No. 24-1309

IN THE

Supreme Court of the United States

EAST PENN MANUFACTURING COMPANY, INC.,

Petitioner,

v.

LORI CHAVEZ-DEREMER, SECRETARY, UNITED STATES DEPARTMENT OF LABOR,

Respondent.

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

BRIEF FOR AMICUS CURIAE THE INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The International Association of Drilling Contractors ("IADC") is a non-profit global oil and gas drilling industry organization with members comprising hundreds of oil and gas drilling firms.

[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus or its counsel made a monetary contribution to this brief's preparation or submission. Pursuant to Supreme Court Rule 37.2, counsel of record for all parties received timely notice of the intention to file this brief.

The IADC's member firms employ thousands of employees across the United States who are required to wear various types of personal protective equipment on a daily basis to provide protection from potential job-related hazards. Clarity and consistency could be provided to the IADC's member organizations if the Court were to issue the requested writ of certiorari and find in East Penn's favor.

SUMMARY OF ARGUMENT

Through this case, the Court has the opportunity to bring clarity and uniformity to an area of law that has confused employers and courts for decades. Nearly a century ago, Congress enacted employee protections in the Fair Labor Standards Act ("FLSA"). A mere decade after that, Congress was forced to enact the Portal to Portal Act ("PTPA") specifically to curb the unwarranted and expansive approach to FLSA liability adopted by the federal courts. By specifying that the compensable workday does not include activities undertaken before and after an employee's principal work, Congress intended the PTPA to bring clarity to the FLSA, allowing employers to avoid unpredictable backpay or overtime liability for preliminary and postliminary activities.

Unfortunately, the Court subsequently undid much of the PTPA's protections and clarity in *Steiner* v. *Mitchell*, 350 U.S. 247 (1956), which held that the very same activities the PTPA meant to remove from FLSA coverage were compensable so long as they were "integral and indispensable" to the principal activities an employee was hired to perform. That meant, among other things, that the battery-plant employees were owed compensation for donning their work clothing at the start of their shifts and for doffing it at the end. In recent decades, FLSA liability has run

rampant once again based on *Steiner*'s unfortunate holding, which ignores both the text of the PTPA and its purpose. Worse, since the holding in *Steiner* is unmoored from the PTPA, courts attempting to apply *Steiner* have raised a host of additional, equally vague doctrines that leave employers with no certainty about their FLSA obligations until a jury has weighed the evidence and potentially saddled them with millions in unexpected liability, usually in high-stakes collective actions. That is just what happened here, and it is increasingly likely to happen in the Third Circuit and other courts going forward.

The Court should therefore grant the petition to restore clarity and uniformity to this area of federal law. As reflected in the PTPA, no employer hires employees to put on generic protective equipment, take showers, or go through security screenings. They hire employees to perform the productive work that follows these preliminary tasks. *Steiner*'s atextual innovation has proven not only to be increasingly incompatible with the PTPA, but it is also unworkable in practice. It should, therefore, be overruled and the PTPA returned to its original intended state.

REASONS FOR GRANTING THE WRIT

I. *STEINER*'S INTERPRETATION OF THE PTPA IS UNWORKABLE AND UNPREDICTABLE.

A. Directly Contrary To Congress' Intent, *Steiner* Has Produced Arbitrary Results That Employers Cannot Anticipate.

Enacted in 1938, the FLSA sets minimum wages and required overtime for covered employees working more than forty hours in any given workweek. 29

U.S.C. §§ 206, 207. Ever since the statute's enactment, however, there has been uncertainty on one key element of the FLSA's scope: when does the compensable workday begin and end?

In the statute's first decade, this Court interpreted the covered workday expansively. For example, in *Tennessee Coal, Iron & Railroad Co.* v. *Muscoda Local No. 123*, 321 U.S. 590 (1944), the Court held that time miners spent traveling between an employer-provided changing house and the mine was compensable, *id.* at 594, 599, but did not reach the question whether the time spent changing clothes (which the lower court had excluded) was as well, *id.* at 593 & n.4. But two years later in *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), the Court held that compensable work also included the time workers spent "putting on aprons and overalls, removing shirts, * * * putting on finger cots," and engaging in other preliminary activities. *Id.* at 683, 692-93.

