No. 21-984

IN THE

Supreme Court of the United States

HELIX ENERGY SOLUTIONS GROUP, INC.;
HELIX WELL OPS, INC.,
Petitioners,

v.

MICHAEL J. HEWITT,
Respondent.

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

BRIEF FOR THE STATES OF MISSISSIPPI, ALABAMA, LOUISIANA, MONTANA, UTAH, AND WEST VIRGINIA AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

The Fair Labor Standards Act exempts from its overtime-pay requirement "any employee employed in a bona fide executive ... capacity." 29 U.S.C. § 213(a)(1). When respondent worked for petitioners, he was "employed in a bona fide executive ... capacity." Did the court of appeals err by interpreting the statute's implementing regulations not to exempt respondent when the regulations may fairly be construed to harmonize with the statute and exempt him from the overtime-pay requirement?

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INTRODUCTION AND INTEREST OF AMICI CURIAE*

This case raises an important, recurring legal question that cuts across industries and, when answered wrongly—as it was below—delivers baseless windfalls to already-well-compensated executives.

The Fair Labor Standards Act exempts from its overtime-pay requirement "any employee employed in a bona fide executive ... capacity." 29 U.S.C. § 213(a)(1). Respondent Michael Hewitt was employed in such a capacity. He managed a dozen employees and executed petitioners' (Helix's) business programs. He concedes that he performed the duties of an executive. And he made over $200,000 a year when he worked for petitioners.

Yet a divided court of appeals ruled en banc that respondent was not "employed in a bona fide executive ... capacity" and was instead, like a blue-collar worker paid $8 an hour, entitled to overtime pay. The court did so because, in its view, respondent was not paid on a "salary basis." Respondent received a minimum guaranteed amount for every week he worked for petitioners—what in common parlance is a *salary*—and that amount far exceeded the minimum amount the regulations require. Yet the court deemed him non-exempt because he was paid a daily rate—a minimum amount for each day he worked—and his payment arrangement did not satisfy a regulation governing how daily-rate workers purportedly must be paid to be exempt executives.

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* Counsel of record for all parties received notice of undersigned counsel's intent to file this brief at least ten days before the brief's due date. S. Ct. R. 37.2(a).

This Court should grant certiorari and reverse. Respondent is an exempt executive employee. He clearly falls within the statutory exemption. He performs the duties of an executive (as he concedes), and so is "employed in a bona fide executive ... capacity." 29 U.S.C. § 213(a)(1). If a regulation renders him non-exempt, the regulation defies the statute. This Court avoids that result when it fairly can. Here it fairly can. The better view of the regulation governing certain employees whose pay is computed on a daily basis, 29 C.F.R. § 541.604(b), is that it does not apply to employees like respondent. That regulation's text shows that it applies to employees who are paid at a daily rate that falls below the weekly amount that the agency has guaranteed to workers who are paid a salary. The regulation does not apply to employees, like respondent, whose (very high) daily rate on its own exceeds what the agency requires for a weekly salary. Those employees necessarily receive the guaranteed weekly pay—the minimum weekly salary—that the agency required, and so are paid on a salary basis. If this Court has any doubts whether the daily-rate regulation applies here, it should resolve those doubts in light of the statutory text and conclude that it does not. Any other conclusion does violence to the FLSA.

The correct resolution of this case is important to the amici States. The Fair Labor Standards Act strikes a balance between improving labor conditions and sustaining employment and economic growth. Rulings that conflict with the Act's text—and broaden the Act's reach—upset that balance. The ruling below imperils protected business activity, awards sweeping windfalls, and upends employers' and employees' expectations. This Court can avoid all that by granting review and ruling in line with the statute's text.

SUMMARY OF ARGUMENT

When a court construes an agency regulation, it should do so in light of the authorizing statute and should, when it fairly can, interpret the regulation in a way that is consistent with the statute. The statute here provides that someone who is employed to perform in an executive capacity is exempt from federal overtime-pay requirements—no matter how his compensation is calculated. The administering agency has nonetheless issued regulations that are in serious tension with the statute: they make the executive exemption turn on the employee's compensation and how his compensation is computed. And the court below stretched those regulations even farther from the statute—to bestow overtime pay on a highly paid executive solely because his total compensation may turn in part on how many days he works in a week. This Court should grant review and reject that view. Consistent with the statute, regulations, and sound principles of interpretation, this Court should hold that respondent was an exempt executive employee.

