No. ____

In the Supreme Court of the United States

FORENSIC PATHOLOGY SERVICES, P.C.;
CAROL A. TERRY, M.D., PETITIONERS,

v.

ROBERT BUMGARDNER; LESLIE BURETA; ASHLEY BRYANT; SHANNON BYERS; LARRY LEON HARRISON; VICTOR LONG, RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The FLSA exempts "administrative" employees as "defined and delimited" by the Secretary of Labor. 29 U.S.C. § 213(a)(1). The regulations turn on "the type of work performed by the employee," 29 C.F.R. § 541.201(a), assessed "based on all the facts in a particular case," *id.* § 541.700(a), and list "legal and regulatory compliance" as a qualifying functional area, *id.* § 541.201(b).

The Eleventh Circuit held that employees who independently determine, under an external legal framework, whether their employer may accept incoming matters are not administratively exempt. The Fifth and Sixth Circuits treat that threshold function as administrative.

The question presented is:

Whether an employee whose primary duty is determining, under a legal and regulatory framework, the employer's authority to accept incoming matters qualifies for the Fair Labor Standards Act's administrative exemption.

PARTIES TO THE PROCEEDING

Petitioners Forensic Pathology Services, P.C. and Carol A. Terry, M.D. were the Defendants-Appellees below.

Respondents Robert Bumgardner, Leslie Bureta, Shannon Byers, Larry Leon Harrison, Victor Long, and Ashley Bryant were the Plaintiffs-Appellants below.[1]

None of the parties to the proceeding is a publicly traded entity, and no stock ticker symbols are associated with any party.

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[1] Shannon Volkadov did not timely appeal.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner Forensic Pathology Services, P.C. has no parent corporation and no publicly held company owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Bumgardner v. Forensic Pathology Services, P.C.,* No. 1:22-CV-01314-JPB (N.D. Ga., Jan. 31, 2025; entering judgment for Petitioners following a trial in which the jury rendered its verdict in favor of Petitioners); and
- *Bumgardner v. Forensic Pathology Services, P.C.,* No. 25-10673 (unpublished, *per curiam* opinion) (11th Cir., Feb. 10, 2026; reversing and vacating the judgment and remanding the case for a new trial).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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The opinion of the Eleventh Circuit Court of Appeals can be located at 2026 U.S. App. LEXIS 4095 and is reproduced in the Appendix. Pet. App. 1a-22a. The district court's oral ruling is located in the Appendix. Pet. App. 23a-26a.

JURISDICTION

The Eleventh Circuit Court of Appeals entered judgment on February 10, 2026, and denied a timely filed petition for panel rehearing on May 5, 2026. The Court has jurisdiction under 28 U.S.C. § 1254(1).

On July 23, 2026, this Court granted an extension to file this Petition through and until September 2, 2026. This Petition is timely filed.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

This case involves Section 13(a)(1) of the Fair Labor Standards Act, which exempts "any employee employed in a bona fide…administrative…capacity" from the Act's minimum-wage and overtime requirements. 29 U.S.C. §§ 213(a)(1); 206–207.

The Secretary of Labor's implementing regulation, 29 C.F.R. § 541.201(b), identifies "legal and regulatory compliance" as one of the enumerated, non-exhaustive functional areas of work "directly related to the management or general business operations" that may support the administrative exemption.

The relevant statutory and regulatory provisions are more fully set out in the Appendix:

- 29 C.F.R. § 541.200(a)(2) and (3). “General rule for administrative employees.” Pet. App. 29a;
- 29 C.F.R. § 541.201(a),(b).“Directly related to management or general business operations.” Pet. App. 29a – 30a;
- 29 C.F.R. § 541.202(a),(b),(c), and (e). “Discretion and independent judgment.” Pet. App. 31a–33a;
- 29 C.F.R. § 700(a),(b), and (c). “Primary duty.” Pet. App. 33a–35a; and
- 29 C.F.R. § 541.704. “Use of Manuals.” Pet. App. 35a.

STATEMENT

Eighty-eight years ago, Congress passed the Fair Labor Standards Act ("FLSA"). Today, the FLSA covers more than 143 million employees at 9.8 million workplaces across the country. Wage & Hour Div., U.S. Dep't of Lab., Small Entity Compliance Guide to the Fair Labor Standards Act's Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees 2 (Apr. 23, 2024) https://www.dol.gov/sites/dolgov/files/WHD/flsa/small-entity-compliance-guide-ot.pdf ; U.S. Gov't Accountability Off., GAO-21-13, Fair Labor Standards Act: Tracking Additional Complaint Data Could Improve DOL's Enforcement 1 (2020) https://www.gao.gov/assets/gao-21-13.pdf.

In 1998, the General Accounting Office estimated that between 20–27% of the full-time United States workforce—19 to 26 million workers—were "executive, administrative, or professional employees covered by white-collar exemptions of the FLSA." U.S. Gen. Accounting Office, GAO/HEHS-99-164, *Fair Labor Standards Act: White-Collar Exemptions in the Modern Work Place*, 2 (Sept. 30, 1999), https://www.gao.gov/products/hehs-99-164.

In recent years, 5,500 – 5,800 FLSA cases are filed each year. Brett C. Bartlett et al., *2025 FLSA Litigation Metrics & Trends*, Seyfarth Shaw LLP (Mar. 23, 2026), https://www.seyfarth.com/news-insights/now-available-2025-flsa-litigation-metrics-and-trends.html. The Department of Labor alone resolves 23,000-30,000 cases every year. GAO-21-13, *supra*, at Highlights. FLSA collective actions have increased more than 400% since 2000. Ogletree Deakins, *FLSA Collective Actions: How Your Company Can Avoid Being Targeted*, https://ogletree.com/insights-resources/blog-posts/flsa-collective-actions-how-your-company-can-avoid-being-targeted/. In 2025, FLSA collective-action settlements totaled $418 million across 337 cases, an average of $1.2 million per case. Carol Warner, *FLSA Lawsuits Ticked Up in 2025, New Report Shows*, HRMorning (Mar. 31, 2026), https://www.hrmorning.com/news/flsa-lawsuits-report-seyfarth-shaw/.

A survey of federal decisions found that courts reached the merits of the administrative exemption in nearly 300 cases between 2004 and 2011 alone. Blake R. Bertagna, *The "Miscellaneous Employee": Exploring the Boundaries of the Fair Labor Standards Act's Administrative Exemption*, 29 Hofstra Lab. & Emp. L.J. 485, 541 (2012). That article's author accordingly described the administrative exemption as "probably the most litigated of the Act's many exemptions." *Id.* at 485.

Determining an employee's functional area is key to finding the exemption. This volume of recurring litigation confirms the stakes of giving the enumerated functional areas of 29 C.F.R. § 541.201(b), including, "legal and regulatory compliance," their plain meaning.

At its heart, the FLSA does two things: it sets forth a minimum wage, and it requires employers to pay one-and-a-half times an employee's regular rate of pay for any hours worked beyond forty in a workweek. *Helix Energy Sols. Grp. Inc. v. Hewitt*, 598 U.S. 39, 44 (2023); 29 U.S.C. §§ 206-207.

But not all employees, of course, are subject to these rules. Congress determined that certain jobs should not be covered by them and wrote a long list of carve-outs. None of these exemptions is a lesser or grudging part of the statute — each one is just as much "the law" as the minimum-wage and overtime provisions themselves, and courts must interpret them fairly rather than narrowly, the same way courts read any other part of the FLSA. *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 88-89 (2018) (finding that exemptions are entitled to a fair interpretation, not a narrow one); *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017) ("[l]egislation is, after all, the art of compromise, the limitations expressed in statutory terms often the price of passage"); *Addison v. Holly Hill Fruit Prods., Inc.*, 322 U.S. 607, 617 (1944) (*quoting A.B. Kirschbaum Co. v. Walling*, 316 U.S. 517 (1942))("[c]onstruction is not legislation and must avoid 'that retrospective expansion of meaning which properly deserves the stigma of judicial legislation.'").

I. Statutory Background

Employees employed in a bona fide "executive, administrative, or professional capacity" are exempt. 29 U.S.C. § 213(a)(1). Congress never defined "bona fide administrative employee" itself – it handed that job to the Secretary of Labor, which ultimately promulgated regulations through the Department of Labor. And whatever standard the Secretary sets is the whole game: meet it, and the overtime right vanishes completely. 29 U.S.C. § 213(a)(1); *Helix Energy Sols. Grp. Inc. v. Hewitt*, 598 U.S. 39, 44-45 (2023) (describing the parallel delegation for the executive exemption); *Loper*

Bright Enters. v. Raimondo, 603 U.S. 369, 394–95 (2024) (preserving deference where Congress expressly delegates definitional authority to an agency).

The Department defined an "employee employed in a bona fide administrative capacity" in 29 C.F.R. § 541.200(a). An "administrative" employee is a worker: (i) that meets the requisite salary, (ii) "whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers," and (iii) "whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance." 29 C.F.R. § 541.200(a).

29 C.F.R. § 541.201(b) contains a non-exhaustive list of functional areas of work that count as "work directly related to the management or general business operations." This list includes "legal and regulatory compliance." But it is not further defined in the text.

The Secretary added these functional areas in 2004 through a deliberate, comment-driven effort to consider the realities of twenty-first century jobs and the modern workforce. *Defining & Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*, 69 Fed. Reg. 22,122, 22,140 (Apr. 23, 2004). It was the first material update in almost 55 years. *Id.* The regulations were so outdated they included jobs like key punch operators, legmen, straw bosses, and gang leaders. *Id.* Over the course of months, the Department received 75,280 comments from a diverse group of employees, employers, trade and professional associations, small business owners, labor unions, government entities, law firms, and others about the "white collar" exemptions. *Id.* In its 2004 final rule, the Department restructured the administrative exemption's duties test. *Id.* The rule's preamble now explains that, after adding the phrase "but is not limited to," to emphasize the list's illustrative character, the Department also "add[ed] computer network, internet and database administration; *legal and regulatory compliance*; and budgeting to the illustrative list." *Id.* The Department explained that the list is not about specific jobs, but about functional areas that commonly relate to the management and general business operations of an employer. *Id.*

The regulations draw a distinction "between administrative work" and "production work" pertaining to the employer's core product or service. This distinction is commonly referred to as the "administrative/production dichotomy." Its source is § 541.201(a). But the Secretary has unequivocally stated: "neither do we believe that the dichotomy has ever been or should be a dispositive test for [the administrative] exemption." *Id.* In fact, the dichotomy is **only** appropriately determinative if the work in question "falls squarely on the production side of the line." 69 Fed. Reg. at 22,141 (*quoting Bothell v. Phase Metrics, Inc.*, 299 F.3d 1120, 1127 (9th Cir. 2002)).