Anderson created a "dramatic influx of litigation involving vast alleged liability." 93 Cong. Rec. 2087, 2089 (1947) (Sen. Donnell). It "provoked a flood of litigation" in which unions and employees filed more than 1,500 FLSA lawsuits seeking "nearly $6 billion in back pay and liquidated damages for various preshift and postshift activities." *Integrity Staffing Sols., Inc.* v. *Busk*, 574 U.S. 27, 31-32 (2014) (citing S. Rep. No. 37, 80th Cong., 1st Sess., 2-3 (1947)).

Intending to curtail *Anderson*'s expansive interpretation and the uncertain liability it was imposing on employers, Congress enacted the PTPA. Congress recognized that, among other problems, the Court's interpretation had "create[ed] wholly unexpected liabilities, immense in amount and retroactive in operation, upon employers" that "would

bring about financial ruin," would "create[e] both an extended and continuous uncertainty on the part of industry" as to companies' financial condition, would grant "windfall payments" to employees for activities no one expected to be compensable, and would "burden[]" courts "with excessive and needless litigation." 29 U.S.C. § 251(a). Accordingly, while the PTPA left in place the Court's definition of "work" and "workweek," Congress explicitly limited the start- and end-points of the compensable workday by removing from the FLSA's scope all "activities which are preliminary to or postliminary to" employees' principal work activities. *See* 29 U.S.C. § 254(a)(2).

Despite the PTPA's clear intent to clarify and limit employers' FLSA obligations, the Court subsequently reintroduced the same issues the PTPA was intended to address: unpredictable and extensive employer liability for activities that form no part of an employee's productive work. *See* Pet. 5-7. In *Steiner*, the Court held that activities that were concededly preliminary and postliminary to principal activities in ordinary circumstances—showering and changing—were nonetheless compensable for battery-plant employees because they were "integral and indispensable to" their principal activities. 350 U.S. at 248-49, 252-55. But the "integral and indispensable" test is "abstract," "murk[y]," "fact-intensive," and "not amenable to bright-line rules," *Tyger* v. *Precision Drilling Corp.*, 78 F.4th 587, 592 (3d Cir. 2023), so the resolution of each case depends on how juries and judges view idiosyncratic facts, thereby creating the precise uncertainty and open-ended liability that Congress intended to remove through the PTPA. In the past two decades, *Steiner*'s integral-and-indispensable expansion to the PTPA's principal-

activities limitation has provoked its own flood of litigation. *See infra* at 12. *Steiner* therefore revived the very problem the PTPA intended to avoid.

As the petition explains, the circuit split implicated by this case over whether employers must pay only for the "reasonable" time their workers engage in preliminary and postliminary activities—or instead for the actual time, even if it is unreasonable—makes it impossible for national employers to know what rule applies to them. Pet. 13-18. The Court should therefore grant certiorari at least to decide this important question. But the uncertain reach of the *Steiner* rule extends far more broadly.

For example, it is impossible for employers to predict whether they must pay for the time workers spend putting on and taking off generic personal protective equipment ("PPE") such as coveralls, steel-toed boots, hard hats and safety glasses—even though such activities are plainly "preliminary" and "postliminary" to the workers' principal activities. In *Tyger*, the Third Circuit (expressly rejecting the test applied by the Second Circuit and other courts) held that an IADC member, Precision Drilling, could not know whether such time is compensable without enduring the immense cost and uncertainty of a collective-action jury trial that would establish factual predicates for a multi-factor determination whether donning basic PPE is "integral and indispensable" to various jobs at drilling sites. 78 F.4th at 592-95. Thus, even though a jury in this case found that petitioner East Penn is not required to compensate its workers for donning and doffing the same sort of PPE, Pet. App. 118a, IADC member Precision Drilling must still endure its own costly jury trial to determine whether the same rule applies to it, highlighting the

inconsistent application of standards across similar industries.

Other examples abound. Employers may be liable for train operators' time walking back from trains at the end of a shift if they happen to answer a passenger's question on the way,[2] for prison guards' security screenings,[3] or for commuting time whenever a crane operator picks up fuel on his way to work.[4] Moreover, employees in different jobs may or may not be compensated for identical, employer-required pre-shift activities such as health screenings.[5] Given

[2] *Finnigan* v. *Metro. Transp. Auth.*, 2025 WL 963998, at *5 (E.D.N.Y. Mar. 31, 2025) (triable issue whether train operators walking back from trains at end of shift and sometimes answering passenger questions on the way was "customer service" and "an integral and indispensable part" of the operators' employment).