REASONS FOR GRANTING THE PETITION

The Decision Below Is Wrong And Damaging.

A. This Court's Precedents Establish That, When Fairly Possible, A Court Should Interpret A Regulation To Be Consistent With The Statute That Authorizes The Regulation.

This Court is often asked to decide whether an agency regulation "is based on a permissible construction of the statute" that the agency is administering. *Chevron U.S.A. Inc. v. Natural Resources Defense*

Council, Inc., 467 U.S. 837, 843 (1984). To meet that task the Court must, of course, interpret the statute to decide whether the regulation exceeds the agency's authority and so is invalid.

At other times, however, this Court is asked just to interpret a regulation, not invalidate it. Take a case where no party challenges the regulation's validity and the parties clash only over what the regulation means. This Court is asked to construe the regulation and is not squarely asked to decide whether the regulation conflicts with the statute.

When that happens, should a court look only to the regulation? Or should it also look to, and interpret, the statute? As this Court's precedents show, a court should look to and interpret the statute. And when interpreting a regulation, a court should—when it fairly can—construe the regulation in a way that harmonizes with the statute.

This understanding—which operates as a canon of construction—has deep roots. This Court has been "quite unwilling" to read a regulation to reach conduct when the "statute speaks so specifically in terms" that show that it does not reach that conduct. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 214 (1976). Longstanding caselaw emphasizes that courts should "not interpret" a regulation "in a vacuum." *Emery Mining Corp. v. Sec'y of Labor*, 744 F.2d 1411, 1414 (10th Cir. 1984). "Rather," courts "must construe" a regulation "in light of the statute it implements." *Ibid.* A court should "not interpret an agency regulation to thwart a statutory mandate." *Ins. Co. of N. Am. v. Gee*, 702 F.2d 411, 414 (2d Cir. 1983); *Emery Mining Corp.*, 744 F.2d at 1415 (rejecting interpretation of a regulation that "plainly is at odds with the language

and objective of the statute, even if arguably consistent with the language of the regulation"). When fairly possible, then, a court should construe a regulation to harmonize with the statute it implements. *E.g.*, *LaVallee Northside Civic Ass'n v. Virgin Islands Coastal Zone Mgmt. Comm'n*, 866 F.2d 616, 623 (3d Cir. 1989) (a court should "attempt reconciliation of seemingly discordant statutes and regulations").

This Court takes this approach when construing regulations. *E.g.*, *Federal Express Corp. v. Holowecki*, 552 U.S. 389, 401 (2008) (rejecting a view of a regulation that "is in considerable tension with the structure and purposes of the" statute); *Ernst & Ernst*, 425 U.S. at 214 (refusing to apply a regulation to negligent conduct when the "statute speaks so specifically in terms of ... intentional wrongdoing ... and when its history reflects no more expansive intent"). It has done so recently when interpreting regulations that implement FLSA overtime exemptions. In *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012), the Court rejected the Department of Labor's view of regulations—regarding the "outside salesman" exemption from the FLSA's overtime-pay requirement—in part because that view was "flatly inconsistent with the FLSA." *Id.* at 159. The Court then evaluated the FLSA's text and aims in concluding that a pharmaceutical sales representative is an "outside salesman" under the regulations. *See id.* at 161-67. Similarly, in *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158 (2007), in holding that an FLSA regulation exempting domestic-service employment controlled over a conflicting regulation, a unanimous Court relied on the FLSA's aims in resolving a conflict between a literal reading of the two regulations. *Id.* at 169-70.

The court of appeals should have used this settled approach here. *See* App.61 n.26 (Jones, J., dissenting) ("The regulations, if possible, should be read in harmony with [the statute's] text.").

B. The Fair Labor Standards Act Does Not Permit A Regulation That Deems Someone Who Is "Employed In A Bona Fide Executive ... Capacity" Not To Be An Executive Exempt From The Act's Overtime-Pay Requirement Because Of How That Employee's Compensation Is Computed.

The canon described above calls for a sound understanding of the statute. The Fair Labor Standards Act is clear: If someone is employed to perform and performs the duties of an executive, then he is exempt from the Act's overtime-pay requirement—period. It does not matter how much he is compensated or how his compensation is computed. The statute does not permit an agency to deem someone who is employed in an executive capacity to be subject to the overtime-pay requirement based on features of his compensation.

