No. 24A-____

IN THE

Supreme Court of the United States

EAST PENN MANUFACTURING COMPANY, INC.
Applicant,

v.

SECRETARY, UNITED STATES DEPARTMENT OF LABOR,
Respondent.

APPLICATION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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TO THE HONORABLE SAMUEL A. ALITO, JR., AS CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT:

Under this Court's Rule 13.5, Applicant East Penn Manufacturing Company, Inc. respectfully requests a 60-day extension of time, to and including July 21, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.[1] The court of appeals entered its judgment on December 19, 2024, App. 1a, *infra*, and denied Applicant's timely petition for panel rehearing and rehearing en banc on February 20, 2025, *id.* at 2a. Unless extended, the time within which to petition for a writ of certiorari will expire on May 21, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). Counsel for Respondent Secretary, United States Department of Labor does not oppose this request.

1. This case presents the ideal opportunity to finally overrule *Steiner* v. *Mitchell*, 350 U.S. 247 (1956), which erroneously held in reliance on legislative history alone that certain employee activities are compensable under the Fair Labor Standards Act ("FLSA"). Highlighting the chaos that *Steiner* has caused, this case also presents two separate circuit splits that have arisen as a result of *Steiner*'s holding.

Shortly after the FLSA was passed, this Court held that the statute required employers to pay overtime for activities that occurred before and after employees'

[1] Under this Court's Rule 29.6, Applicant East Penn Manufacturing Company, Inc., states that it is not publicly traded and has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

"productive work," including walking to and from their work station, showering, and changing clothes. *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946). This decision "provoked a flood of litigation" that imposed "wholly unexpected liabilities," creating an "emergency" that threatened "financial ruin of many employers." *Integrity Staffing Sols., Inc.* v. *Busk*, 574 U.S. 27, 31-32 (2014) (citations omitted). So Congress "responded swiftly" by enacting the Portal-to-Portal Act, which amended the FLSA to explicitly exclude "preliminary" or "postliminary" activities, including walking time, as non-compensable. *Id.* at 37 (quoting 29 U.S.C. § 254(a)). But in 1956, this Court held that activities are not "preliminary" or "postliminary," even though they occur before or after the employees' productive labor, if they are "integral and indispensable" to this productive labor. *Steiner*, 350 U.S. at 256. *Steiner* derived this exception not from the text of the FLSA or Portal-to-Portal Act, but from cherry-picked statements in an admittedly "conflicting" legislative history. *Id.* at 255–56. This exception has sowed confusion ever since, including by generating two important circuit splits implicated in this case.

2.a. In this case, Applicant manufactures or recycles lead-acid batteries. App. 6a, *infra*. Applicant pays hourly workers for their productive work, and further affords them five minutes of paid time at the beginning of each shift (to put on their work uniform and walk to their work station) and ten minutes of paid time at the end of each shift (to walk back from their work station, shower, and change clothes). *Id.* at 7a. Applicant based this additional compensation on the reasonable time it takes to perform these activities. *Id.* at 10a.

b. In March 2018, the Secretary of the Department of Labor filed this action, seeking back wages on behalf of 11,780 current and former hourly employees of Applicant. *Id.* at 7a. The Secretary alleged that Applicant was required to pay these employees for the actual time it took them to conduct these activities, rather than the reasonable time it should have taken them. *Ibid.*

On summary judgment, the district court agreed with the Secretary and ruled that Applicant's employees were entitled to compensation for the actual time it took them to conduct these activities, regardless of whether that time was reasonable. *Id.* at 10a. The case proceeded to trial, during which the Secretary's expert estimated that Applicant's employees actually spent, on average, 15.6 minutes on the start-of-shift activities, and 11.0 minutes on the end-of-shift activities. *Id.* at 7a. The Secretary also adduced evidence that a number of employees performed these activities outside of the paid time periods afforded to them. *Id.* at 25a, 46a.

At the conclusion of trial, the parties disputed the appropriate jury instruction on the issue of whether the alleged uncompensated time was "de minimis," *id.* at 8a—another atextual exception recognized in this Court's prior precedent, *Anderson*, 328 U.S. at 692. The district court sided with the Secretary and instructed the jury that it was Applicant's burden to prove entitlement to this de minimis exception. App. 8a, *infra*. The jury then returned a verdict of approximately $22.25 million in favor of the Secretary. *Id.* at 7a.

c. The Third Circuit affirmed. *Id.* at 6a. It acknowledged a circuit split on how to calculate time spent performing "integral and indispensable" activities, with

the Eighth, Ninth, and Tenth Circuits calculating based on reasonable time, and the Second and Sixth Circuits having calculated based on actual time. *Id.* at 12a-13a. The Third Circuit purported to side with the Second and Sixth Circuits. *Ibid.*

The Third Circuit also ruled that Applicant, and not the Secretary, bore the burden of proving that any uncompensated time was de minimis. *Id.* at 8a. In doing so, the Third Circuit acknowledged that it was joining the Seventh, Ninth, and Tenth Circuits on this issue. *Id.* at 9a-10a. It did not acknowledge the contrary position of the Fifth Circuit. *Von Friewalde* v. *Boeing Aerospace Operations, Inc.*, 339 F. App'x 448, 458 (5th Cir. 2009) (per curiam) (holding that employees "failed to present sufficient evidence" to meet "their burden" that the time spent on challenged activities was more than "de minimis").

