No. 23-50724

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ROBERT MAYFIELD, AND
R.U.M. ENTERPRISES, INCORPORATED,

Plaintiffs – Appellants,

v.

UNITED STATES DEPARTMENT OF LABOR, AND
MARTIN WALSH, SECRETARY, U.S. DEPARTMENT OF LABOR,

Defendants – Appellees.

On Appeal from the United States District Court
for the Western District of Texas, Austin
Honorable Robert L. Pitman, U.S. District Judge

PLAINTIFFS-APPELLANTS' UNOPPOSED MOTION TO EXPEDITE APPEAL

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Attorneys for Plaintiffs – Appellants

CERTIFICATE OF INTERESTED PERSONS

No. 23-50724, *Mayfield, et al. v. U.S. Department of Labor, et al.*

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case:

1. Dixon, Courtney, Attorney for Defendants-Appellees
2. Garrison, Frank D., Attorney for Plaintiffs-Appellants
3. Kerkhoff, John F., Attorney for Plaintiffs-Appellants
4. Klien, Alisa Beth., Attorney for Defendants-Appellees
5. Mayfield, Robert, Plaintiff-Appellant
6. Pitman, Robert, U.S. District Court Judge
7. R.U.M. Enterprises, Inc., Plaintiff-Appellant
8. Rosen-Shaud, Brian C., Attorney for Defendants-Appellees
9. Su, Julie, Acting U.S. Secretary of Labor, Defendants-Appellees
10. U.S. Department of Labor, Defendants-Appellees
11. Wake, Luke A., Attorney for Plaintiffs-Appellants

12. Walsh, Martin, former U.S. Secretary of Labor, Defendants-Appellees

/s/ Luke A. Wake
LUKE A. WAKE
Counsel for Plaintiffs-Appellants

Pursuant to 28 U.S.C. § 1657(a) and 5th Cir. Loc. R. 27.5, Appellants Robert Mayfield and R.U.M. Enterprises, Inc. ("Mayfield") file this unopposed motion to expedite the pending appeal in the above captioned case.[1] There is good cause for granting a motion to expedite because the Appellees, Secretary of Labor and the Department of Labor ("Department"), have taken action that exacerbates Mayfield's injuries in a manner that will cause irreparable harm beginning on July 1, 2024. And because Mayfield's irreparable harms will dramatically worsen on January 1, 2025, this motion specifically requests that this Court schedule oral argument as soon as possible and render a decision before January 1, 2025.

In support of this motion, Mayfield states:

1. This appeal concerns the Department's authority to impose minimum salary requirements under the Fair Labor Standards Act's Executive, Administrative, and Professional Exemption, 29 U.S.C. § 213(a)(1) ("EAP Exemption"). Mayfield alleges that the Department has no statutory authority to establish minimum salary requirements

[1] Mayfield conferred with opposing counsel prior to filing this motion in accordance with Local Rule 27.4. Appellees do not oppose Mayfield's request to expedite the appeal.

under the EAP Exemption. Alternatively, Mayfield argues that the EAP Exemption violates the Constitution's nondelegation doctrine.[2]

2. Throughout this appeal, the Department has enforced a minimum salary rule that it adopted in 2019, which requires Mayfield to pay his managers a minimum salary of $35,568 annually to maintain their exempt status under the EAP Exemption.[3] But a week after the parties concluded merits briefing, the Department finalized a new rule, now incorporated into 29 C.F.R. § 541.600, that will require Mayfield to provide dramatic salary raises to his exempt managers, or will otherwise force the company to convert these employees to an hourly non-exempt status.[4]

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[2] *See* AOB at 12–42 (pressing ultra vires arguments); *infra* at 43–68 (arguing that there is no intelligible principle to guide the exercise of discretion for imposing or modifying minimum salary rules).

[3] Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 84 Fed. Reg. 51,230, 51,236 (Sept. 27, 2019).

[4] Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 89 Fed. Reg. 32,842, 32,862 (April 26, 2024) ("2024 Rule").[5] The January 1, 2025 effective date will require a salary hike of $14,768 annually ($284 per week) above the $43,888 annual ($844 a week) minimum salary that will go into effect on July 1, 2024. That is on top of the July 1st minimum salary hike of $8,320 annual ($160 per week) from the Department's 2019 salary rule.