The statute's text compels this conclusion. Congress exempted from the Act's overtime-pay requirement "any employee employed in a bona fide executive, administrative, or professional capacity." 29 U.S.C. § 213(a)(1). At every turn, the exemption rests on an employee's functions and duties—requiring simply that they be one of the three sorts listed. The exemption does not turn on compensation.

To start, *capacity* means "[o]utward condition or circumstances; relation; character; position." Webster's New International Dictionary 396 (2d ed. 1934);

see 2 Oxford English Dictionary 89 (1933) ("[p]osition, condition, character, relation"). As this Court observed, after invoking these definitions to construe the word *capacity* in another FLSA exemption, "[t]he statute's emphasis on the 'capacity' of the employee counsels in favor of a functional, rather than a formal, inquiry, one that views an employee's responsibilities in the context of the particular industry in which the employee works." *Christopher*, 567 U.S. at 161 (construing FLSA's outside-salesman exemption). So too for the executive exemption. The word *capacity* conveys that the exemption turns on the functions that an employee performs. The word does not convey that the exemption turns on the employee's compensation—whether it be his level of compensation or how his compensation is computed.

The words *executive*, *administrative*, and *professional* drive home that function-based understanding. Each of those words focuses on "a person's performance, conduct, or function." *Nevada v. U.S. Dep't of Labor*, 275 F. Supp. 3d 795, 804 (E.D. Tex. 2017). *Executive* means "[c]apable of performance," "operative," "[a]ctive in execution," "energetic," "[a]pt or skilful in execution," "[p]ertaining to execution," or "having the function of executing or carrying into practical effect." 3 Oxford English Dictionary 395. *Administrative* means "[p]ertaining to, or dealing with, the conduct or management of affairs," "executive," "[o]f the nature of stewardship, or delegated authority," or "a company of men entrusted with management." 1 Oxford English Dictionary 118. And *professional* means "[p]ertaining to, proper to, or connected with a or one's profession or calling" or "[e]ngaged in one of the learned or skilled professions, or in a calling considered socially superior to a trade or handicraft." 8

Oxford English Dictionary 1428. Each word affirms what *capacity* denotes: The executive exemption turns on an employee's functions, responsibilities, duties, or conduct—in particular, whether those features place an employee in a category for which overtime compensation would not be expected or appropriate. None of the terms—capacity, executive, administrative, professional—"suggest[s]" that "salary" or compensation is relevant to the exemption. *Nevada v. U.S. Dep't of Labor*, 218 F. Supp. 3d 520, 529 (E.D. Tex. 2016).

The modifying term *bona fide* reinforces this function-based understanding of the statute's text. *Bona fide* means "[i]n good faith, with sincerity; genuinely." 1 Oxford English Dictionary 980. The phrase modifies "executive, administrative, or professional capacity." "The plain meaning of 'bona fide' and its placement in the statute indicate" that the exemption applies "based upon the tasks an employee actually performs," *Nevada*, 218 F. Supp. 3d at 529—not, say, the job title that an employee is given. A business cannot apply the executive exemption to a janitor by calling him an Executive Vice President. But someone who performs executive duties falls within the exemption.

Last, the statute says that the executive exemption applies to "any" employee who is employed in an executive (or other listed) capacity. Here, *any* "is best read to mean 'one or some indiscriminately of whatever kind.'" *Christopher*, 567 U.S. at 162 (some internal quotation marks omitted). "Any" denotes breadth and affirms that the exemption covers all employees who perform the duties and functions denoted.

Taking the words of the exemption together leads to an unmistakable conclusion: If someone is

employed to perform and does perform the duties of an executive, an administrator, or a professional, then he falls outside the overtime-pay requirement. And he is "employed" in an enumerated "capacity"—be it "executive, administrative, or professional"—based on his functions and duties alone. If his duties are executive (or administrative or professional), then he is exempt. The statute requires no more. And it allows no more requirements—including compensation-based requirements. The exemption says nothing of compensation and nothing in it denotes or connotes compensation. So it leaves no room for the agency to "fill a gap" by adding a compensation requirement.

