits in an arbitrary way nor exact surrender of the basic freedom to believe, even though, in other contexts, it might exact minor curtailment of the religious freedom to act.

II

THE REQUIREMENT OF UNRESTRICTED AVAILABILITY FOR WORK ON APPELLANT'S SABBATH IN EFFECT PROHIBITS THE FREE EXERCISE OF RELIGION BY APPELLANT AND CANNOT BE JUSTIFIED BY ANY SUBORDINATING INTEREST OF THE STATE.

Even if appellant's claimed right to non-action on her Sabbath be regarded as conduct subject to regulation and control in the public interest, the Unemployment Compensation Law of South Carolina, as here construed, violates the First Amendment.

As construed by the state court, section 68-113(3), S. C. Code (1952) requires that appellant, to be initially eligible for unemployment benefits, must be willing to work on her Sabbath; section 68-114(3) requires that she, to avoid disqualification, accept a job involving otherwise suitable work, if offered, even though it involves her working on her Sabbath (R. 37, 44, 46).

Statutory compulsion, inducement or influence to register

an attitude of mind contrary to her conscientiously held belief as to her duty to God, or actually to work on her Sabbath in violation of her religious belief, would in practical effect destroy the very substance of religious freedom for appellant. The right to observe the Sabbath by abstaining from labor is of the essence. Take that away or stifle it, and there is no freedom of religion so far as a Saturday Sabbatarian is concerned. Most Sunday-observing Christians probably feel as strongly with respect to their right similarly to refrain from labor in observance of Sunday as the Lord's Day.

Decisions of this Court establish that conduct constituting the practice of religion and not inherently harmful or immoral, may not be wholly prohibited; neither may such conduct, by otherwise permissible state regulation, be unduly or unnecessarily infringed. *Lovell* v. *Griffin,* 303 U.S. 444; *Cantwell* v. *Connecticut,* 310 U. S. 296, 304-305. That a state measure is non-discriminatory in form is unimportant. If it stifles or penalizes exercise of religious freedom, it is nevertheless bad. Dissenting opinion in *Jones* v. *Opelika,* 316 U. S. 584, 600, 608, adopted as opinion of the Court, 319 U. S. 103; *Murdock* v. *Pennsylvania,* 319 U. S. 105, 115. Power of the State to regulate or impair a First Amendment freedom is the exception rather than the rule (*Herndon* v. *Lowry,* 301 U. S. 242, 258) and mere rational relation between the statutory enactment and the evil to be cured is not enough to justify even minor limitations on the full enjoyment of the First Amendment freedom. *West Virginia Board of Education* v. *Barnette,* 319 U. S. 624, 639; *Thomas* v. *Collins,* 323 U. S. 516, 530. Hence, a general law to advance legitimate secular goals of the State, where it touches, even tangentially, on First Amendment freedoms of the individual, must be highly selective and narrowly drawn to prevent the supposed evil; any

deterrent to exercise of religious freedom, even if incidental or indirect, must have appropriate relation to the purpose of the law and be essential to its accomplishment. *Schneider* v. *State,* 308 U. S. 147, 164; *Martin* v. *Struthers,* 319 U. S. 141, 147-148; *Talley* v. *California,* 362 U. S. 60, 64, 66; *Louisiana* v. *N.A.A.C.P,* 366 U S. 293, 297.

In applying these principles to the South Carolina law, the circumstances must be weighed and the substantiality of the reasons advanced in support of the questioned provisions must be carefully appraised. *Schneider* v. *State, supra,* 161; *Martin* v. *Struthers, supra,* 144; *Marsh* v. *Alabama,* 326 U. S. 501, 509.

Measured by these standards, the requirement of "availability for work" on the Sabbath that the state court has read into the statutory provisions here involved (§§ 68-113(3) and 68-114(3)) cannot be sustained, and their enforcement violates the First Amendment.

A. The stated object of the statutory provisions here involved is to test whether a claimant is genuinely and currently attached to the local labor market.

The opinion of the state supreme court quotes the formal declaration of policy of the South Carolina Unemployment Compensation Law (sec. 68-36, S. C. Code (1952)) (R. 38). The opinion then states (R. 39):

> "It is obvious, therefore, that the fundamental purpose of the Unemployment Compensation Law is to protect against economic insecurity due to involuntary unemployment because of the inability of industry to provide stable employment . . . .

Since the law is an "experience rating" type under which the employers bear the entire burden, they are protected against being required to pay compensation benefits to those

who become or remain unemployed merely because of personal circumstances.

