

The Burger Court Opinion Writing Database

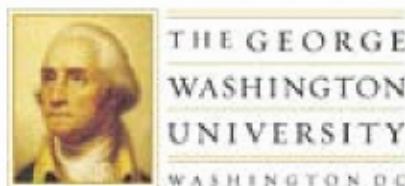
Johnson v. Robison

415 U.S. 361 (1974)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 2, 1974

Re: 72-1297 - Johnson v. Robison

Dear Bill:

Please join me.

Regards,



Mr. Justice Brennan

Copies to the Conference

To : The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Mr. Justice Douglas, J.

No. 72-1297

Circulate: 2-26

Donald E. Johnson, Admin-
istrator of Veterans'
Affairs, et al.,
Appellants,
v.
William Robert Robison, Etc.

Recirculated: _____

On Appeal from the
United States District
Court for the District
of Massachusetts.

[February —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

In *Braunfield v. Brown*, 366 U. S. 599, I expressed my view that Pennsylvania's Sunday closing law was unconstitutional as applied to Sabbatarians, see 366 U. S., at 561, 575, 577. The State imposed a penalty on a sabbatarian for keeping his shop open on the day which was the Sabbath of the Christian majority; and that seemed to me to exact an impermissible price for the free exercise of the Sabbatarian's religion. Indeed, in that case the Sabbatarian would be unable to continue in business if he could not stay open on Sunday and would lose his capital investment. See *id.*, at 611.

In *Girouard v. United States*, 328 U. S. 61, we held in overruling *United States v. Schwimmer*, 279 U. S. 644, that the words of the oath prescribed by Congress for naturalization—"will support and defend the Constitution and the laws of the United States of America against enemies, foreign and domestic"—should not be read as requiring the bearing of arms, as there is room under our Constitution for the support and defense of the Nation in times of great peril by those whose religious scruples bar them from shouldering arms. We said: "The effort of war is indivisible; and those whose religious scruples

Circulated

2-21-74

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1297

Donald E. Johnson, Administrator of Veterans' Affairs, et al.,
Appellants,
v.

William Robert Robison, Etc.

On Appeal from the
United States District
Court for the District
of Massachusetts.

[February —, 1974]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

A draftee accorded Class I-O conscientious objector status and completing performance of required alternate civilian service¹ does not qualify under 38 U. S. C. § 1652 (a)(1) as a "veteran . . . who served on active duty," (defined in 38 U. S. C. § 101 (21) as "full time duty in the Armed Forces"), and is therefore not an "eligible veteran" entitled under 38 U. S. C. § 1661 (a) to veterans' educational benefits provided by the Veterans' Readjust-

¹ 50 U. S. C. App. § 456 (j) exempts from military service persons "who by reason of religious training and belief" are opposed to participation in "war in any form" 32 CFR § 1622.14 directs local Selective Service Boards that,

"In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed services."

Further, § 456 (j) and 32 CFR §§ 1660.1-12 (1972) authorize local Selective Service Boards to order I-O conscientious objectors to perform alternate civilian service contributing to the maintenance of the national health, safety, or interest.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 22, 1974

TO THE CONFERENCE:

Re: No. 72-1297 - Johnson v. Robison

On page 21, line 13 of my opinion in this case, circulated
February 21, 1974, the word "not" should be added immediately before
the word "assume".

Sincerely,

WJB

Crucial
2-27-74

pp. 14, 21

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1297

Donald E. Johnson, Admin-
istrator of Veterans'
Affairs, et al.,
Appellants.
v.
William Robert Robison, Etc.

On Appeal from the
United States District
Court for the District
of Massachusetts.

[February —, 1974]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

A draftee accorded Class I-O conscientious objector status and completing performance of required alternate civilian service¹ does not qualify under 38 U. S. C. § 1652 (a)(1) as a "veteran . . . who served on active duty," (defined in 38 U. S. C. § 101 (21) as "full time duty in the Armed Forces"), and is therefore not an "eligible veteran" entitled under 38 U. S. C. § 1661 (a) to veterans' educational benefits provided by the Veterans' Readjust-

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Further, § 456 (j) and 32 CFR §§ 1660.1-12 (1972) authorize local Selective Service Boards to order I-O conscientious objectors to perform alternate civilian service contributing to the maintenance of the national health, safety, or interest.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

February 26, 1974

72-1297 - Johnson v. Robison

Dear Bill,

Upon the understanding that you are agreeable to the minor changes we discussed on the telephone today, I am glad to join your opinion for the Court in this case.

Sincerely yours,

PS,
J

Mr. Justice Brennan

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE POTTER STEWART

February 27, 1974

72-1297 - Johnson v. Robison

Dear Bill,

I am glad to join your opinion for the
Court as recirculated today.

Sincerely yours,

? S

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 26, 1974

Re: No. 72-1297 - Johnson v. Robison

Dear Bill:

Please join me.

Sincerely,

Mr. Justice Brennan

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 28, 1974

Re: No. 72-1297 -- Johnson v. Robison

Dear Bill:

Please join me.

Sincerely,



T. M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 27, 1974

Re: No. 72-1297 - Johnson v. Robison

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 27, 1974

No. 72-1297 Johnson v. Robison

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 27, 1974

Re: No. 72-1297 - Johnson v. Robison

Dear Bill:

Please join me in your opinion for the Court in this case.

Sincerely,

WR

Mr. Justice Brennan

Copies to the Conference