The statute does permit the agency to "define[ ] and delimit[ ]" the exemption's terms. 29 U.S.C. § 213(a)(1). That authority may give the agency some latitude in (for example) defining what duties are executive, administrative, or professional. *Nevada*, 218 F. Supp. 3d at 530. But the authority to define and delimit "is limited by the plain meaning of the statute" and does not allow the agency to rewrite the statute by adding a compensation requirement that has no basis in the statutory text. *Ibid.* "Congress gave the" agency "the authority to define what type of duties qualify—it did not give" it "the authority to supplant the duties test and establish a salary test that causes bona fide" executives, administrators, or professionals "to suddenly lose their exemption irrespective of their job duties and responsibilities." *Id.* at 531 n.6 (internal quotation marks omitted).

The statute's clear text is grounds enough to conclude that a regulation may not, based on features of an employee's compensation, subject him to the Act's overtime-pay requirement when his duties qualify him for the executive exemption. Just a few Terms

ago this Court construed another FLSA overtime exemption based only on the exemption's text—in an analysis that consumed barely a page in the Supreme Court Reporter. *See Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1140-41 (2018) ("Under the best reading of the text" of the statute, service advisors are "salesm[e]n ... primarily engaged in ... servicing automobiles."). The text here is similarly decisive.

But here there is more. The statutory structure puts beyond doubt that an employee cannot be excluded from the exemption here based on his compensation. That structure shows that Congress knows how to make an overtime exemption turn on compensation. Congress has set forth many exemptions from its general overtime-pay requirement. Title 29 U.S.C. § 213(a) and (b) contain about three dozen of them. In several of those exemptions Congress specified that the exemption turns on a feature of compensation. Certain agriculture employees may be exempt if they are "paid on a piece rate basis." 29 U.S.C. § 213(a)(6). Certain computer workers who are paid on an hourly basis may be exempt—but only if they are paid at least $27.63 per hour. *Id.* § 213(a)(17). A local-delivery driver may be exempt if he is "compensated ... on the basis of trip rates." *Id.* § 213(b)(11). A baseball player is exempt only if he is provided a minimum weekly salary. *Id.* § 213(a)(19). Certain persons employed "by a nonprofit educational institution" must, to be exempt, be paid, "on a cash basis, at an annual rate of not less than $10,000." *Id.* § 213(b)(24). A criminal investigator is exempt if he is paid "availability pay" under 5 U.S.C. § 5545a. *Id.* § 213(a)(16).

When Congress wants to make an exemption turn on a feature of compensation, it says so. It did not make the executive exemption turn on compensation.

So a regulation cannot subject an employee to the Act's overtime-pay requirement based on how he is compensated when he is in fact "employed in a bona fide executive ... capacity." 29 U.S.C. § 213(a)(1).

C. The Court Of Appeals Erred On An Important Issue When It Failed To Interpret The Regulations Here To Treat Respondent—Who Was "Employed In A Bona Fide Executive ... Capacity"—As Exempt From The Act's Overtime-Pay Requirement.

This brings us to the ultimate issue: Under the regulation, is respondent exempt from the FLSA's overtime-pay requirement? The answer is yes. And if there were any doubt, the court of appeals should have resolved it in light of the FLSA itself—under which respondent is clearly exempt. The court of appeals' contrary decision warrants further review.

To start, respondent was exempt under the statute. He was "employed in a bona fide executive ... capacity." 29 U.S.C. § 213(a)(1). He concedes that he performed executive duties. App.4, 85. As a tool pusher he customarily supervised about a dozen employees and was charged with executing petitioners' oil-and-gas-service programs. App.78-79.

Under the best reading of the regulations, respondent was also exempt. The regulations provide three requirements for the executive exemption. Pet. 5-6. First, an employee must meet a *duties requirement*. He must perform certain executive duties. *See* 29 C.F.R. § 541.100(a)(2)-(4). (We cite the regulations that applied at the relevant time. *Cf.* Pet. 5 n.2.) Second, an employee must meet a *minimum-compensation requirement*. Most employees must receive at

least $455 per week. *See* 29 C.F.R. § 541.100(a)(1). Third, an employee must be paid in a certain way—he must (as relevant here) be paid *on a salary basis*. *See id.* § 541.602(a); *id.* § 541.100(a)(1), (b). The core provisions of the salary-basis requirement state:

> General rule. An employee will be considered to be paid on a "salary basis" within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. ... [A]n exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work.

Id. § 541.602(a). So to be an exempt executive, an employee must (i) be paid regularly (weekly or less often), and (ii) receive in that regular pay a previously set ("predetermined") amount for any week in which the employee does any work (he may receive compensation beyond that—the predetermined amount can constitute "all *or part* of the employee's compensation"). The regulation ensures that an employee receives a minimum guaranteed amount—a salary—for any week in which the employee does any work.