The opinion then introduces the intrepretation that has created the issues in this case. It states (R. 41):

> "The basic purpose of the requirement that a claimant must be available for work to be eligible for benefits is to provide a test by which it can be determined *whether or not the claimant is actually and currently attached to the labor market,* which in this case is unrestricted availability for work." (Emphasis supplied.)[10]

The meaning of "attached to the labor market" is further spelled out as follows (R. 42):

> "The availability for work requirement has been said to be satisfied when an individual is willing, able, and ready to accept suitable work or employment, which he does not have good cause to refuse, that is, *when he is genuinely attached to the labor market.* Unemployment Compensation Commission of Virginia v. Dan River Mills, Inc., 197 Va. 816, 91 S.E. (2d) 642. (Emphasis supplied.)

It thus appears that the "basic purpose" or object of the requirements of "available for work" in § 68-113(3) and "available for suitable work" in § 68-114(3) (both being read by the court as "available for suitable work" (R. 41, 42)) is stated to be the provision of a test whereby to determine whether or not a benefits claimant is genuinely

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[10] It is here that the court below also reads into "available for work" the court's construction of that phrase as meaning "unrestricted availability", which in turn requires willingness to work on Saturday, but not on Sunday (R. 41, 48)

and currently "attached to the labor market."[11] The indicated evil thereby sought to be remedied is the abuse of the law by persons who become unemployed, not because of inability of industry to provide stable employment but solely because of changes in the personal circumstances of the employee.

B. The requirement of willingness to work on Saturday is not essential to accomplish the object of the law or to prevent the evil it seeks to remedy.

The requirement of availability for work on the Saturday Sabbath is read into the statute by the state court as part of the "unrestricted availability" for work which it, also by construction, adds to the requirements of §§ 68-113(3) and 68-114(3) for eligibility and avoidance of disqualification, respectively (R. 41, 43, 44). But this is all in extension of "available for work" as it appears in the

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[11] In *Reger* v. *Administrator Unemployment Compensation Act,* 132 Conn. 647, 46 A. 2d 844, 846, it is stated: "A labor market for an individual exists when there is a market for the type of services which he offers in the geographical area in which he offers them."

In Freeman, *Able to Work and Available for Work,* 55 YALE L. J. 123, 124, it is explained:

"The availability requirement is said to be satisfied when an individual is willing, able, and ready to accept suitable work which he does not have good cause to refuse, that is, when he is genuinely attached to the labor market. Since, under unemployment compensation laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual exists when there is a market for the type of services which he offers in the geographical area in which he offers them. 'Market' in this sense does not mean that job vacancies must exist; the purpose of unemployment compensation is to compensate for the lack of appropriate job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which he is offering them. (Footnotes omitted)

statute.[12] This phrase, in turn, is conceded by the Court to be merely a means of implementing the basic purpose of the law—to provide a test by which to determine whether a claimant "is actually and currently attached to the labor market" (R. 41).[13]

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[12] The state, court also introduced into the statute, by construction, as another equivalent of "available for work" the requirement of availability for work in the claimant's usual occupation for the usual and customary number of days and hours and usual and customary conditions (R. 41, 42, 43, 44). It held appellant failed to satisfy this requirement (R. 48).

The fallacy lies in looking only to what other employers in the same trade had established as "usual". The opinion thus evades the impact of the record facts. Only the change to a six-day week by the employer, Spartan Mills, in June, 1959 made the six-day week "usual" in the textile industry so far as appellant was concerned. As the dissenting Judge Bussey pointed out (R. 54, 59), appellant made no change in religious faith and attached no new conditions to the terms upon which she had enjoyed stable employment for many years. She had been observing Saturday as the Sabbath since at least as early as 1957. It was the employer that made the change. Thus, it was the employer that elected not to continue the stable employment. One of the objects of the statute is to relieve the employee of the insecurity of unemployment attributable to the inability of the employer to provide stable employment.

So far as the judgment below may be regarded as resting on the ultimate fact conclusion that appellant's unemployment resulted from her changing the usual days or hours of her usual occupation to fit her own personal circumstances, it cannot stand. All of the evidential facts are clearly to the contrary. Furthermore, if construed to require that claimant always be available for her old job, if offered, or for a similar job in the same occupation, grave doubts as to validity of the law under the due process clause would arise. This would tie the worker, not only to his last occupation but also, where the job is still open, to his last employer. Unemployment compensation was never intended as a throw-back to serfdom. See Freeman, Able to Work and Available for Work, 55 YALE L. J. 123, 125-126.