An administrative employee's primary duty must include the exercise of discretion and independent judgment on "matters of significance," which are defined as the comparison and evaluation of possible courses of conduct, followed by a decision or action. 29 C.F.R. § 541.202."Matters of significance" are those matters that bear a level of importance or consequence of the work. *Id.*

"Primary duty" means the principal, main, major, or most important duty the employee performs. § 541.700(a). The determination rests on all the facts of a particular case, with the emphasis on the character of the job *as a whole* — not a mechanical tally of tasks. *Id.* It is not about the job title; it is about the nature of the job.

The regulations provide a non-exhaustive list of factors as guidance in determining whether the primary duty test has been met:

- The relative importance of the exempt duties compared to other duties;
- The amount of time spent on exempt work;
- The employee's relative freedom from direct supervision; and
- The relationship between the employee's salary and the wages paid to other employees performing the nonexempt work in question.

§ 541.700(a).

Time spent is not dispositive in determining the employee's "primary duty." 29 C.F.R. § 541.700(b). Employees who spend more than 50% of their time on exempt work will generally satisfy the primary duty test. *Id.* But employees who spend less than

50% of their time on exempt work may nevertheless be exempt. *Id.* The regulations clearly state that "spending less than 50% of the time performing exempt work has never been, and will not be, dispositive of nonexempt status." *Defining & Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*, 69 Fed. Reg. 22,122, 22,140 (Apr. 23, 2004).

The regulations provide a telling illustration on this point: Retail assistant managers who perform exempt executive work (supervising staff, ordering merchandise, managing budgets, authorizing bill payment) can have management as their primary duty even if they spend over 50% of their time on nonexempt tasks like running the register. 29 C.F.R. § 541.700(c); Pet. App. 34a–35a. But if those assistant managers are closely supervised or paid little more than a nonexempt employee, they likely do not meet the primary duty test. *Id.*

Nothing in the text of § 541.201(b) requires the employee to *only* do the exempt function. Nor does § 541.202 impose such a limitation on the exercise of discretion and independent judgment. In other words, nothing in the text says that the employee cannot have a primary duty that involves administrative work *and* secondary duties that involve producing the core product or service.

The primary duty must also include the exercise of discretion. Discretion does not mean finality or unreviewed authority. 29 C.F.R. § 541.202. An employee is still exempt even if the employee's independent recommendations are subject to higher-level approval and are occasionally revised or reversed on review. 29 C.F.R. § 541.202. The regulations themselves include an example of a credit manager's policies being reviewed by higher company officials who may ultimately approve or disapprove of the decisions. 29 C.F.R. § 541.202. While discretion must be more than skillful application of well-established techniques, the use of manuals, guidelines, and other established procedures relating to highly technical, legal, or similarly complex matters interpreted by those with specialized skills or knowledge does not preclude exemption. 29 C.F.R. §§ 541.202; 541.704.

The following non-exhaustive factors indicate an exercise of discretion:

- Formulates, affects, interprets, or implements management policies/operating practices;
- Carries out major assignments in conducting business operations that affect business operations to a substantial degree, even in a limited segment;
- Has authority to commit the employer on matters with significant financial impact;
- Can waive or deviate from established policies without prior approval;
- Can negotiate and bind the company on significant matters;
- Provides expert advice or consultation to management;
- Is involved in planning long- or short-term business objectives;
- Investigates and resolves significant matters on management's behalf; and

- Represents the company in handling complaints, arbitration, or grievances.

29 C.F.R. § 541.202(b).

But an employee does not exercise discretion merely because the employer could suffer financial loss if the employee errs. High stakes are not enough. *Id.* The regulation requires actual policy-level impact and discretion. *Id.*

II. Factual and Procedural Background

Petitioner Forensic Pathology Services, P.C. ("FPS") provides contract medical examiner services for Gwinnett County – the second most populous county in the State of Georgia. Petitioner Dr. Carol A. Terry is the Chief Executive Officer of FPS and serves as the "Chief Medical Examiner," which is statutorily defined. She is responsible for determining the cause and manner of death in cases within her jurisdiction.

Under Georgia law, a medical examiner's authority to investigate a death is not automatic. The Georgia Death Investigation Act requires an inquiry into a death by the medical examiner only when the reported death falls within specified statutory categories. Ga. Code Ann. § 45-16-24 (2026); Pet. App. 4a. The overwhelming majority of deaths reported to FPS do not qualify: Only about one-third of reported deaths fall within FPS's jurisdiction. Pet. App. 5a. In the other two-thirds of reported deaths, FPS lacks legal jurisdiction to act. *Id.*

Respondents were medicolegal investigators at FPS. Pet. App. 4a. Their title was "medical examiner's investigator." Their authority and role, much like Dr. Terry's, is expressly included in the Georgia Death Investigation Act. Ga. Code Ann. § 45-16-24 (2026).

The Respondents' first, primary, and threshold responsibility, for *every reported* death, was to determine whether the death fell within the specific statutory guidelines of the Georgia Death Investigation Act. Respondents' first act was as gatekeepers. They determined whether FPS could act at all. They determined whether FPS could render its core services. If a Respondent determined that a death was *not* within the jurisdiction of FPS, no further action could be taken by application of law. That was the result nearly two-thirds of the time. Pet. App. 5a. In the other one-third of the time when a Respondent concluded legal jurisdiction existed, further investigation – including up to an autopsy – would occur. *Id.*

To make the jurisdictional determination, a Respondent taking a call took down basic demographic information on what is known as a "green sheet." Trial Tr. Doc. 148. Then the Respondent, through an independent exercise of discretion and professional judgment, evaluated the circumstances of the death based on the criteria set forth in the Georgia Death Investigation Act. The Respondents were required to ultimately determine, based on those circumstances and criteria, whether FPS had jurisdiction to exercise legal jurisdiction and accept the custody of the body. This gatekeeping function controlled everything that happened next: whether an investigation occurred, whether a body was transported for examination, whether Dr. Terry conducted an external examination or a full autopsy, and whether law enforcement or family notifications proceeded on the medical-examiner track.

No other FPS function — examination, autopsy, family communication, or report preparation — occurred unless and until a Respondent first determined that the reported death met the requirements of Georgia law to give FPS jurisdiction. In fact, all other FPS employees – including Dr. Terry herself – relied on the Respondents' jurisdictional determination before their work even began. *See generally* Trial Tr.

Only after an investigator found jurisdiction existed did they engage in their other duties: investigating to support Dr. Terry's finding of cause and manner of death. Georgia law expressly grants an investigator the same powers, absent arrest and autopsy, that Dr. Terry has. *Id.*

The Respondents' secondary duties included: photographing the scene, inspecting the scene, collecting evidence, interviewing witnesses, preliminarily examining the body, coordinating with law enforcement, families, hospitals, physicians, funeral homes, organ databases, and other third parties. *Id.* If further examination was warranted, the investigator tagged the body, arranged transport, and Dr. Terry then conducted her own examination, ranging from an external review to a full-blown autopsy. *Id.* Respondents also served as the conduit of information between Dr. Terry and the decedent's family, gathering additional information, relaying the medical examiner's conclusions, and they memorialized their work in written reports incorporated into the official medical examiner's report. *Id.*

In 2021, in response to complaints made by Respondents (after they were either fired from FPS or voluntarily resigned), the Department of Labor investigated FPS's compliance with the FLSA. Pet. App. 6a. While the Department opined that overtime was due to the Respondents, the Department did not pursue litigation. *Id*.

In April 2022, Respondents sued FPS and Dr. Terry alleging they were due overtime pay under the FLSA. *Id*. While some had longer tenures at FPS, like Robert Bumgardner (Jan. 2011 – Jun. 2021) and Shannon Byers (Aug. 2017 – Jul. 2019), most were remarkably short: Leslie Bureta (Jan. 2020 – Jul. 2020), Larry Leon Harrison (Jul. 2019 – Jul. 2020), Victor Long (Aug. 2019 – Dec. 2019), and Ashley Bryant (Mar. 2021 – May 2021). D. Ct. Doc. 123-2 at 27.

Petitioners moved for summary judgment on the administrative exemption. The district court found that there was a genuine dispute of fact concerning whether Respondents' role qualified under the administrative exemption and therefore denied the motion. Pet. App. 6a.

The case proceeded to trial in the United States District Court for the Northern District of Georgia (Atlanta Division). During the trial, all of the Respondents effectively admitted that by determining jurisdiction under the Georgia Death Investigation Act, they were performing "legal and regulatory" compliance. Before the case was submitted to the jury, Petitioners and Respondents moved for judgment as a matter of law on the administrative-exemption defense; the district court denied both motions and properly instructed the jury on the exemption. Pet. App. 23a-26a; D. Ct. Doc. 123-2.

In its instructions, which were consented to by the parties, the district court quoted verbatim the relevant regulations, including 29 C.F.R. § 541.201. D. Ct. Doc. 123-2. The parties also agreed to special verdict forms. The verdict forms read in pertinent part:

> Do you find from a preponderance of the evidence:
>
> That [each Respondent] was an administrative employee, so [he/she] was not eligible to receive overtime compensation from [Petitioners]?
>
> Answer Yes or No.
>
> D. Ct. Docs. 116-122.