Respondent satisfies all three regulatory requirements. First, as explained, he concededly satisfied the duties requirement that applies to executives. App.4.

Second, respondent met the minimum-compensation requirement. He needed to make only $455 per

week. 29 C.F.R. § 541.100(a)(1). He never made less than $963 in a week when working for petitioners. *See* App.79 n.2. (As Part B shows, the FLSA provides no textual basis for a compensation-level requirement. But respondent satisfied it anyway.)

Third, respondent met the salary-basis requirement. The regulations provide as a "[g]eneral rule" that an employee is paid on a salary basis if he "regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed." 29 C.F.R. § 541.602(a). And (as relevant here) "an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked," but "[e]xempt employees need not be paid for any workweek in which they perform no work." *Id.* § 541.602(a). Respondent met these criteria. He was paid on "a weekly, or less frequent basis"—to wit, every two weeks. App.79. When he was paid, he "regularly receive[d] ... a predetermined amount constituting all *or part* of" his compensation—he received at least $963 for each week in which he worked at all. *See* App.79 n.2. That predetermined amount was not subject to reduction based on "the quality or quantity of the work performed": he received at least that amount if he did any work in a week. *See* App.79. And he would receive his "full salary" (the predetermined minimum amount) "for any week in which" he "perform[ed] any work." *See ibid.* So respondent was paid on a salary basis: consistent with the regulation, his employment arrangement ensured that he received a

minimum guaranteed amount—a salary—for any week in which he worked at all. 29 C.F.R. § 541.602.

The en banc majority viewed matters differently. Because respondent received a daily rate for each day that he worked, the court reasoned that he was paid *with* (not, as 29 C.F.R. § 541.602(a) requires, "without") "regard to the number of days or hours worked" and so needed to satisfy another regulation that addresses workers whose compensation is computed on a daily basis (App.8-10):

> (b) An exempt employee's earnings may be computed on an hourly, a daily or a shift basis, without losing the [executive] exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek. ...

29 C.F.R. § 541.604(b). According to the en banc court, petitioners did not satisfy the two conditions that this regulation imposes. First, "the employment arrangement" between petitioners and respondent lacked "a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked." *See* App.11. Rather, petitioners paid respondent "a daily rate without offering a minimum weekly required amount paid

'regardless of the number of hours, days or shifts worked.'" *Ibid.* (quoting 29 C.F.R. § 541.604(b)). Second, "a reasonable relationship" did not "exist[ ] between the guaranteed amount and the amount actually earned," 29 C.F.R. § 541.604(b): petitioners paid respondent "orders of magnitude greater than the minimum weekly guaranteed amount"—respondent's daily rate. App.11.

This Court should grant review to reject that holding. If the en banc majority were right to apply 29 C.F.R. § 541.604(b), then that regulations would defy the statute. The statute provides that an employee is exempt if he is "employed in a bona fide executive ... capacity." Respondent concededly performed the duties of an executive, so he falls within the statute. *See supra* Part B. The court of appeals' view of the regulations would cause respondent to fall outside the exemption based on how his compensation is computed. That conflict with the statute is not one that a court should accept unless it has no better option.

Here there is a better option. The better view of 29 C.F.R. § 541.604(b) is that it does not apply to respondent and employees compensated as he is.

The en banc majority erred in thinking that 29 C.F.R. § 541.604(b) applies here at all. The court thought that respondent was paid *with* (not, as 29 C.F.R. § 541.602(a) requires, "without") "regard to the number of days ... worked," so the court believed that respondent had to meet the daily-rate requirements in 29 C.F.R. § 541.604(b). *See* App.8-11. But that is not the best reading of section 541.602(a)'s "without regard" requirement. Under section 541.602(a) it is the employee's *salary* that cannot be paid with "regard to the number of days ... worked." Section

541.602(a) says that "an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked." The employee's "full salary" is different from an employee's full compensation. The term "full salary" (29 C.F.R. § 541.602(a)) refers to the regularly paid, "predetermined amount constituting all *or part* of the employee's compensation" that is "not subject to reduction because of variations in the quality or quantity of the work performed" (*ibid.*). If the employee gets a salary that meets the required level, he can also get other compensation (even on a daily rate) and still satisfy the salary-basis requirement. Take respondent. His *full salary* was the minimum amount that he would receive in any week in which he did any work—$963. That salary was paid without regard to the number of days he worked (so long as he worked at some point in the week). He received *further compensation*, based on a daily rate—but that compensation was not his *salary*, so it does not matter that it was paid with "regard to the number of days ... worked." Section 541.604(b) was thus never triggered because respondent was guaranteed a $963 salary per week for any week in which he did *any* work—a salary that far exceeds the minimum the regulations require.