In any event, it is plain that with "available for work" construed to include the requirement of availability for the usual occupation during the usual hours and usual days, particularly with the peculiar meaning attached to "usual" by the court below in this case, the challenged statutory provisions have the same effect and are subject to the same constitutional objections that apply to "unrestricted availability".

[13] Curiously, after stating that the "available for work" requirement is merely a test to determine whether or not the claimant is "actually and

But "unrestricted availability" or availability for work on Saturday, on this record, fails to further or aid the accomplishment of the purpose of the statute. It fails because it would exclude from eligibility as persons attached to the labor market at least 150 individuals who admittedly are presently performing services in the Spartanburg market although not available for work on Saturday. (R. 12, 17). Appellant is willing to accept a job in any industry (R. 11). That their services, with restriction against Saturday work, are being so performed establishes that there is a labor market in Spartanburg for such services so restricted against Saturday work. Attachment to the labor market is thus demonstrated by persons who cannot show "unrestricted availability"—because unavailable on their Saturday Sabbath—and would, if they became claimants fail to satisfy the objectionable "unrestricted availability" requirement read into the statute by the court below and here challenged.

Because the avowed object of the subsections here challenged is to verify that a claimant is genuinely and currently attached to the local labor market, and because the requirement of unrestricted availability on every day but Sunday (R. 41, 48) so signally fails as a test of such attachment, it is manifest that this requirement of availability on Saturday Sabbath—read into the statute by the state court and here challenged by appellant—is neither essential nor helpful in furthering or advancing that avowed object of the subsections.

Freedoms guaranteed by the First Amendment occupy a preferred position (*Murdock* v. *Pennsylvania,* 319 U. S.

currently attached to the labor market" (R. 41), the opinion of the state supreme court does not even mention the uncontradicted evidence that as to at least 150 persons (there are probably many more of other religions such as the Orthodox Jewish faith) non-availability for Saturday work does not remove them from the labor market (R. 12). The Employment Security Commission did note the fact but gave it no weight (R. 16-17),

105, 115; *Saia* v. *New York,* 334 U.S. 558, 562; *Kovacs* v. *Cooper,* 336 U.S. 77, 88) or retain a "momentum for respect" (*Kovacs* v. *Cooper,* 336 U.S. 77, 95 (concurring opinion)) that requires the subordinating interest of the State to be "compelling" before legislation in derogation of those freedoms can be sustained. *Sweezy* v. *New Hampshire,* 354 U.S. 234, 265; *N.A.A.C.P.* v. *Alabama,* 357 U.S. 449, 463; *Bates* v. *Little Rock,* 361 U.S. 516, 524; Legislation, such as that here involved, that so directly and gravely impairs and abridges a First Amendment freedom can be sustained only if narrowly drawn to achieve the purported objective or to prevent the supposed evil. *Schneider* v. *State,* 308 U.S. 147, 164; *Cantwell* v. *Connecticut,* 310 U.S. 296, 307; *Martin* v. *Struthers,* 319 U.S. 141, 147-148; *Talley* v. *California,* 362 U.S. 60, 64, 66. Particularly is this true, where, as here, the purpose of the legislation of the State can be achieved by a measure less broad and sweeping but narrowly drawn to avoid penalizing exercise of First Amendment rights. *Schneider* v. *State,* 308 U.S. 147, 162, 164; *Shelton* v. *Tucker,* 364 U.S. 479, 488-489; *Louisiana* v. *N.A.A.C.P.,* 366 U.S. 293, 296-297.

C. Unobjectionable constructions or provisions would with equal efficiency achieve the object of the law here challenged.

It is plain that the objectives and purpose of the legislation here involved and particularly the stated purpose of the requirements ("available for work") in § 68-113(3) and ("available for suitable work") § 68-114(3) could and would be fully achieved if those requirements were limited or construed to make the test of eligibility or disqualification a test identical with the stated basic object of the requirements: Whether the claimant is actually, currently and genuinely attached to the labor

market in the area in which the claimant offers his services. Of course, another alternative clearly open to the State, and probably involving no conflict with the religious freedoms of claimants would be the interpretation of section 68-114(3)(a), S.C. Code, (1952), now section 68-114(3)(b), S.C. Code (1962), to require the Employment Security Commission to give consideration to the subjective effect on the morals of the individual claimant of the days and hours of a particular job in determining whether or not it is "suitable work." See *Tary* v. *Board of Review,* 161 Ohio St. 251, 119 N.E. 2d 56 (1954); *In re Miller,* 243 N.C. 509, 91 S.E. 2d 241 (1956).[14]

It is submitted that there is no compelling justification for the deterrent effect of the challenged provisions of the South Carolina Unemployment Compensation Law on the free exercise of religion by appellant.