During deliberations, the jury asked a single question: whether there was a definition for "legal and regulatory compliance" as provided in 29 C.F.R. § 541.201(b). Pet. App. 16a. There is not one in the regulations, and the Eleventh Circuit had not opined on one either. The jury was instructed to use their best judgment. *Id.*

The jury returned verdicts for Petitioners finding that the administrative exemption applied to each of the Respondents. *Id.*

Respondents renewed their motion for judgment as a matter of law after the verdict; the district court again denied it, and the clerk entered judgment for Petitioners. Pet. App. 7a, 25a–26a.

Three independent findings by the district court, at three different stages in the proceedings, applying the same reasonable-jury standard, found that a jury *could find* that the Respondents were administrative employees. Indeed, after a two-week trial, the jury did.

Six plaintiffs appealed. The Eleventh Circuit, in an unpublished (*per curiam*) opinion, reversed, holding that the district court erred in denying Respondents' motion for judgment as a matter of law on the administrative-exemption defense — the sole basis for the jury's verdicts. The Eleventh Circuit vacated the judgment and remanded for a new trial. Pet. App. 3a, 22a.

In its opinion, the Eleventh Circuit relied entirely on its prior decision in *Swans v. OSP Prevention Grp. Inc.* 38 F. 4th 103 (11th Cir. 2022) (known to the Eleventh Circuit and cited herein as "*Fowler*"). Pet. App. 2a-22a. It then erroneously extended its reasoning in *Fowler* to this case, finding that Respondents' primary duty did not "directly relate to the management or general business operations" of FPS. *Id.* The panel treated the tasks making up the Respondents' primary duty as undisputed when the parties hotly contested the duties and their primacy at summary judgment and trial. Pet. App.11a. Ultimately, the panel refused to consider the "gatekeeper" role as "legal and regulatory compliance."

Because Respondents also performed investigations, what the Eleventh Circuit believed was FPS's core service, the court characterized Respondents as "production" employees under the administration/production dichotomy articulated in *Fowler*. The court found the investigators in *Fowler* to be indistinguishable to Respondents despite the legal and regulatory compliance work that they admitted they performed. Pet. App. 14a.

Framing the dispute as purely one of legal characterization, the panel outright rejected the jury's findings that the investigators' primary duty involved a jurisdictional determination that meets the legal and regulatory function espoused in § 541.201(b). Even though the text is not so limited and other courts have found otherwise, the panel found that Respondents' work was not legal and regulatory compliance work like the "back-office" legal and regulatory compliance work purportedly intended by 541.201(b). Pet. App. 13a.

In fact, courts have reached opposite conclusions on whether the functional role of legal and regulatory compliance qualifies for the administrative exemption. Not because the underlying primary duty differs, but because the exemption's application has come to depend on how a reviewing appellate court views the employer's core product or service. Compare *Lutz v. Huntington Bancshares, Inc.*, 815 F.3d 988, 993–97 (6th Cir. 2016) (mortgage underwriters administratively exempt because credit-risk screening services the business) with *Davis v. J.P. Morgan Chase & Co.*, 587 F.3d 529, 534–35 (2d Cir. 2009); *McKeen-Chaplin v. Provident Sav. Bank, FSB*, 862 F.3d 847, 851–54 (9th Cir. 2017) (similar threshold underwriting function held non-exempt "production" work*),* and *Smith v. Ochsner Health Sys.,* 956 F.3d 681, 682, 686–87 (5th Cir. 2020) (an organ procurement coordinator's authority to enter a "provisional yes" accepting a donated organ was administrative work directly related to the employer's operations). The decision below deepens this brewing conflict.

In its opinion, at one point, the panel admitted, that "it's *unclear* that the jurisdiction determinations are the sort of 'legal compliance' work the FLSA exemption contemplates." Pet. App. 18a. (emphasis added). The court then made a policy – rather than legal – decision, when it warned that by reading and applying this functional area this way, "huge swaths of the American workforce would be subject to the FLSA's administrative exemption, meaning the FLSA's wage protections would not apply to them." Pet. App. 3a.

The court also found that even if it were to assume that the jurisdiction determination is legal and regulatory compliance work recognized by the regulations, that the jury did not have *any evidence* to support its verdict that it was the investigators' primary duty. Pet. App. 19a–20a.

In setting aside the jury's verdict, the court reasoned that *any worker* who merely follows the law could be construed as performing legal and regulatory compliance work under the regulations. The panel went so far as to say that "[e]very worker must take care to ensure he complies with the law. But a delivery driver [does not] become a 'legal compliance' employee when he stops for a red light." Pet. App. 18a.

Respondents' duty to determine jurisdiction is clearly not simply stopping for a red light. Their role is better framed as determining whether an intersection falls within the town's traffic code to require the installation of a traffic signal. Of course, a driver obeying a posted speed limit does not become a traffic-policy employee. But someone tasked with *determining* which intersections need a traffic signal performs a fundamentally different function. Respondents' primary duties were similar to the latter.

In limiting the scope of "legal and regulatory compliance" this way, the panel's reading runs the real risk of reading "legal and regulatory compliance" out of the regulation entirely. Critically, the panel completely fails to define ***what work*** constitutes legal and regulatory compliance under § 541.201, if not the kind of work performed by the Respondents. Pet. App. 18a.

Petitioners sought rehearing, asking the panel to reconsider its decision. After sixty-three days, the panel denied rehearing. Pet. App. 27a–28a. This petition follows.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Misapplies *Fowler* and Deepens a Circuit Conflict.

The appellate courts disagree over *how* the standard in 29 C.F.R. § 541.201 ought to be applied to gatekeeper employees whose primary duty is the interpretation and application of legal, regulatory, or professional evaluative standards to determine whether, and on what terms, their employer may act. Gatekeeper workers, like Respondents, can be found across a multitude of industries such as insurance, healthcare, and financial services.

This case presents a recurring and outcome-determinative question under the administrative exemption: whether a gatekeeping employee performs work "directly related to the management or general business operations" of the employer under 29 C.F.R. § 541.201. The decision below adopts the most restrictive position in that divide. Because gatekeeper employees of this kind recur across numerous industries, in a wide variety of circumstances, the conflict identified below will not resolve itself. This Court's review is necessary.

The decision below rests entirely on *Fowler* – which was decided on summary judgment. But the court's reasoning extends *Fowler* well past the function it addressed. The *Fowler* investigators documented physical damage to broadband infrastructure, determined liability, and calculated repair costs — fact gathering that fed the employer's core loss assessment product. Pet. App. 14a; *Fowler*, 38 F.4th at 106.

When conducting their investigations, the *Fowler* employees followed the procedures and steps outlined in two documents and were not able to deviate. *Fowler*, 38 F.4th at 106. The Eleventh Circuit likened these investigators' liability calculation to "plugging data into a formula." *Fowler*, 38 F.4th at 108.

In its opinion in this case, the panel, some of whom also decided the *Fowler* decision, pointed to the investigators' application of dig laws. Pet. App. 18a (*citing Fowler*, 38 F.4th at 108, 110). But the *Fowler* investigators' application of the law was nothing more than a mechanical-standard application. They used prescribed criteria involving an already-authorized and retained matter to decide a simple question of liability using a cost sheet akin to plugging data in a formula.

On the contrary, Respondents are gatekeepers who wrestle with the Georgia Death Investigation Act to determine whether FPS has jurisdiction to act at all. The panel never meaningfully engaged in that distinction. It did not ask whether applying an external jurisdictional statute to determine the employer's authority to act differs from documenting damage or calculating repair costs; it simply substituted one noun ("investigator") for another and imported *Fowler*'s result wholesale. Pet. App.14a. It did so even after the jury found the FPS investigators to be exempt.

A. The Fifth and Sixth Circuits

Unlike the Eleventh Circuit, the Fifth and Sixth Circuits have interpreted legal and regulatory compliance as administrative work that services the business regardless of the worker's involvement with the core product or service.

In *Zannikos v. Oil Inspections (U.S.A.), Inc.*, 605 F. App'x 349, 354-55 (5th Cir. 2015) (*per curiam*), marine superintendents who monitored oil-cargo transfers at the core of an oil inspection employer were found to perform work directly related to the management or general business operations of the employer or its customers. Their responsibilities included observing oil transfers to ensure the transfers were accurate, legal, and safe. *Id.* at 351. The workers monitored the loading and unloading of cargo, reported errors or losses, monitored and reported on transfers' compliance with safety policies and nationally recognized safety standards, and performed quality control functions, including inspecting loading and discharging equipment. *Id.* The superintendents' administrative duties were intertwined with the core product. *Id.* at 352.

Every task was an evaluation of conformity to a fixed standard, performed at the physical point of production. In fact, the superintendents even "oversaw line blending" – the very process that combined components into the new petroleum end product being sold. *Id.* at 351. Yet the Fifth Circuit held this standards-checking oversight work involved "quality control" and "legal and regulatory compliance," not production. *Id.* at 355-356. Involvement with the marketplace product, and even direct participation in the process that created it, did not control. The character and primacy of the duty did.

In *Lutz*, 815 F.3d at 993–97, the Sixth Circuit treated a loan underwriter's determination as to whether the bank may lend as work that helps to run or service the business as opposed to the production of the loan itself, and therefore administratively exempt.

There, residential-loan underwriters' work indisputably touched on the bank's principal production activity of making loans, but the court held them administrative because they primarily serviced the bank by advising "whether it should accept the credit risk posed by its customers." *Id.* at 993. The dispositive inquiry, the court held, is whether an employee helps run or service a business. Not whether that employee's duties "merely touch on a production activity." *Id.* at 995-96. The *Lutz* court determined that servicing is defined by function: the underwriter's determination as to whether the bank should accept the credit risk posed by a customer was a threshold authorization decision that did not generate business but was necessary for the employer to do business. *Id.* at 994.

Respondents' jurisdictional determination under the Georgia Death Investigation Act in this case is the same kind of threshold, may-the-employer-act decision. The panel below, applying the very touch-on-production test the Sixth Circuit rejected, reached the opposite result.