[3] *Aguilar* v. *Mgmt. & Training Corp.*, 948 F.3d 1270, 1279 (10th Cir. 2020) (security screenings integral and indispensable to detention officers' principal activities); *but see Lewis* v. *MHM Health Pros., LLC*, 696 F. Supp. 3d 707, 716-17 (E.D. Mo. 2023) (dismissing FLSA claim premised on security screenings for prison health personnel because screenings were not integral to their work).

[4] *Coates* v. *TNT Crane & Rigging, Inc.*, 2023 WL 3947493, at *2-3 (W.D. Tex. May 12, 2023) (jury could properly decide whether crane operators' stops for fuel and other supplies on the way to work were integral and indispensable to their work operating cranes).

[5] *Compare*, *e.g.*, *Harwell-Payne* v. *Cudahy Place Senior Living LLC*, 2022 WL 6195619, at *6-7 (E.D. Wis. Sept. 30, 2022) (potentially compensable for medical aides) *and Snyder* v. *Univ. of Chi. Med. Ctr.*, 2025 WL 564282, at *3-4 (N.D. Ill. Feb. 20, 2025) (potentially compensable for healthcare workers) *with Howard* v. *Post Foods, LLC*, 2022 WL 4233221, at *14-15 (W.D. Mich. Sept. 14, 2022) (not compensable for food-production workers) *and Pipich* v. *O'Reilly Auto Enters., LLC*, 2022 WL

these arbitrary and unpredictable results, no employer that requires such activities will be able to know in advance whether they are compensable.

Different results may also apply to different employees hired by the same employer. One court has held that walking through security screenings is integral and indispensable to prison guards' principal activities of maintaining prisoner safety. *Aguilar*, 948 F.3d at 1279. But another court has held that such security screenings for prison health employees are not integral and indispensable to their principal activities of maintaining prisoner health, *Lewis*, 696 F. Supp. 3d at 716, while yet another has held that screenings may be integral and indispensable to prison dental employees' principal activities so long as they allege that providing security is also one of their principal activities, *Bath* v. *State of California*, 326 Cal. Rptr. 3d 604, 616 (Cal. Ct. App. 2024). An employer trying to comply with all these cases may need to pay some employees, but not others, for identical pre-shift conduct.

Steiner also creates perverse employer incentives. In *Tyger*, for example, the Third Circuit held that the "location" of changing clothes—whether at home or on-site—affects whether an activity is "integral." 78 F.4th at 592 (holding that "[l]ocation" is a key inquiry and that "[i]t matters where workers change"). But it is well-established that employees cannot be compensated for changing at home, since otherwise the "continuous workday" rule, *see infra* at 13, would mean they would also be compensated for commuting to work. *See*, *e.g.*, Dep't of Labor, *Wage & Hour Adv.*

788671, at *3-4 (S.D. Cal. Mar. 15, 2022) (not compensable for auto-parts handlers).

Mem. No. 2006-2, at 3 (May 31, 2006) ("It is our longstanding position that if employees have the option and the ability to change into the required gear at home, changing into that gear is not a principal activity, even when it takes place at the plant."); 29 C.F.R. § 790.6. Thus, by offering a workplace location for changing into and out of basic protective clothing such as reinforced boots—even if solely for employees' convenience—employers risk a jury finding that donning is now "integral" because it occurs onsite, thereby requiring the employers not only to pay for their actual donning and doffing time but also for time spent walking to work locations afterward. *See Tyger*, 78 F.4th at 591 (noting that "the walking claim rises and falls with the changing claim"). That could discourage employers from providing such benefits, and arbitrarily advantage employers whose jobsites make onsite changing impracticable.

As another example of a perverse employer incentive, courts have held that the time it takes for call-center employees to boot up and log into their computers—which house the employees' time clocks—is compensable if they use those computers to answer calls. *Cadena* v. *Customer Connexx LLC*, 51 F.4th 831, 838-39 (9th Cir. 2022); *Deutsch* v. *My Pillow, Inc.*, 2023 WL 3125549, at *12 (D. Minn. Apr. 27, 2023). But that result would likely be the opposite had the employers provided employees with traditional phones to make their calls, since booting up the computer would no longer be integral to their productive work even if it remained indispensable to their timekeeping.

B. The Court Should Grant The Petition And Restore The PTPA To What Congress Intended.

As these cases and others show, *Steiner*'s atextual rule has reimposed the very unpredictability and potentially ruinous liability that Congress enacted the PTPA to avoid. The PTPA was expressly meant to protect employers from unpredictable, runaway liability, but *Steiner*'s integral-and-indispensable test undoes much of the statute's intended effects.