3. Effective on July 1, 2024, the new rule will require that employees performing "executive, administrative, or professional" duties must be paid a minimum salary of at least $43,888 annually ($844 a week) to remain exempt. 2024 Rule, 89 Fed. Reg. at 32,843. And effective on January 1, 2025, the new rule will require a minimum salary of $58,656 annually ($1,128 a week) for these employees to maintain their exempt status. *Id*. at 32,842

4. Accordingly, unless Mayfield obtains judicial relief before the end of the year, the company will be required to pay $23,088 annually ($444 per week) more than was required under the 2019 Rule for each of its managers to maintain an exempt status, and $34,996 annually ($673 per week) more than was required before the 2019 Rule went into effect in 2020.[5]

5. Mayfield currently employs 15 managers and assistant managers with a base salary of less than $844 a week, and 27 exempt employees with a base salary of less than $1,128 weekly. Exhibit A,

[5] The January 1, 2025 effective date will require a salary hike of $14,768 annually ($284 per week) above the $43,888 annual ($844 a week) minimum salary that will go into effect on July 1, 2024. That is on top of the July 1st minimum salary hike of $8,320 annual ($160 per week) from the Department's 2019 salary rule.

Declaration of Robert Mayfield, ¶ 10. Under these new thresholds, Mayfield will face the same Hobson's Choice he has already endured since 2019, but his constitutional injury will be exacerbated: He must either convert his managers and assistant managers to an hourly non-exempt status or dramatically raise salaries to meet the new minimum salary levels.

6. Mayfield has concluded that it is economically infeasible to raise minimum salaries for these currently exempt employees. *Id.* ¶ 11. Mayfield will thus be forced to convert 35.7% of his salaried employees to a nonexempt hourly status on July 1, 2024. *Id.* at 13. Mayfield will then be forced to convert 64.3% of his currently exempt employees to an hourly non-exempt status on January 1, 2025.[6] *Id.*

7. As such, Mayfield is facing new administrative burdens. Mayfield Decl. ¶ 15. For one, his company will be required to track employee hours and will have to develop new protocols to limit the

[6] Mayfield anticipates that he will need to convert still more currently exempt employees to an hourly non-exempt status in the future because the Department's new rule will automatically raise minimum salary requirements for "executive, administrative, and professional" employees to maintain their exempt status every three years. 2024 Rule, 89 Fed. Reg. at 32,843. The company forecasts that it will have to convert 81.1% of its currently exempt management team to an hourly status by 2027. Mayfield Decl. ¶ 14.

number of hours any given manager or assistant manager works to minimize overtime liabilities. *Id.*

8. Mayfield expects that the change to hourly status will also adversely affect the morale and productivity of his management team. *Id.* ¶ 16. Mayfield has reason to believe his currently exempt employees will be upset by this change and will view it as a demotion—not least because it will mean they will lose opportunities for bonuses that are only available to exempt employees under his compensation system. *Id.* ¶¶ 12, 16.

9. Mayfield is further concerned that converting these managers to an hourly non-exempt status will thoroughly upset the "managerial mindset" that he believes is essential to their success, and to the operation of his businesses. *Id.* ¶ 16. And he worries about losing good employees because of these changes. *Id.* ¶ 12.

10. But a timely merits decision in the Appellants' favor will alleviate Mayfield of his injuries and will minimize the irreparable harm his company will suffer after July 1, 2024.

11. Alternatively, a timely merits decision in the Appellees' favor would allow Mayfield to pursue a petition for en banc review or a

petition for certiorari to the U.S. Supreme Court sooner rather than later.

For all of these reasons, Mayfield respectfully requests, if the Court deems it warranted, that oral argument be scheduled as soon practicable. Mayfield's counsel is generally available for oral argument beginning in the fourth week of June and through the rest of the year, with exception of July 29, through August 2, 2025.[7] Accordingly, the undersigned counsel requests that this Court set oral argument for the earliest possible date beginning in the fourth week of June, but avoiding the week of July 29–August 2, 2024, if possible.

Likewise, Mayfield requests that this Court render a decision before the end of the year, or as soon as practicable, because the company must begin planning to ensure its compliance with the Appellees' new impending minimum salary rules before they become effective.

[7] Mayfield's lead counsel has an argument scheduled for June 5, 2024 in Philadelphia, Pennsylvania, and is working to finalize an opening brief in a case pending before the Eighth Circuit Court of Appeals—which will likely be due on either June 7, or June 14, 2024. Additionally, Mayfield's second chair attorney, as well as opposing counsel, are scheduled for oral argument before the Eighth Circuit in another matter on June 12, 2024. And further, Mayfield's second-chair and lead attorneys have their respective family vacations planned for the weeks of June 17–21, and July 29, 2024–August 2, 2024.

DATED: May 20, 2024.

Respectfully submitted,

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Attorneys for Plaintiffs–Appellants

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Luke A. Wake
LUKE A. WAKE
Counsel for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limit,
Typeface Requirements, and Type-Style Requirements

1. This document complies with the word limit of Fed. R. App. P. 5(c)(1) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f):

   X this document contains 1,268 words, or

   this brief uses a monospaced typeface and contains [state the number of] lines of text.

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DATED: May 20, 2024.