The Fifth Circuit applied that same § 541.201 characterization standard in *Ochsner*, 956 F.3d at 686–87. There, an organ procurement coordinator's duties included providing a provisional "yes" or "no" as to whether an organ met federal regulatory criteria before the employer's transplant operation could proceed. *Id.* at 683. The court held that this gatekeeping function constituted "legal and regulatory compliance" work — concluding that the work was "directly related to assisting with the running or servicing of the business." *Id.* at 684-686. Although *Ochsner* was resolved under the highly-compensated-employee exemption rather than the standalone administrative exemption, it applied the identical § 541.201 characterization that governs the administrative exemption's second prong at issue in this case. *Id.*

In the Fifth Circuit, applying legal, regulatory, or professional evaluative standards to authorize the employer's action is administrative, not production work.

Notably, both the Fifth and Sixth Circuit in these decisions emphasize the importance of *disaggregating* and analyzing *each* duty that the employee performs. If the appeal of this case went to the Fifth or Sixth Circuit, those courts would have affirmed the jury's verdict based on the precedent above. But, because the appeal was heard by the Eleventh Circuit, the jury's verdict was reversed.

B. The Second and Ninth Circuits

The Second and Ninth Circuits disagree with the Fifth and Sixth Circuits, described above, but they do not even support the Eleventh Circuit's decision here. This is illustrated by decisions of the Second and Ninth Circuits addressing functionally identical loan underwriters.

In *Davis*, 587 F.3d at 532–35, loan underwriters applied their employer's *own internal lending standards*, in what was referred to as a "Credit Guide," to decide *whether* to approve a loan the bank was already authorized and in business to make. *Id.* at 534-535. The Second Circuit called a "yes or no decision" on "the production of loans—the fundamental service provided by the bank." *Id.* at 534. Because the court found that the Credit Guide provided "detailed directions" and that the underwriters did not advise customers as to what loan product best met their needs and abilities, the court found the underwriters did not exercise sufficient independence and discretion to be administrative. *Id.* at 534. The Second Circuit also found that "they were not at the heart of the company's business operations" nor "did they perform any other function that in any way related to the business' overall efficiency or mode of operation." *Id.* at 535.

Similarly, the Ninth Circuit in *McKeen-Chaplin,* 862 F.3d at 854, held that the underwriters fell outside the exemption because they simply assessed, using given guidelines, whether a particular loan fell within the range of risk that their employer had already determined it was willing to take. The court stated that these "[m]ortgage underwriters are told what is in [the bank]'s best interest and then asked to ensure that the product being sold fits within criteria set by others." *Id.* at 852.

Whatever the merits of characterizing the application of an employer's *internal* product criteria as "production," Respondents' duty here was different. Respondents applied an external statute — the Georgia Death Investigation Act — to determine whether the medical examiner possessed lawful jurisdiction to act at all. That determination was made largely independently (Dr. Terry could override the determination, but very rarely did) by Respondents and resulted in roughly two-thirds of reported deaths being screened out before FPS could take any other action. Respondents all admitted that it was a primary part of their duties. And it was clearly a quintessential act of servicing FPS's operations.

None of the above-referenced decisions require that the compliance employee be segregated in a standalone "back office" with a corresponding compliance job title. Although the panel never explicitly provides definitional guidance as to what constitutes "legal and regulatory compliance," it appears to require that the work occur in a "back-office" – using the phrase *three times* in its opinion. Pet. App. 13a, 15a, 22a.

By doing this, the Eleventh Circuit's rule reaches further than its sister circuits: it "squarely" forecloses the exemption for any employee whose legal or regulatory compliance function is operationally integrated with other duties rather than organizationally isolated. Pet. App. 2a. This is a distinction the regulation does not make in § 541.201 and that other Circuits have not adopted.

Respondents' gatekeeping determination and investigative work are *two functionally different areas of work*. But unlike some of the other Circuits that disaggregate them, the Eleventh Circuit fused them together. The duties could not be more distinct:

> Making a jurisdictional determination, applying the law to determine whether FPS can act at all, performed on 100% of the reported deaths, and dispositive of two-thirds;
>
> ***versus***
>
> Investigative work performed by Respondents and other employees, in some capacity, only *after* Respond-

> ents determine that legal jurisdiction actually exists.

A court adhering to the regulation – like the Fifth and Sixth Circuits – would identify and analyze each duty separately, then weigh relative importance as required under the regulations.

The decision below, in effect, erases that distinction, treating **any** legal and regulatory compliance that happens to be embedded in the core operational business as categorical production work. This is a rule that is far broader in reach than *McKeen-Chaplin, Davis,* or even *Fowler*, which Petitioners maintain is wholly distinct in several respects. In those cases, the courts denied exemption to workers applying the employer's internal standards: an insurer's damage criteria or a bank's risk tolerance as set forth in its credit guide or guidelines packet. Moreover, those courts found the employees to be non-exempt based on evidence that the employees lacked independence and discretion.

Neither held, nor had occasion to hold, that an employee independently applying an ***external legal mandate*** — one that determines whether the employer may act at all — performs "production" merely because that mandate happens to be embedded in the day-to-day operation of the business. Let alone after a jury found that the facts supported the application of the exemption. After all, in today's modern service industry, many administrative duties touch on the core product or service.

In fact, based on the panel's logic, any enumerated functional work that happens to occur at, or immediately before, the point where the end product or service is delivered would render the employee non-exempt.

Review is warranted to answer this question.

II. The Question Presented Is Recurring, Important, and Squarely Presented.

Under Rule 10, a petition should be granted when the decision below has decided an important question of federal law that has not been, but ought to be, settled by this Court, and where the resolution of the question extends far beyond the parties. Sup. Ct. R. 10(c). The Eleventh Circuit's decision meets that standard.

The administrative exemption's "legal and regulatory compliance" prong is not a peripheral question. Compliance is one of the largest and most unavoidable cost centers in the American economy. The gatekeeper function at issue here recurs across nearly every regulated industry that relies on compliance personnel to make a threshold call.

The scale involved is substantial by any measure. Federal regulatory compliance is estimated to cost the U.S. economy $1.9 trillion annually — a figure that, if it were a national economy, would rank as the world's ninth largest, just ahead of Canada. Wayne Crews, *Ten Thousand Commandments 2019: An Annual Snapshot of the Federal Regulatory State* (Competitive Enter. Inst. 2019), https://cei.org/studies/ten-thousand-commandments-2019/. American businesses spend an average of $10,000 per employee annually on regulatory costs. *Id.*

Medicolegal investigators' compliance work – like the Respondents' here – is not insignificant either. Approximately 20% of all reported deaths in the United States are investigated by medical examiner or coroner's offices. *Nat'l Acads. of Scis., Eng'g & Med., Strengthening the U.S. Medicolegal Death Investigation System: Lessons from Deaths in Custody* 1, 21 (2025) ("NAS Report")(*citing* Kanayo Tatsumi & Michael Graham, *Death Investigation in the United States: Forensic Pathology*, 119 Mo. Med. 411 (2022)). In 2018, medical examiner and coroner offices received 1.3 million death referrals and initiated in-depth investigations in 605,000 cases, accepting an average of 80 cases per autopsy pathologist, nonphysician coroner, death investigator, and forensic toxicologist. *NAS Report*, *supra* note 1, at 39 (*citing* Connor Brooks, Bureau of Just. Stat., U.S. Dep't of Just., NCJ 302051, Medical Examiner and Coroner Offices, 2018, at 4 (2021), https://bjs.ojp.gov/content/pub/pdf/meco18.pdf).

This work serves the criminal justice system, public safety, medicine, public health, and more. *NAS Report, supra* note 1, at 2, 41–42. Medical examiners and coroners are often the first to see trends in traumatic deaths as well as other causes of death. *Id.* at 41, box 2-4 (*quoting* Margaret Warner & Paula A. Brown, *Public Health Impact: How Medicolegal Death Investigation Data Help the Living*, 7 Acad. *Forensic Pathology*, xiv, xiv (2017)). Data generated during investigations can be used to confirm hunches and provide evidence that brings about monumental policy changes. *Id.* Indeed, it was the analysis of one autopsy technician comparing data about infant death rates in car crashes to that of older children that led to laws being enacted requiring the use of infant car seats. *Id.*

As of 2023, 11 states had coroner systems in place across all counties, and 14 other states had coroner systems serving some of their counties. *NAS Report*, supra note 1, at 29 fig.2-1 (*citing Ctrs. for Disease Control & Prevention, Medicolegal Death Investigation Systems* (2023)). Another 22 states and Washington, DC, were served entirely by medical examiner systems, including 11 that had a centralized state medical examiner and 3 states that were served by a regional medical examiner. *Id.* Several states have a hybrid system. *Id.*

Ultimately, all fifty states, plus the District of Columbia, has a coroner, medical examiner, or hybrid statute. *Ctrs. for Disease Control & Prevention, Coroner and Medical Examiner Laws, Pub. Health L. Program*, https://www.cdc.gov/phlp/php/coroner/index.html. Nearly all of these statutes share the same functional structure as the Georgia Death Investigation Act, in that a specific statutory list of circumstances must exist before the medical examiner or coroner's jurisdiction attaches. In other words, in all of these offices, there is an individual who is making the very threshold determination that the Respondents made at FPS.

For example, Arizona's statute mandates that the county medical examiner provide a death investigation upon a determination of jurisdiction. Ariz. Rev. Stat. Ann. § 11-594(A)(2025). Florida, New Jersey, Wisconsin, and Michigan similarly impose the duty to investigate upon a determination that the death falls into their statute's categories. Fla. Stat.

§ 406.11(1) (2026); N.J. Stat. Ann. § 52:17B-86 (2025); Mich. Comp. Laws § 52.202(1) (2025); and Wis. Stat. § 979.01(1) (2023-24).