Applicant filed a petition for rehearing by the panel and the Court en banc. That petition was denied. App. 2a, *infra.*

3. The Third Circuit's ruling warrants this Court's review for at least two reasons.

First, as just discussed, the decision below directly implicates two circuit splits concerning the *Steiner* exception for preliminary and postliminary activities that are "integral and indispensable" to principal activities. See pp. 3–4, *supra.* At a minimum, this Court could grant certiorari to resolve those two important questions.

Second, the decision below provides an ideal vehicle for overruling *Steiner*. This issue was preserved, would be dispositive, and is squarely presented. And *Steiner* should be overruled. As this Court recently explained, "*[s]tare decisis* is not

an 'inexorable command.'" *Loper Bright Enterpises* v. *Raimondo*, 603 U.S. 369, 407 (2024) (citation omitted). Here, "the quality of [*Steiner's*] reasoning, the workability of the rule it established, and reliance on the decision . . . all weigh in favor of letting [*Steiner*] go." *Ibid.* (citation omitted).

To begin with, *Steiner* was poorly reasoned and contrary to the plain text of the Portal-to-Portal Act—in part because it "was decided at a time when the Court's statutory interpretation decisions sometimes paid less attention to the actual text of the statute than to its legislative history." *Allen* v. *Milligan*, 599 U.S. 1, 103 (2023) (Alito, J., dissenting).

The rule *Steiner* established is also unworkable, as evidenced by the circuit division discussed above and others that will be addressed in the petition. Overruling that decision would obviate both circuit splits discussed earlier, and also dispel broader confusion among lower courts as to how to apply this atextual exception.

Finally, there are minimal reliance interests at stake. See, *e.g.*, *Llorca* v. *Sheriff, Collier Cnty., Fla.*, 893 F.3d 1319, 1324 (11th Cir. 2018) (describing the "integral and indispensable" inquiry as "fact-intensive and not amenable to bright-line rules"). For non-unionized employees such as East Penn's, where there is a contract, custom, or practice of paying employees for preliminary or postliminary activities, Section 254(a) (and the exception to Section 254(a) recognized by *Steiner*) does not apply. See 29 U.S.C. § 254(a), (b). As for unionized employees, they can address compensation for preliminary and postliminary activities through the collective-bargaining process. See *id.* §§ 203(o), 254(b)(1). And in all events, states

remain free to require higher wages and payment for preliminary and postliminary activities, too. See, *e.g.*, *id.* § 218(a).

4. Good cause exists for the requested extension. Lead counsel for Applicant in this Court were not involved in the proceedings below, and additional time is needed to complete a review of the record, research the relevant legal issues in this case, and prepare and file a petition that would be helpful to the Court. Also, counsel have had significant professional responsibilities in the last 60 days that have impeded their ability to draft this petition. These include, among others:

- A response brief in a mass arbitration before the American Arbitration Association;
- Oral argument in *Commonwealth's Attorney* v. *Serrano*, Record No. 0396-24-4 (Va. Ct. App.);
- A response to a motion to dismiss in *Norsk Hydro Oil.* v. *Talos ERT*, No. 24-cv-2244 (S.D. Tex.);
- An opening brief in *Amazon.com Services LLC* v. *NLRB*, No. 24-13819 (11th Cir.);
- Oral argument in *American Southern Homes Holdings LLC* v. *Erickson*, No. 24-10287 (11th Cir.);
- A response brief in *Unimed International Inc.* v. *Fox News Network, LLC*, No. 24-2987 (3d Cir.);
- Dispositive motions and trial preparation in *Phi Zeta Delta Fraternity* v. *Washington & Lee University*, Case No. 163CL24000003-00 (Va. Cir. Ct. Rockbridge County);
- Opposition to a motion for summary judgment, and cross-motion for summary judgment in *Cumbie* v. *Ashworth*, No. 24-cv-2505 (D. Md.);
- Oral argument on a motion to dismiss in *White* v. *Miyares*, No. 3:24-cv-725 (E.D. Va.); and

- An answer due in *Alexander* v. *State of Alaska*, No. 3AN-23-04309CI (Ala. Sup. Ct.).

5. Counsel for Respondent does not oppose the requested extension.

Accordingly, Applicant respectfully requests that its time to file a petition for a writ of certiorari be extended by 60 days, to and including July 21, 2025.

Respectfully submitted,

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