Section 541.604(b) applies to a different set of workers—those whose daily (or hourly or shift) rate does not on its own exceed the minimum weekly guarantee that the regulations require. Section 541.604(b) speaks to hourly, daily, and shift-basis workers and says that an employee will not "los[e]" the executive exemption if his employment arrangement "guarantee[s]" that the employee will receive "at least the minimum weekly required amount." As explained,

respondent's high pay meant that petitioners never "los[t]" the exemption and never needed the safety valve that section 541.604(b) supplies. Petitioners satisfied section 541.602, and section 541.604(b) never came into play. Section 541.604(b)'s directive makes sense only for—and applies only to—someone whose daily (or hourly or shift) rate does not on its own catapult him above the weekly salary level that the regulations require. There is no reason to add section 541.604(b)'s extra guarantee for someone who is already compensated so well that if he does *any* work in a week then he exceeds the agency's minimum weekly salary guarantee.

Similarly, section 541.604(b)'s reasonable-relationship test makes sense only for—and applies only to—employees paid at a level at which they are not guaranteed the minimum weekly salary whenever they work at all in a week. As the court of appeals itself explained, "the reasonable relationship test ensures that the minimum weekly guarantee is not a charade." App.10. It "sets a ceiling on how much the employee can expect to work in exchange for his normal paycheck"—"by preventing the employer from purporting to pay a stable weekly amount without regard to hours worked, while in reality routinely overworking the employee far in excess of the time the weekly guarantee contemplates." *Ibid.* (emphasis omitted). That logic has no force for those in respondent's shoes. He enjoyed not just a high weekly guarantee but also additional pay for each other day he did any work—which all brought him more than $200,000 a year. The reasonable-relationship test makes sense (if at all) only for someone who receives a daily (or hourly or shift) rate that does not on its own meet the weekly salary level that the regulations require.

If there were any doubt whether 29 C.F.R. § 541.604(b) applies to employees like respondent—those whose daily rate exceeds the regulation's weekly salary-level requirement—that doubt should be resolved in a way that respects the FLSA's text. As explained in Part A, a court should "not interpret" regulations "in a vacuum" but should instead "construe" them "in light of the statute" they "implement[ ]." *Emery Mining Corp. v. Sec'y of Labor*, 744 F.2d 1411, 1414 (10th Cir. 1984). And a court should "not interpret an agency regulation to thwart a statutory mandate." *Ins. Co. of N. Am. v. Gee*, 702 F.2d 411, 414 (2d Cir. 1983). Here, that means holding that 29 C.F.R. § 541.604(b) does not apply to employees like respondent—those whose daily rate exceeds the regulation's weekly salary-level requirement. Any other approach causes the regulations to do needless violence to the statute's text. App.55, 61 (Jones, J., dissenting) ("[t]he majority's conclusion is ... at odds with the statute" and the court should have adopted an interpretation of the regulation "that is more faithful to the statute"). A court should be "quite unwilling" to reach that result because, as Part B explains, the "statute speaks so specifically in terms" that do not allow an employee to be stripped of the executive exemption based on how his compensation is computed. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 214 (1976).

The court of appeals embraced a view of the regulations that is (at best) "in considerable tension with" the statute, *Federal Express Corp. v. Holowecki*, 552 U.S. 389, 401 (2008), and (at worst) "flatly inconsistent with the FLSA," *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 159 (2012). The question whether a regulation should be construed consistently with its authorizing statute is important. It

is critical in this case for many reasons the petition identifies. Pet. 33-35. The question cuts across industries, determines whether to unleash massive windfalls, and reaches core questions about the limitations on agency power. This Court's review is warranted in this case to correct an error that risks significant harm to the law and legitimate business expectations.

CONCLUSION

This Court should grant the petition and reverse the en banc court of appeals' judgment.

Respectfully submitted.

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