Forensic pathologists like Dr. Terry rely heavily on investigators because the certified pathologist workforce cannot keep pace. There is a shortage of forensic pathologists and resources against a heavy workload. *NAS Report*, *supra*, at 44. Against the backdrop of that shortage, medicolegal investigators, like the Respondents, are structurally indispensable. *Id.* at 96.

Employers at this scale do not perform compliance work through idle formality; they delegate it to employees with the independent judgment and discretion to make the threshold determinations that expose or shield the employer from that risk — precisely the "legal and regulatory compliance" category 29 C.F.R. § 541.201(b) enumerates as administrative work.

The panel's rule, which effectively confines that category to employees formally segregated into a compliance department, would strip the exemption from a substantial share of the workforce actually performing this function: mortgage underwriters, insurance claims adjusters, BSA/AML analysts, KYC analysts, customs brokers, title examiners, IRB coordinators, and the medical examiner's investigators at issue here, among many others, whose compliance function is integrated into day-to-day operations. And it would mean that if an employee's role happens to call for her to gatekeep *and* produce, she would never be subject to the administrative exemption.

Getting this question right is not incidental to the case; it determines whether the exemption reaches the employees Congress and the Department of Labor actually meant it to cover. Or whether the "legal and regulatory compliance" exemption that is expressly in the regulation has no meaning.

While the decision below is unpublished and non-precedential, that does not undermine its vehicle value. 11th Cir. R. 36-2. The panel announced no new rule and instead, treated *Fowler, a published, binding* Eleventh Circuit precedent as "squarely foreclos[ing]" Petitioners' compliance arguments. Pet.App.2a. The rule under review is therefore *Fowler*'s, not a one-off disposition that vanishes with this case. Since *Fowler* remains binding throughout the Eleventh Circuit, its erroneous extension to legal-and-regulatory-compliance gatekeeping employees across regulated industries will continue without review. And it will continue to be in conflict with the Fifth and Sixth Circuits.

Finally, this case is a substantially stronger vehicle than the Court's most recent look at a similar, albeit slightly different, question. *See Su v. F.W. Webb Co.,* 110 F.4th 391 (1st Cir. Aug. 1, 2024), *cert. denied sub nom. F.W. Webb Co. v. Micone,* No. 24-626 (U.S. Mar. 10, 2025) ("Webb").

On appeal from a summary judgment ruling, Webb asked this Court whether inside sales representatives' primary duty was "directly related to the management or general business operations" of their employer. *Id.* In doing so, Webb asked that this Court discard the First Circuit's "relational analysis" test, which makes the employer's business purpose the dispositive inquiry across administrative exemption cases. *Id.* But as the Solicitor General pointed out, even under Webb's preferred framework, the employees' primary duty still involved selling a product. *Id.*

This petition comes after the Eleventh Circuit vacated a jury verdict – a verdict delivered by a jury that found that legal and regulatory compliance was the Respondents' primary duty. The district court and jury were directly confronted with an undisputed fact pattern presenting gatekeeper employees and applied the regulation to it. As referenced above, gatekeeper employees exist among a wide variety of industries and the application of the regulation to those gatekeepers is recurring.

III. The Decision Below is Wrong in Several Other Respects.

Beyond warranting review because it deepens a budding circuit conflict, the panel's decision independently requires correction because it misapplies this Court's and the Department of Labor's own primary-duty framework in ways that will recur in every case presenting a similar functional pattern.

A. The Panel Collapsed the "Primary Duty" Test into a Rigid Time-Majority Requirement that the Regulation Expressly Rejects.

The panel repeatedly demanded proof that Respondents' duty to determine jurisdiction "took a majority share of the investigators' time," stating:

> But without any evidence showing it took a majority share of investigators' time…this testimony can't establish that determining jurisdiction was more important to the investigators' roles than investigative work.

Pet. App. 20a.

This reasoning contradicts the plain language of the regulation, which explains, in no uncertain terms, that time alone is *not* the sole test. Other factors like the relative importance of the exempt duties versus the nonexempt duties and an employee's relative freedom from direct supervision speak to the primacy of the duty, too. 29 C.F.R. § 541.700(a). Moreover, "primary" duty can also mean the "most important duty" that the employee performs.

The Petitioners offered an abundance of evidence at trial demonstrating that the investigator's most important duty is a determination of jurisdiction – an act of legal and regulatory compliance:

- Robert Bumgardner explained that compliance with the Act is central to the operation of the Medical Examiner's office. Trial Tr. Vol. 2, 123;

- Robert Bumgardner agreed that in his capacity as investigator, he was the "decisionmaker" on jurisdiction. Trial Tr. Vol. 2, 123;

- Robert Bumgardner stated that jurisdiction is a "judgment call" he makes "every time" he takes a death call. Trial Tr. Vol. 2, 123;

- Leslie Bureta testified that determining jurisdiction was a matter of legal compliance, exercised with great discretion, and the fundamental component of the investigator's job. She did not describe her investigative work the same way. Trial Tr. Vol. 5, 20;

- Larry Leon Harrison also testified about the establishment of jurisdiction and the varying circumstances that can arise that can complicate making that determination. Trial Tr. Vol. 3, 80;

- Ashley Bryant agreed with Robert Bumgardner's assessment that the determination of jurisdiction was an act of legal compliance. Trial Tr. Vol. 2, 194;

- Shannon Volkodav, an investigator, said that she regarded the jurisdictional determination as legal compliance with the Georgia Death Investigation Act. She said that her role as an investigator was "very significant" to the Medical Examiner's Office. Trial Tr. Vol. 4, 78;

- Victor Long testified that the threshold gatekeeping determination of whether jurisdiction existed was an act of legal compliance – and his first step on every case. Trial Tr. Vol. 4, 139;

- Shannon Byers described her primary responsibility as taking the initial death call and determining jurisdiction. Trial Tr. Vol. 4, 199;

- Shannon Byers said that there were "so many factors" to consider when determining jurisdiction indicating the complexity of the decision. She said the determination might be very involved and take "several hours." Trial Tr. Vol. 4, 25;

- Eddie Reeves, Chief Investigator, stated that the investigator's goal is to determine jurisdiction upon receiving an incoming death call. Trial Tr. Vol. 6, 153-154;

- Dr. Terry testified that when she does have jurisdiction, as determined by an investigator pursuant to the Georgia Death Investigation Act, it authorizes her office – above the wishes of the next of kin – to have the power to investigate and do dissections. She described this as a "pretty humbling and awesome responsibility that [she] [doesn't] take lightly." Trial Tr. Vol. 6, 24; and

- Dr. Terry testified that there is nothing more significant to the role than the determination of jurisdiction. Trial Tr. Vol. 6, 69.

The jury heard from several witnesses, including the Respondents themselves. The jury credited the Respondents' own characterizations of their work. And that still was not enough proof for the Eleventh Circuit under the deferential Rule 50 standard.

Petitioners offered the kind of primary-duty evidence required under the regulations. But the panel decided that, contrary to the express language of the regulation, time-share was the only factor that mattered. A duty every other task waits on does not become unimportant because it takes fewer hours than the tasks it unlocks. An act that confers legal authority to override a grieving family's wishes and to dissect a human body is not a mere clerical prerequisite to "real" work; it is the exercise of statutory power upon which FPS's entire function depends. The panel's opinion never grapples with what the jurisdictional determination actually authorizes — only with how many hours it took. This reasoning reduces "primary duty" to a stopwatch and runs afoul of the regulations. Furthermore, based on the panel's reasoning, any functional work that happens to be performed at, or immediately before, the point where the end product or service is delivered, would render the employee non-exempt.

B. The Panel Reversed the Jury's Verdict Without Ever Defining the Meaning of "Legal and Regulatory Compliance."

Despite being directly confronted with the issue, the decision below never actually interprets "legal and regulatory compliance." Numerous times in the opinion, the Eleventh Circuit writes that the jurisdictional determination work the investigators perform does not count, but it never expressly says what does. Nor does the Eleventh Circuit say what does in *Fowler*. Pet. App. 18a, 20a.

What this means is that the question regarding what constitutes "legal and regulatory compliance" was never really decided below. It means that the opinion rests entirely on the panel's primary-duty ruling — a determination that the Respondents' investigative work, not their antecedent jurisdictional gatekeeping, was the principal duty per

§ 541.700(a). It also means that the Eleventh Circuit did not follow the Fifth and Sixth Circuits.

Additionally, the Eleventh Circuit's ruling reweighed the relative importance of Respondents' duties against a jury verdict for the employer, contravening both § 541.700(b) and this Court's holding in *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986)*; see also* Pet. App. 9a n.4. As this Court stated in *Icicle*, ***how*** employees "spend their time" and the significance of that work are questions of fact.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

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September 2, 2026

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED FEBRUARY 10, 2026

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 25-10673

ROBERT BUMGARDNER, LESLIE BURETA,
SHANNON BYERS, LARRY LEON HARRISON,
ASHLEY BRYANT, VICTOR LONG,

Plaintiffs-Appellants,

SHANNON VOLKODAV,

Plaintiffs,

versus

FORENSIC PATHOLOGY SERVICES, P.C.,
CAROL A. TERRY, M.D.,

Defendants-Appellees.

Filed February 10, 2026

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:22-cv-01314-JPB

Before Rosenbaum, Branch, and Grant, Circuit Judges.

PER CURIAM:

Under the Fair Labor Standards Act ("FLSA"), workers in administrative roles like "legal and regulatory compliance" aren't entitled to extra pay for overtime work. Defendants-Appellees Forensic Pathology Services, P.C. ("FPS"), and its CEO, Dr. Carol A. Terry, contend that FPS's forensic death investigators, who investigate unexpected or non-natural deaths in Gwinnett County, Georgia, fit this category.

FPS operates under the authority of the Georgia Death Investigation Act. Naturally, the company takes care to examine and remove bodies from the scene of death only if the law authorizes it to do so. FPS's investigators make sure they have jurisdiction over a body before diving into their investigation. In Defendants' view, this makes the investigators "legal compliance" employees who don't have a right to overtime pay.