As its name denotes, the Portal to Portal Act was intended to limit compensation to the "portals" that employees pass through before and after they engage in their principal work activities. The statute does this by eliminating mandatory compensation for "activities which are preliminary to or postliminary to [a worker's] principal activity or activities, which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities." 29 U.S.C. § 254(a)(2). As noted, Congress did so in part because it found that prior judicial interpretations expanding the workday "creat[ed] wholly unexpected liabilities, immense in amount," that could "bring about financial ruin of many employers," create "an extended and continuous uncertainty on the part of industry," and "burden" courts with "excessive and needless litigation." 29 U.S.C. § 251(a).

As shown above, *Steiner*'s integral-and-indispensable test, by effectively abrogating Congress's bar on mandatory compensation for preliminary or postliminary activities, has created the "unexpected liabilities," "continuous uncertainty," and "excessive and needless litigation" that the PTPA

was meant to prevent. This is amply shown by its effect on the IADC's members, virtually all of whom require their rig employees, before and after they engage in their principal work activities, to don and doff generic safety gear of the sort routinely worn by hourly workers in disparate industries. Not only is there intractable disagreement among the circuits as to whether and under what circumstances such time is ever compensable,[6] but even ***within*** the Third Circuit, an employer cannot know whether such time will be compensable until it has faced the inordinate expense and uncertainty of a collective-action jury trial. *See supra* at 6-7.

The Court should therefore grant certiorari and reverse the judgment below. Principal activities are the PTPA's bottom line. Employers do not hire employees principally to put on hardhats and boots or do other things that are not their principal work activities; they hire employees to perform the productive work that ***follows*** these preliminary tasks. The Court should therefore return the PTPA to what Congress intended. Doing so would still allow employers to pay for preliminary and postliminary activities by agreement or otherwise, as East Penn did

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[6] *Compare Perez* v. *City of New York*, 832 F.3d 120, 127 (2d Cir. 2016) (time donning and doffing safety gear compensable only "if the gear—however generic or specialized—guards against 'workplace dangers' that accompany the employee's principal activities and 'transcend ordinary risks.'") (citation omitted) *and Von Friewalde* v. *Boeing Aerospace Ops., Inc.*, 339 F. App'x 448, 454 (5th Cir. 2009) ("[D]onning and doffing of generic protection gear such as safety glasses and hearing protection are in any event 'non-compensable, preliminary tasks' under the [PTPA].") *with Tyger*, 78 F.4th at 594-95 (rejecting *Perez* test as "too narrow" and adopting open-ended multifactor balancing test instead).

here by voluntarily paying for "reasonable" time spent showering. But it would eliminate the "excessive and needless litigation," 29 U.S.C. § 251(a), Congress expressly sought to end.

II. THIS CASE HAS OVERRIDING NATIONWIDE IMPORTANCE.

The importance of this case far transcends the specific dispute at issue. Congress enacted the PTPA in an attempt to stem the "flood of litigation"—more than 1,500 cases—sparked by this Court's expansive allowance of compensation "for various preshift and postshift activities." *Busk*, 574 U.S. at 31-32 (citing S. Rep. No. 37, 80th Cong., 1st Sess., 2-3 (1947)). Unfortunately, the situation today is even worse, with the intractable legal uncertainty fostered by the *Steiner* rule engendering another flood of litigation that shows no signs of abating.

Recent years have seen between 6,000 and 8,000 new FLSA cases filed each year, and a large percentage of those are filed as collective actions.[7] In 2023 alone, collective FLSA actions settled for a total of nearly half a billion dollars—a dramatic increase over the prior two years. Seyfarth Shaw, *supra*, at 15. In the same year, the DOL recovered over $150 million.[8] And as shown above, the "integral and indispensable" test has been applied, with unpredictable and arbitrary results, in numerous disparate industries and work settings, from the IADC's drilling companies, to petitioner's battery

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[7] *See* Seyfarth Shaw LLP, *2023 FLSA Litigation Metrics & Trends*, at 4, 7 (https://tinyurl.com/2ts7c7zy).

[8] Jennifer Weiss, *DOL Releases Latest Enforcement Stats On FLSA, FMLA*, Resourceful Finance Pro (Feb. 9, 2024) (https://tinyurl.com/2zh9druk).

plants, to meat and poultry plants and processers, and virtually every other industry in between.