III

THE REQUIREMENT OF UNRESTRICTED AVAILABILITY ON SATURDAY AND THE EXCEPTION AS TO SUNDAY MAKES THE LAW ARBITRARY AND DISCRIMINATORY IN VIOLATION OF THE FOURTEENTH AMENDMENT.

The state supreme court, after stating that "available for work" means "unrestricted availability" (R. 41), noted that this does not mean availability on Sundays because such interpretation of the statute "would be in conflict with Section 64-4 and 64-5 of the Code, which makes it un-

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[14] Rejecting the ground of decision in these cases, the court below said (R. 46): "When the General Assembly provided that in determining whether any work is suitable for an individual, the Commission should consider the degree of risk involved to morals, it obviously had in mind work, the character of which would be morally objectionable to any employee."

lawful for an employer to require or permit an employee, especially a woman, to work in a mercantile or manufacturing establishment on Sunday, except as is provided in Section 64-6 of the 1952 Code'' (R. 48).

Reference to the sections cited by the Court (Appendix, *infra,* pp. 34-35, 36) shows that under section 64-4 the operators of textile plants are prohibited from permitting any regular employee to ''perform any of the usual or ordinary worldly labor or work in'' such employee's calling on Sunday. During times of national emergency industries engaged in production for national defense and under Government contracts may, by permit, operate on Sunday—

> ''But no employee shall be required to work on Sunday as above provided who is conscientiously opposed to Sunday work; . . . .''

Section 64-5 similarly prohibits the employment of women or children in mercantile or manufacturing establishments on Sunday but by proviso allows women to work on Sunday on defense contracts during times of national emergency, again with the further proviso:

> ''no employee shall be required to work on Sunday as above provided, who is conscientiously opposed to Sunday work. . . .''

It is submitted that the due process clause of the Fourteenth Amendment, with the content added in transmitting the principles of the First Amendment (*West Virginia Board of Education* v. *Barnette,* 319 U.S. 624, 639) is violated by the arbitrary and discriminatory effect of the Unemployment Compensation Law as so construed by the state court.

To require Saturday Sabbatarians to repudiate their

religious belief in the sanctity of Saturday as the day appointed by God to be devoted to reverence and worship, and to be willing and ready to work on Saturdays, while leaving Sunday observers free of any similar requirement as to Sunday work constitutes an arbitrary discrimination that violates the due process clause of the Fourteenth Amendment.

The language of the South Carolina statutes upon which the South Carolina court relies as requiring the exemption makes it plain that the exemption is based, not on secular considerations directed to obtaining the benefits of a unitary day of rest but rather on a classification that discriminates between persons on the basis of their religious beliefs. This discrimination in the statutes on which the state court relies to justify the Sunday exception, particularly as to women, from its rule of "unrestricted availability" (R. 41, 48) emphasizes that the Saturday Sabbath observer is by the Unemployment Compensation Law, as construed, deprived of the equal protection of the laws under the First and Fourteenth Amendments. *Niemotko* v. *Maryland,* 340 U.S. 268, 272. These brook no partiality on the part of the State but require absolute neutrality. *Everson* v. *Board of Education,* 330 U. S. 1, 15-16; *McCollum* v. *Board of Education,* 333 U.S. 203, 210; *Zorach* v. *Clauson,* 343 U.S. 306, 313; *Engel* v. *Vitale,* 370 U.S. 421, 443 (concurring opinion).

It is submitted that the South Carolina Unemployment Compensation Law is invalid as applied because it is arbitrary and discriminatory in violation of the due process clause of the Fourteenth Amendment.

CONCLUSION

It is respectfully submitted that the Unemployment Compensation Law as here construed and applied cannot constitutionally be given effect, and the judgment of the South Carolina Supreme Court should be reversed.

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APPENDIX

The South Carolina Unemployment Compensation Law (Title 68, secs. 68.1-68.404 (S. C. Code (1962)) in pertinent part provides:

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§ 68-113. Conditions of eligibility for benefits.—An unemployed insured worker shall be eligible to receive benefits with respect to any week only if the Commission finds that:

* * * * * * *

(3) He is able to work and is available for work, but no claimant shall be considered available for work if engaged in self-employment of such nature as to return or promise remuneration in excess of the weekly benefit amounts he would have received if otherwise unemployed over such period of time.