Defendants are mistaken. Our precedent in *Fowler v. OSP Prevention Group, Inc.*, 38 F.4th 103 (11th Cir. 2022), squarely forecloses their argument.

That decision makes clear that "administrative" employees help run a business by setting standards for others or by performing the general functions involved in running any business. The exemption doesn't apply to line-level "production" employees who produce the goods or services that the business offers.

Plaintiffs-Appellants, six former forensic death investigators at FPS, fall into this second category. Their factfinding helped produce FPS's core "product" of death-investigation services. FPS and Dr. Terry provide no authority to support their view that if an employee adheres to state law while producing their employer's core product, that somehow makes their work "administrative" within the meaning of the FLSA. And if that were so, huge swaths of the American workforce would be subject to the FLSA's "administrative" exemption, meaning the FLSA's wage protections would not apply to them.

We therefore conclude that the district court erred by denying Plaintiffs' motion for judgment as a matter of law on Defendants' administrative-exemption defense. This defense was the sole basis for the jury's verdicts for FPS and Dr. Terry. So we vacate the court's judgment and remand the case for a new trial.

I. BACKGROUND

A. The Parties

Dr. Terry is a forensic pathologist who functions as the chief medical examiner for Gwinnett County, Georgia. As chief medical examiner, Dr. Terry conducts post-mortem examinations of deaths in Gwinnett County that are sudden, unexplained, or due to non-natural causes. She was appointed to the role under the Georgia Death Investigation Act.

Dr. Terry also is the chief executive officer of FPS. Gwinnett County and FPS have contracted so that the company operates as the Gwinnett County Medical Examiner's Office. FPS employs several forensic death investigators, who gather evidence to help Dr. Terry determine decedents' causes of death. It also employs forensic technicians, who assist Dr. Terry with autopsies.

Plaintiffs-Appellants are six former employees of FPS, where they worked as death investigators. One of them, Bumgardner, was a "senior" investigator.

B. The Forensic Death Investigator Role

FPS's death investigators operate as Dr. Terry's "eyes and ears" to help her determine the cause and manner of a person's death. As Dr. Terry explained at trial, she is not personally able to visit every scene of death or engage with every decedent's family members. So FPS's investigators collect evidence on her behalf. They take photographs of the scene, speak with law-enforcement officials and witnesses, and examine the body for injuries and signs of natural disease.

Not every death falls within the chief medical examiner's jurisdiction, though. Georgia law requires a medical examiner to inquire into certain categories of deaths, mainly those that are sudden, unexplained, or due to non-natural causes. *See* Ga. Code Ann. § 45-16-24(a)(1)-(10), (b). So the first thing FPS investigators do when a death is reported is to determine whether it falls within Dr. Terry's jurisdiction. Only about one-third of the deaths reported to FPS do.

If the investigator concludes that a body needs further examination, she sends it to the medical examiner's office. To do so, the investigator tags the body, ensures it is placed in a body bag, and calls a transport service to bring the body in. Dr. Terry then conducts an examination, which can range from examining the outside of the body to a full autopsy. The investigators serve as a "conduit" between Dr. Terry and the decedent's family, gathering additional information from family members and providing updates about the chief medical examiner's conclusions. The investigators later memorialize the information they've learned in a written report that forms part of the official medical examiner's report.

One plaintiff, Robert Bumgardner, had additional responsibilities as a senior investigator. Sometimes, he would recommend that FPS hire certain people as investigators, and he once gave input on whether to fire an investigator. Bumgardner also shared responsibility for training new investigators after they began at FPS. Yet Bumgardner continued to perform the same investigative functions as FPS's other forensic death investigators, so he was able to swap shifts with non-senior investigators.

C. Procedural History

In 2021, the Department of Labor investigated FPS's compliance with the FLSA. The Department informed Dr. Terry that its investigation revealed violations of the

FLSA's minimum-wage, overtime, and recordkeeping requirements. But the Department ultimately declined to litigate.

Instead, a group of former forensic death investigators ("Plaintiffs") sued FPS and Dr. Terry (collectively, "Defendants") in April 2022 under the FLSA's private right of action. Plaintiffs alleged that Defendants violated the FLSA's requirement to pay one-and-a-half times the normal rate of pay for overtime work.

After discovery, Defendants moved for summary judgment. As relevant here, they asserted an affirmative defense that the FLSA's overtime provision doesn't apply to Plaintiffs because, they claimed, Plaintiffs qualify for the FLSA's administrative exemption.[1] After reviewing our decision in *Fowler v. OSP Prevention Group, Inc.*, 38 F.4th 103 (11th Cir. 2022), the district court denied Defendants' motion.

Nine months later, the district court conducted a seven-day trial. Before the judge charged the jury, Plaintiffs moved for judgment as a matter of law on whether the FLSA's administrative exemption applied. The court denied the motion and instructed the jury, which reached verdicts favoring Defendants as to all seven Plaintiffs. For each, the jury's sole finding was that the

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1. Defendants' motion also asserted that the FLSA's executive exemption applies to Bumgardner, that certain time Plaintiffs put in at FPS doesn't constitute "work," and that Plaintiffs' claims were time-barred. The district court denied the motion on these grounds as well.

FLSA's administrative exemption applied, making that Plaintiff ineligible for overtime pay. Plaintiffs renewed their motion for judgment as a matter of law on the administrative exemption. The court again denied the motion.

Ultimately, the clerk entered judgment in favor of Defendants. Six Plaintiffs timely appealed.

II. LEGAL STANDARD

We review de novo a district court's ruling on a motion for judgment as a matter of law. *McGinnis v. Am. Home Mortg. Servicing, Inc.*, 817 F.3d 1241, 1254 (11th Cir. 2016).

A party may move under Rule 50(a) for judgment as a matter of law after a party has been fully heard on an issue but before the court submits the case to the jury. Fed. R. Civ. P. 50(a). After judgment, the party may renew its motion under Rule 50(b). The legal standard is the same under either rule. *McGinnis*, 817 F.3d at 1254. The court must determine whether "a reasonable jury would not have a legally sufficient evidentiary basis to find for the [non-moving] party on that issue." Fed. R. Civ. P. 50(a)(1). The court "must evaluate all the evidence, together with any logical inferences, in the light most favorable to the non-moving party," but it must not resolve conflicts in the evidence or make credibility determinations. *McGinnis*, 817 F.3d at 1254 (quoting *Beckwith v. City of Daytona Beach Shores*, 58 F.3d 1554, 1560 (11th Cir. 1995)).

III. DISCUSSION

At the close of trial, the jury reached verdicts in Defendants' favor as to all seven Plaintiffs.[2] These verdicts each made a single finding: that Defendants had established their affirmative defense that the investigator fell within the FLSA administrative exemption.

Plaintiffs argue that the district court should have granted their renewed motion for judgment as a matter of law on this issue for any of three reasons. First, they contend that Defendants provided no evidence that Plaintiffs' primary duty was "the performance of office or non-manual work directly related to the management or general business operations of the employer." 29 C.F.R. § 541.200(a)(2). Second, and relatedly, they

2. The district court previously recognized that an eighth plaintiff, Dallas Williams, was not a part of the case by the time the court entered its pretrial order. Its Consolidated Pretrial Order listed seven Plaintiffs—omitting Williams's name—as the "correct and complete" set of Plaintiffs. And the Order "supersede[d]" and amended the pleadings "to conform hereto." ECF No. 82 at 25 ¶ 29; *cf.* Fed. R. Civ. P. 16(c)(2)(B). For that reason, Williams's earlier and ineffective attempt to voluntarily dismiss himself from the case does not bear on our jurisdiction. To be sure, Williams filed his purported notice of voluntary dismissal after Defendants answered the complaint, and it lacked the stipulation of all parties who had appeared. *See* Fed. R. Civ. P. 41(a)(1)(A). But the district court's Consolidated Pretrial Order later validly dismissed Williams from the case. So the clerk's judgment following trial was a final, appealable judgment. *See* 28 U.S.C. § 1291. We therefore have no need to consider the court's later judgment *nunc pro tunc*, apparently placed on the docket to resolve concerns over Williams's status.

assert Defendants failed to present evidence that their primary duty included the exercise of discretion and independent judgment about matters of significance. And third, Plaintiffs posit that the FLSA's "first responder regulation"—which generally makes the FLSA's executive, administrative, and professional exemptions inapplicable to police officers, fire fighters, investigators, paramedics, and similar employees, 29 C.F.R. § 541.3(b)(1)—excludes Plaintiffs from the administrative exemption.

We don't need to go beyond the first argument. Under a straightforward reading of our precedent, Plaintiffs' role as investigators doesn't directly relate to the "management or general business operations" of FPS. 29 C.F.R. § 541.200(a)(2).[3] That shortcoming is dispositive. So the district court erred in holding that the jury had a sufficient evidentiary basis to conclude that the FLSA administrative exemption covers Plaintiffs.[4]

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3. An employee can also qualify for the FLSA administrative exemption if his primary duty directly relates to the "management or general business operations" of his employer's customers. 29 C.F.R. § 541.200(a)(2). No one argues that Plaintiffs fall within the exemption for that reason.

4. Because the parties presume that the question is one of factual sufficiency, we consider this appeal on those grounds. But this opinion should not be read to take a position on that premise. *See Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 713 (1986) (characterizing "whether an exemption to the FLSA applies in a particular case" as a "legal question").

A. The Administrative Exemption

The FLSA carves out employees "employed in a bona fide executive, administrative, or professional capacity" from its minimum-wage and overtime protections. 29 U.S.C. § 213(a). It also makes that carveout subject to the way "such terms are defined and delimited from time to time by regulations of the Secretary [of Labor]." *Id.*

The Secretary defines an "employee employed in a bona fide administrative capacity" as any employee:

> (1) Compensated on a salary or fee basis that exceeds a certain rate of pay;
>
> (2) "Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers;" and
>
> (3) "Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance."

29 C.F.R. § 541.200(a). We have explained that a defendant must satisfy each of these prongs to show that the exemption applies. *Fowler*, 38 F.4th at 106.