Moreover, because this case arises in the Third Circuit, it will likely have a nationwide impact by itself. The Third Circuit includes the State of Delaware, which, as of 2023, was the state of incorporation for nearly 70% of all Fortune 500 companies and was the state of incorporation for roughly 80% of all IPOs in that same year.[9] In light of recent case law making clear that a defendant's state of incorporation is the critical venue for establishing personal jurisdiction for all plaintiffs in collective actions, *see, e.g., Canaday* v. *Anthem Companies*, 9 F.4th 392, 396-98 (6th Cir. 2021)), the Third Circuit's rule will not only wreak havoc on employers in the states it covers but will extend nationwide.

The difficulties arising from *Steiner*'s unworkable and unpredictable test are also magnified by at least two other FLSA doctrines. First, the "continuous workday rule," under which an employee is entitled to compensation beginning with his or her first compensable activity and continuing through to the last, multiplies employer liability. *See* Pet. 8; *IBP, Inc.* v. *Alvarez*, 546 U.S. 21, 28-29 (2005); 29 C.F.R. § 790.6(a). When otherwise preliminary or postliminary activities are deemed "integral and indispensable" to a principal activity, even a few minutes of such time sweeps in additional "walking time"—from and to the location of those activities—that would not only otherwise be non-compensable under the PTPA but is also an activity that the PTPA expressly sought to

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[9] *See* Delaware Division of Corporations, *2023 Annual Report* (https://corpfiles.delaware.gov/Annual-Reports/Division-of-Corporations-2023-Annual-Report.pdf).

exempt.[10] This doctrine therefore amplifies employers' potential liability in many cases, since a finding that preliminary or postliminary activities are integral and indispensable to a principal activity not only opens the employer to liability for the time the employee spent on that activity but also extends the workday longer than the employer would ever have expected by sweeping in additional time.

Second, the de minimis doctrine—one of the only limitations on an employer's liability for preliminary or postliminary activities, Pet. App. 4a-5a—adds its own complexity. That doctrine arises from *Anderson* itself, where the Court's expansive interpretation of FLSA liability left it with a need for some limiting principle, which it supplied by noting that "negligible" time could be "disregarded" because the workweek "must be computed in light of the realities of the industrial world." 328 U.S. at 692. In this very case, the Third Circuit referred to the de minimis doctrine as "atextual" and "hazy." Pet. App. 5a. The doctrine is also the source of its own division among the lower courts. *See* Pet. 30-31 (noting differences in whether time should be aggregated to determine whether it is de minimis). And the doctrine often applies, as it did

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[10] *See, e.g.,* 29 U.S.C. § 254(a)(1) (making non-compensable time spent "walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform"); *Tyger*, 78 F.4th at 591 (walking time compensable if donning-and-doffing time is); *Lee* v. *Dana Inc.*, 2024 WL 4349402, at *6 (N.D. Ohio Sept. 30, 2024) (plausible allegations that donning PPE was compensable also rendered claims for post-donning time spent "walking to and from workstations" plausible); *Walsh* v. *Timberline S., LLC*, 658 F. Supp. 3d 484, 491 (E.D. Mich. 2023) (adding 30 minutes of driving time on top of 30 minutes of fueling time when employees stopped for fuel while heading to a worksite to harvest timber).

here, to activities at the start or end of the workday which, if held to be integral and indispensable, can also extend the workday longer than employers or employees would otherwise have expected in light of the continuous-workday rule. *See, e.g.*, *Butler* v. *DirectSAT USA, LLC*, 55 F. Supp. 3d 793, 814-18 (D. Md. 2014) (discussing difficulties of applying de minimis doctrine in conjunction with continuous-workday rule).

Overruling *Steiner* would therefore dramatically curb, or even eliminate, the need for courts or employers to rely on the de minimis doctrine. Returning the PTPA to its text and purpose—ensuring employers pay for all principal activities but limiting employer liability for preliminary and postliminary ones—would sweep away the "hazy"[11] and atextual de minimis issue by eliminating the "murk[y]"[12] and atextual integral-and-indispensable doctrine that renders it necessary in the first place. *Cf. Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 235 (2014) (holding donning-and-doffing non-compensable under different provision of FLSA and noting that this holding would "avoid * * * judicial involvement in 'a morass of difficult, fact-specific determinations'" involved in the de minimis inquiry) (citation omitted).

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[11] Pet. App. 5a.

[12] *Tyger*, 78 F.4th at 592.

CONCLUSION

For the foregoing reasons, and those in the petition, the Court should grant certiorari and reverse the judgment below.

Respectfully submitted,

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