

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
Lubbock Division**

FLINT AVENUE, LLC,

Plaintiff,

v.

U.S. DEPARTMENT OF LABOR; JULIE
SU, Acting Secretary, U.S. Department of
Labor, in her official capacity; JESSICA
LOOMAN, Administrator, Wage and Hour
Division, U.S. Department of Labor, in her
official capacity,

Defendants.

CASE NO: 5:24-cv-130-C

**PLAINTIFF'S RESPONSE TO DEFENDANTS'
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff respectfully responds to Defendants' notice of supplemental authority (ECF 30) regarding the Eastern District of Texas's June 28, 2024 order enjoining the Final Rule as to Texas in its capacity as an employer. *Texas v. DOL*, No. 4:24-cv-499-SDJ (E.D. Tex. June 28, 2024), ECF No. 38, attached as Exhibit A.

Texas v. DOL raises identical issues as this case. Texas challenged the Department of Labor (DOL)'s 2024 Final Rule in its capacity as an employer. The Eastern District of Texas agreed with Plaintiff's argument here (*See Reply at 5-9*) that *Wirtz v. Mississippi Publishers Corp.*, 364 F.2d 603 (5th Cir. 1966), does not control a challenge to the Final Rule, which uses a different salary test from the rule *Wirtz* upheld. Ex. A at 20-21. The Eastern District also relied on *Loper Bright Enterprises v. Raimondo*, 603 U.S. —, 2024 WL 3208360, at *6 (June 28, 2024), to interpret the statute independently and without deference to the agency, Ex. A. at 12, which is a different mode

of analysis from *Wirtz*'s deferential approach. Such independent analysis concluded that the Final Rule's salary requirements likely exceed DOL's statutory authority to define the EAP exemption based on the "capacity" in which workers are employed. Ex. A at 20. It also found that the Final Rule would inflict irreparable injury on an affected employer, and that the balance of equities favors an injunction. *Id.* at 26-31. This Court should follow the Eastern District's well-reasoned analysis and grant a stay or injunction that, at the very least, prevents the Final Rule from applying to Plaintiff. Irreparable harm to Plaintiff could be avoided by an injunction limited to the July 1 salary level if *and only if* the Court resolves the merits of Plaintiff's claims before January 1, 2025. Nothing prevents the Court from staying or enjoining the entire Final Rule—as the Eastern District of Texas did—while this litigation is pending.

June 30, 2024

Respectfully Submitted

/s/ Sheng Li

Sheng Li, *pro hac vice*
John J. Vecchione, *pro hac vice* forthcoming
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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2024, a true and correct copy of the foregoing document was transmitted via using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Sheng Li