The Secretary has given further guidance about the second prong—that is, evaluating whether the employee's primary duty is "the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers." 29 C.F.R. § 541.200(a)(2). To meet that requirement, "an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment." *Id.* § 541.201(a).

The parties don't meaningfully dispute which tasks make up the investigators' primary duty.[5] Instead, the relevant question is whether that duty directly relates to FPS's "general business operations" within the meaning of the FLSA administrative exemption. And our precedent controls that question.

B. Factfinding Investigators Under *Fowler*

Our decision in *Fowler* requires us to conclude that Plaintiffs aren't administrative employees. In that case, we considered whether two property-damage investigators who worked with broadband infrastructure fell within the FLSA administrative exemption. We held that they didn't satisfy the exemption's second prong because they weren't part of their employer's management and "did not run or service the general business operations of the company." *Id.* at 114.

5. The parties debate the degree to which those tasks constitute "office or non-manual work," another aspect of the exemption's second prong. 29 C.F.R. § 541.200(a). Because Plaintiffs' primary duty doesn't directly relate to FPS's "general business operations," we don't need to wade into that dispute.

Two aspects of *Fowler* control the result here. First, we explained how the administrative exemption's second prong distinguishes administrative work from production work. Second, we applied that understanding to factfinding investigators who were highly analogous to the death investigators in this case.

1. The Administration/Production Distinction

The more general lesson from *Fowler* is the difference between production and administrative work. Production employees "perform the core function of the business"—producing the goods or services that the business offers to the public. *Id.* at 110-11. Administrative employees, in contrast, have a primary duty that directly relates either to managing others or to "running [the] business" as a whole. *Id.* at 113.

To flesh out this distinction, we reviewed the long list of "functional areas" the Secretary of Labor identifies as administrative work. *Id.* at 109-10. Those areas include accounting, procurement, finance, human resources, and "legal and regulatory compliance." *See* 29 C.F.R. § 541.201(b). Each is the sort of support function necessary for nearly any business. *See Davis v. J.P. Morgan Chase & Co.*, 587 F.3d 529, 535 (2nd Cir. 2009) (distinguishing the work to produce the "primary output of a business" from "general administrative work applicable to the running of any business").

We identified a common thread in these functional areas. Employees performing these functions often help to define policies for a business's production employees to follow. For example, a human-resources officer might develop procedures for employees to report unsafe or inappropriate conduct by their peers. So the exemption's second prong "draws a line between administrative employees, who help run the business by setting standards, and 'production' employees, who help the business run by following the standards that have been set for them." *Fowler*, 38 F.4th at 110.

Of course, an employee can help run or service the business without creating policies. For instance, consider a member of a finance department who processes payments to a company's vendors. That employee is administrative because she "is simply performing 'work that is ancillary to an employer's principal production activity.'" *Grage v. N. States Power Co.-Minn.*, 813 F.3d 1051, 1056 (8th Cir. 2015) (alterations accepted) (quoting *Renfro v. Ind. Mich. Power Co.*, 370 F.3d 512, 517 (6th Cir. 2004)).

To put it another way, the FLSA's administrative exemption generally applies to "back office" employees who manage others or perform a supporting function that "assist[s] with the running or servicing of the business" as a whole. 29 C.F.R. § 541.201(a). It doesn't apply to line-level production employees—whether they work on a traditional "manufacturing production line," *id.*, or at a business that "provide[s] investigative services," *Fowler*, 38 F.4th at 111.

2. Investigators as Production Employees

After explaining the difference between production and administrative work, we then applied the exemption's second prong to the "factfinding investigators" in *Fowler*. *Id.* at 112. Those investigators examined damage to broadband infrastructure, determined who was liable for the damage, and calculated how much repairs would cost. *Id.* at 106-07. Considering their company's "core function of damage investigations," we concluded the plaintiffs' "investigative factfinding duties amounted to production work." *Id.* at 114. So, we said, they weren't covered by the administrative exemption. *Id.*

The same principle governs here—simply swap out "damage investigations" for "death investigations." Just as in *Fowler*, Plaintiffs in this case were involved in production of their employer's core service—death investigations. Like the *Fowler* investigators, Plaintiffs similarly "interviewed witnesses, . . . preserved evidence, took photographs, and . . . wrote reports and submitted them to their supervisors." *Id.* at 113. And the parties agree Plaintiffs had to follow "prescribed procedures" when doing so, even if they used their professional "judgment to decide the order of the steps in their investigations and what inferences to draw from the data they gathered." *Id.* So no matter how much their work was "essential to the service [FPS] provides," the investigators didn't "run or service the general business operations of the company." *Id.* at 113-14.

C. Compliance with the Georgia Death Investigation Act

Defendants' contrary argument stretches the FLSA regulation's reference to "legal and regulatory compliance" far past its breaking point. Because Plaintiffs must first determine whether they have jurisdiction over a case under the Georgia Death Investigation Act before they perform their forensic investigation, Defendants contend that 100 percent of Plaintiffs' investigative work directly relates to "legal compliance" with the Georgia Death Investigation Act. Indeed, Defendants label the jurisdictional determination "the most critical part of FPS's general [business] operations." This view incorrectly conflates any employee's adherence to the law with the back-office function of "legal compliance."

Legal compliance was the only ground Defendants offered the jury to conclude that Plaintiffs met the administrative exemption's second prong. Again, that prong requires an employee's primary duty to be "the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers." 29. C.F.R. § 541.200(a)(2). In closing arguments, Defendants' counsel told jurors that "legal compliance" was the single, "key" way that Plaintiffs' primary duty related to FPS's general business operations. And he elaborated that "determining legal compliance" with the Georgia Death Investigation Act satisfied the second prong.

The record shows the jury had the same focus. After less than a half-hour of deliberation, the jury submitted its only question, asking for a more specific definition of the regulation's reference to "legal and regulatory compliance." The court explained that the regulation had no further detail and asked the jurors to use their "best judgment." Less than 45 minutes later, the jury returned verdicts against all seven Plaintiffs. But the record can't support this finding.

1. The Scope of "Legal Compliance"

Defendants point to no evidence that Plaintiffs' primary duty directly relates to the type of "legal compliance" relevant to the FLSA exemption. Rather, Defendants' attempt to reframe investigative work as legal compliance misapprehends the governing regulation. Even if we focus on the investigators' determination of whether their office had jurisdiction over a given death, no evidence indicates that this function was their primary duty.

We'll start with the argument Defendants make on appeal. Defendants are plainly wrong to assert that Plaintiffs' core investigative duties constitute "legal compliance." Complying with applicable laws and regulations is critical for *every* regulated business. So accepting Defendants' argument that complying with the Georgia law that governs their industry somehow turns Plaintiffs into administrative employees would have an extraordinary result. It would mean that all employees in regulated industries are "administrative." But that position has no basis in law.

First, it would dissolve the administration/production distinction *Fowler* articulates. As we've noted, under Defendants' theory, even the most paradigmatic line-level production employee would fall within the administrative exemption if his work must comply with applicable statutes or regulations. But Defendants provide no basis to think that the FLSA or related regulations contemplate this outcome.

Second, in fact, the contrary is true. The regulation provides examples of roles that are or are not subject to the administrative exemption, and these examples cut strongly against Defendants' view. The regulation explains that "[p]ublic sector inspectors or investigators" in areas such as fire safety, building code inspection, or health and sanitation generally don't satisfy the second prong. 29 C.F.R. § 541.203(j). But statutes and regulations govern public employees in these roles far more tightly than they do private employees. And the more that applicable law imposes "known standards or prescribed procedures," the less appropriate the administrative exemption becomes. *Id.*

The regulation also discusses many nuances about which employees in the financial-services industry—a quintessential regulated industry—fall under the administrative exemption. *Id.* § 541.203(b). If Defendants' view were right, this detail would be unnecessary because all financial-services employees' roles would relate to legal and regulatory compliance.

Every worker must take care to ensure he complies with the law. But a delivery driver doesn't become a "legal compliance" employee when he stops for a red light.

Next, we consider the one responsibility Defendants identify that is even arguably administrative "legal compliance"—the investigators' initial determination of statutory jurisdiction. But even if we assumed that this duty can be deemed administrative work, that wouldn't solve Defendants' problem.

At the outset, it's unclear that the jurisdiction determinations are the sort of "legal compliance" work the FLSA exemption contemplates. The investigators in *Fowler* were non-exempt production employees, even though they "review[ed] permits and applicable dig laws" and recommended who was legally liable for property damage according to set criteria. *Fowler*, 38 F.4th at 108, 110. Similarly, the jury heard unrebutted testimony that investigators determining jurisdiction had to ask the person reporting a death a list of "mandatory" questions the investigators referred to as the "green sheet." And Dr. Terry testified that she had the ultimate call about jurisdiction.

But even if Defendants could show that these jurisdiction determinations qualify as "legal compliance," they have a more fundamental problem: no evidence suggests that the investigators' "primary duty" was determining jurisdiction. Defendants do not even contend otherwise. And the record reflects that Plaintiffs' primary duty involved determining the causes of death in cases over which they had jurisdiction. So Defendants' description of Plaintiffs' investigative work as 100 percent directly related to "legal compliance" with the Georgia Death Investigation Act betrays an implicit recognition that Defendants could not prove that at least half of Plaintiffs' work directly related to true "legal compliance."

And that is enough to decimate their administrative-exemption defense.

As we've explained, the administrative exemption applies to a worker only if his "primary duty" directly relates to the "management or general business operations" of his employer or its customers. 29 C.F.R. § 541.200(a)(2). An employee's primary duty is the "principal, main, major or most important duty that the employee performs," looking at factors including duties' relative importance, the time spent on exempt tasks, and the amount of direct supervision. 29 C.F.R. § 541.700(a).

Defendants emphasize that an employee will generally satisfy this second prong if more than half his work is exempt. 29 C.F.R. § 541.700(b). But they conspicuously don't argue that determining jurisdiction comes anywhere near this threshold. To the contrary, Defendants' brief emphasizes testimony that minimizes the amount of time Plaintiffs spent on determining jurisdiction.