By /s/ Luke A. Wake
LUKE A. WAKE
Counsel for Plaintiffs-Appellants

Exhibit A

Declaration of Robert Mayfield

No. 23-50724

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DECLARATION OF ROBERT MAYFIELD IN SUPPORT OF PLAINTIFFS-APPELLANTS' MOTION TO EXPEDITE APPEAL

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Counsel for Plaintiffs-Appellants

I, Robert Mayfield, declare that:

1. I make this statement of my own personal knowledge and if called to testify, could and would testify truthfully thereto.

2. I am the owner and sole shareholder of R.U.M. Enterprises, Inc., which is currently challenging the Secretary of Labor's assertion of power to impose minimum salary rules for executive employees who are deemed exempt from the Fair Labor Standards Act's hourly pay and overtime requirements.

3. I have long taken issue with the Secretary's recurrent decisions to raise and further raise minimum salary requirements. I have repeatedly filed comment letters opposing every minimum salary hike over the past 20 years—from the rule the Department of Labor finalized in 2004, to the Department's most recent rule, which will raise minimum salary requirements dramatically higher for my company's management team. *See* Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 89 Fed. Reg. 32,842 (April 26, 2024) ("Impending Rule").

4. I initiated this lawsuit in August, 2022, seeking a declaration that the Secretary has no authority to enforce minimum salary rules

under 29 C.F.R. § 541.600. The lawsuit also asks for an injunction to prevent the Defendants from enforcing minimum salary rules under 29 C.F.R. 541.600, for an order setting aside 29 C.F.R. 541.600 under the Administrative Procedure Act, and for any other relief the Court may deem just and proper.

5. At the time I filed this lawsuit, the Department of Labor was enforcing a rule that was promulgated in 2019—which required my company to pay "executive" employees at least $684 per week ($35,568 annually). That rule went into effect in January, 2020. At the time it represented a 50 percent increase from the rule that the Department had promulgated in 2004, which had required a minimum salary of $455 per week ($23,660 annually) for exempt "executive" employees.

6. After filing this lawsuit, the Department proposed to further raise minimum salary requirements for "executive" employees to be deemed exempt under 29 U.S.C. § 213(a)(1).

7. Through my counsel, I filed a comment letter opposing this new rule in October, 2023. I stated, in that letter, that if the Department finalized its proposed rule to raise minimum salary requirements to $1,059 per week ($55,068 annually), R.U.M. Enterprises would be

compelled to reclassify many on its management team to a non-exempt status.

8. Nonetheless, the Department recently finalized the Impending Rule—which will raise minimum salary requirements to $844 per week ($43,888 annually) on July 1, 2024, and to $1,128 per week ($58,656 annually) beginning on January 1, 2025.

9. Still worse, the Impending Rule will automatically raise minimum salary requirements again in 2027 and every three years thereafter.

10. R.U.M. Enterprises currently employs 42 exempt employees on our management team. 15 of these employees currently have a base salary of less than $844 per week ($43,888 annually), and 27 currently have a base salary of less than $1,128 per week ($58,656 annually).

11. The Impending Rule putatively gives my company the option to continue classifying my managers and assistant managers as exempt so long as they are given dramatic raises. But it is economically infeasible for R.U.M. Enterprises to pay its exempt managers the minimum salaries required under the Impending Rule. As such, the company will have to reclassify those employees to an hourly nonexempt status.

12. This means we will be forced to demote the employees on whom we depend on the most. And once converted, those employees will lose the benefit of dependable salaries. Also, once converted to a non-exempt status, these employees will likely bring home less. They will be paid strictly by the hour, and will lose opportunities for bonuses, which are only available to exempt employees. And in turn, I worry that I will lose good employees and will see higher turnover under the new rule.

13. In the absence of judicial intervention, my company will be forced to convert 35.7% of our currently exempt management team to an hourly non-exempt status on July 1, 2024. Likewise, the company will be forced to convert 64.3% of our currently exempt management team to an hourly non-exempt status on January 1, 2025.

14. What is more, I anticipate that we will need to convert still more currently exempt employees to an hourly non-exempt status in the future because the Department's new rule will automatically raise minimum salary requirements. The company forecasts that we will have to convert 81.1% of our currently exempt management team to an hourly non-exempt status by 2027, under the new rule.

15. These compelled changes will create new administrative burdens because they will require the company to begin tracking the hours for these formerly exempt employees. Moreover, the company will have to develop new protocols to limit the number of hours any given manager or assistant manager works in order to minimize overtime liabilities.

16. What is more, this change will adversely affect the morale and productivity of my management team. Once converted to an hourly role, my management team will lose the "managerial mindset" that I have always tried to foster; instead, they will assume the mind-set of an hourly employee who is primarily interested in watching the clock.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on May 17, 2024 at Austin, Texas.

Robert U. Mayfield

ROBERT U. MAYFIELD