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§ 68-114. Disqualification for benefits.—Any insured worker shall be ineligible for benefits:

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(2) *Discharge for misconduct.*—If the Commission finds that he has been discharged for misconduct connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with such ineligibility beginning with the effective date of such request, and continuing not less than five nor more than the next twenty-two consecutive weeks (in addition to the waiting period), as determined by the Commission in each case according to the seriousness of the misconduct, ...

* * * * * * *

(3) *Failure to accept work.*—(a) If the Commission finds that he has failed, without good cause, (i) either to apply for available suitable work, when so directed by the employment office or the Commission, (ii) to accept available suitable work when offered him by the employment office or the employer or (iii) to return to his customary self-employment (if any) when so directed by the Commission, ineligibility shall continue for a period of five weeks (the week in which such failure occurred and the next four weeks in addition to the waiting period) as determined by the Commission according to the circumstances in each case....

* * * * * * *

(b) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation and the distance of the available work from his residence.

* * * * * * *

Title 64 of the South Carolina Code (1962), "Sundays, Holidays and other Special Days" provides:

§ 64.4. Employment in textile plants on Sunday.—It shall be unlawful for any person owning, controlling or operating any textile manufacturing, finishing, dyeing, printing or processing plant to request, require or permit any regular employee to do, exercise or perform any of the usual or ordinary worldly labor or work in, of, about or connected with such employee's regular occupation, or calling, or any part thereof in or about such textile manufacturing, finishing, dyeing, printing or processing plant on Sunday, except work of absolute necessity or emergency and except voluntary work in certain departments which is essential to offset or eliminate a processing bottleneck or to restore a balance in processing operations and main-

tain a normal production schedule, but then only upon condition that such employee be paid on the basis of one and one half the amount of the usual average day wage or salary earned by such employee during other days of the week. But this section shall not be construed to apply to watchmen, firemen and other maintenance and custodial employees. The term *"regular employee"* as used in this section shall be construed to mean any person who usually or ordinarily works as much as eight hours per week or more in any such textile manufacturing, finishing, dyeing, printing or processing plant, whether employed and paid by the job, by the piece, by the hour or on a salary basis. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

During times of national emergency the Commissioner of Labor shall issue permits to industries regulated by this section permitting such industries to operate on Sunday when sufficient proof is furnished to the Commissioner that the industries are engaged in producing or processing goods for national defense purposes, and under government contract. The sense of this paragraph is that it shall be applicable only during periods of national emergency and to those industries expressly enumerated. *But no employee shall be required to work on Sunday as above provided who is conscientiously opposed to Sunday work; and if any employee should refuse to work on Sunday on account of conscientious or physical objections* ~~he or she shall not jeop~~ardize his or her seniority by such refusal or be discriminated against in any other manner. Nothing herein contained shall be taken to authorize the production or processing on Sunday of goods other than those being produced or processed for national defense purposes under government contract. (Emphasis supplied.)

* * * * * * *

§ 64-5. Employment of children or women in mercantile or manufacturing establishments on Sunday.—It shall be unlawful for any person to employ, require or permit the employment of women or children to work or labor in any mercantile establishment or manufacturing establishment on Sunday. *Provided*, that women shall be permitted to work on Sunday during times of national emergency when and if they are employed by industries engaged in producing or processing goods for national defense and under government contracts in the same manner and under the same conditions as otherwise provided by law. *Provided, further,* that no woman shall be permitted to work in the manner herein provided unless and until the industries engaged in producing goods for national defense purposes and under government contract have first submitted to the Department of Labor, proof sufficient to establish their national defense status, whereupon the Commissioner of Labor is directed to issue a permit authorizing the employment of women on Sunday, subject, however, to other conditions and circumstances provided by law. *Provided, further, however, that no employee shall be required to work on Sunday as above provided, who is conscientiously opposed to Sunday work; and if any employee should refuse to work on Sunday on account of conscientious or physical objections* he or she shall not jeopardize his or her seniority rights by such refusal or be discriminated against in any other manner. This section shall not apply to those manufacturing establishments described in § 64-6. (Emphasis supplied.)

* * * * * * *

§ 64-6. Exceptions for chemical plants requiring continuous operation.—The provisions of §§ 64-2 to 64-5 shall not apply to manufacturing establishments or employees thereof when such establishments in the nature of their business involve chemical manufacturing processes requiring, of necessity, for a normal production schedule continuous and uninterrupted operation. In such industries a work week in excess of forty hours and a workday in excess of eight hours shall not be permissible except when the provisions

of the Fair Labor Standards Act are complied with. The exemption herein provided shall not apply to or affect cotton, woolen or worsted manufacturing, finishing, dyeing, printing or processing plants and such plants and industries shall be controlled by § 64-4.

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(6075-6)