Plus, the testimony consistently shows that the investigators' central function was gathering evidence in death investigations. Dr. Terry herself called the investigators "my eyes and ears" to "collect[] information on my behalf to help me determine cause and manner of death." Defendants' other witness called determining the cause and manner of death the "ultimate goal for the whole case." To be sure, the jury heard a witness testify that determining jurisdiction was one of the investigators' primary responsibilities and another witness agree it was a "fundamental" component of the job. But without any evidence showing it took a majority share of investigators' time—and considering evidence that negates this possibility—this testimony can't establish that determining jurisdiction was more important to the investigators' roles than investigative work.

Like the investigators in *Fowler*, the death investigators' core work fundamentally "focused on diligent and accurate factfinding according to guidelines set by their employer." 38 F.4th at 110. So a proper understanding of the scope of "legal compliance" dictates that the administrative exemption doesn't apply.

2. Defendants' Attempts to Distinguish *Fowler*

Perhaps recognizing that it's fatal to their defense, Defendants try to distinguish *Fowler* in four ways. They emphasize that the investigators there (1) had only one client, (2) followed standard operating procedures memorialized in two documents, (3) typically concluded that the damage was caused by excavation or digging, and (4) did not have an "awesome responsibility" like determining whether FPS had statutory jurisdiction over a death. None of these arguments is persuasive.

First, Defendants don't explain why a business's number of clients affects whether a given employee's work is administrative. And we don't see why it would. But in any event, FPS's work also focused on just one principal client—Gwinnett County.

The second and third counterarguments fail for similar reasons. As the evidence showed during the trial, FPS's investigators had to follow written guidelines on their "green sheet" and employment manual when deciding whether the office had jurisdiction over a death. Defendants suggest that, once the investigator reached the scene, the causes of death varied more than the causes of property damage in *Fowler*. But that's a distinction without a difference. Even assuming Plaintiffs had to exercise more discretion than the *Fowler* investigators, the degree of discretion goes to the separate, third prong of the administrative exemption. *See* 29 C.F.R. § 541.200(a)(3); *Brown v. Nexus Bus. Sols., LLC*, 29 F.4th 1315, 1318 (11th Cir. 2022) (analyzing third prong). And we have no need to reach that third prong because, as we've explained, Defendants fail on the second. Nor does the exercise of judgment somehow transform Plaintiffs from frontline, factfinding investigators to managers or back-office support staff.

Finally, Defendants misstep by arguing that Plaintiffs' jurisdictional determinations were so significant that they must be administrative. We rejected the same argument in *Fowler*, 38 F.4th at 114. So it can fare no better here.

IV. CONCLUSION

For the foregoing reasons, we reverse the district court's denial of Plaintiffs' renewed motion for judgment as a matter of law on Defendants' administrative-exemption defense. We also vacate the district court's judgment against Plaintiffs and remand for further proceedings consistent with this opinion.

REVERSED, VACATED, and REMANDED.

APPENDIX B — EXCERPTS OF TRANSCRIPT FOR THE NORTHERN DISTRICT OF GEORGIA JANUARY 31, 2025 JURY TRIAL PROCEEDINGS

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DOCKET NO 1:22-CV-01314-JPB
VOLUME 7

ROBERT BUMGARDNER, *et al.*,

Plaintiffs,

-VS-

FORENSIC PATHOLOGY SERVICES, P.C. AND CAROL A. TERRY,

Defendants.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS BEFORE THE HONORABLE J.P. BOULEE UNITED STATES DISTRICT JUDGE JANUARY 31, 2025

* * *

[40]MR. KAPPLER: We've already done that one.

So switching to the executive exemption, there has to be evidence to show that Mr. Bumgardner was responsible for the management of at least two employees, and that his decisions -- he either had the ability to make hiring and firing decision or make recommendations.

THE COURT: Let me interrupt as to these last two, administrative and executive. I think there's been a lot of evidence from both sides on this, and the jury's going to have to sort that out and make the decision. So I'm going to just interrupt you and say I'm going to deny on administrative and executive. I think there's just a lot of evidence and I think that a reasonable jury would have a legally sufficient evidentiary basis to find for the defense on those issues.

And this goes to the first responder as well. I mean, both of you, I think to your credit on behalf of your clients, you've gotten a lot of evidence out that goes both ways on all – on the administrative and on the executive. And in conjunction with both of those, the first responder. So I certainly don't think I should through Rule 50 take that -- those factual questions away from the jury.

As far as severely restricted, I think it's the same. I think there's evidence on both sides of that. I can't say that a reasonable jury couldn't find legally sufficient evidentiary basis to rule for the defense. So I'll deny the

* * *

[168]I know it came at the price of inconvenience both vis-a-vis your family and your jobs. So thank you for your willingness to be here. It is appreciated. Take care.

Thank you.

(The jury exited the courtroom at 5:37 p.m.)

THE COURT: You can be seated.

Counsel, I would be happy to go ask the jurors if they would like to -- if either side would like to talk with them? I usually only do that if both folks are going to go back.

MR. KAPPLER: Judge, it's 5:30 on a Friday, I would not want to impose on them. I do like to talk to jurors but today is okay.

THE COURT: Mr. Walker?

MR. WALKER: Give me a second, your Honor.

No, your Honor, we'll pass on that offer.

THE COURT: All right. Very well. I think that concludes this proceeding.

MR. WALKER: Your Honor, I would like to make a overdue plaintiffs' motion for directed verdict on the administrative exemption issue as that's the finding of the jury. And in addition to that, the first responder regulation that's incorporated as part of that administrative exemption.

THE COURT: All right. Thank you, Mr. Walker.

Based on my earlier rulings, I don't see any reason [169]to revisit those and reconsider, so those continue to be denied.

That concludes this proceeding. Thanks, everyone.

And I want to applaud counsel for both sides. I know this was a two-week long case and it was difficult in a lot of ways, and I thought you each showed professionalism throughout the proceedings. And despite the result, it was obvious that everyone was advocating well on behalf of your clients. Thank you.

(PROCEEDINGS REPORTED WERE CONCLUDED AT 5:39 P.M.)

APPENDIX C — ORDER DENYING REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED MAY 5, 2026

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 25-10673

ROBERT BUMGARDNER, LESLIE BURETA,
SHANNON BYERS, LARRY LEON HARRISON,
ASHLEY BRYANT, *et al.*,

Plaintiffs-Appellants,

SHANNON VOLKODAV, *et al.*,

Plaintiffs,

versus

FORENSIC PATHOLOGY SERVICES, P.C.,
CAROL A. TERRY, M.D.,

Defendants-Appellees.

Filed May 5, 2026

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:22-cv-01314-JPB

Before Rosenbaum, Branch, and Grant, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Forensic Pathology Services, P.C. and Carol A. Terry, M.D. is DENIED.

APPENDIX D — RELEVANT STATUTORY PROVISIONS

§ 541.200 General rule for administrative employees.

(a) The term "employee employed in a bona fide administrative capacity" in section 13(a)(1) of the Act shall mean any employee:

. . .

(2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and

(3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

29 C.F.R. § 541.200(a)(2) and (3).

* * *

§ 541.201 Directly related to management or general business operations.

(a) To qualify for the administrative exemption, an employee's primary duty must be the performance of work directly related to the management or general business operations of the employer or the employer's customers. The phrase "directly related to the management or general business operations" refers to the type of work performed by the employee. To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.

(b) Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities. Some of these activities may be performed by employees who also would qualify for another exemption.

. . .

29 C.F.R. § 541.201 (a) and (b).

* * *

§ 541.202 Discretion and independent judgment.

(a) To qualify for the administrative exemption, an employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term "matters of significance" refers to the level of importance or consequence of the work performed.

(b) The phrase "discretion and independent judgment" must be applied in the light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

(c) The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, employees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. Thus, the term "discretion and independent judgment" does not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. For example, the policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization may have the plan reviewed or revised by superiors before it is submitted to the client.

. . .

(e) The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources. See also § 541.704 regarding use of manuals. The exercise of discretion and independent judgment also does not include clerical or secretarial work, recording or tabulating data, or performing other mechanical, repetitive, recurrent or routine work. An employee who simply tabulates data is not exempt, even if labeled as a "statistician."

. . .

29 C.F.R. § 541.202 (a), (b), (c), and (e).

* * *

§ 541.700 Primary duty.

(a) To qualify for exemption under this part, an employee's "primary duty" must be the performance of exempt work. The term "primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

(b) The amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Thus, employees who spend more than 50 percent of their time performing exempt work will generally satisfy the primary duty requirement. Time alone, however, is not the sole test, and nothing in this section requires that exempt employees spend more than 50 percent of their time performing exempt work. Employees who do not spend more than 50 percent of their time performing exempt duties may nonetheless meet the primary duty requirement if the other factors support such a conclusion.

(c) Thus, for example, assistant managers in a retail establishment who perform exempt executive work such as supervising and directing the work of other employees, ordering merchandise, managing the budget and authorizing payment of bills may

> have management as their primary duty even if the assistant managers spend more than 50 percent of the time performing nonexempt work such as running the cash register. However, if such assistant managers are closely supervised and earn little more than the nonexempt employees, the assistant managers generally would not satisfy the primary duty requirement.

29 C.F.R. § 541.700 (a), (b), and (c).

* * *

§ 541.704 Use of manuals.

The use of manuals, guidelines or other established procedures containing or relating to highly technical, scientific, legal, financial or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skills does not preclude exemption under section 13(a)(1) of the Act or the regulations in this part. Such manuals and procedures provide guidance in addressing difficult or novel circumstances and thus use of such reference material would not affect an employee's exempt status. The section 13(a)(1) exemptions are not available, however, for employees who simply apply well-established techniques or procedures described in manuals or other sources within closely prescribed limits to determine the correct response to an inquiry or set of circumstances.

29 C.F.R. § 541.704