



FOR IMMEDIATE RELEASE

Media Inquiries: [Ruslan Moldovanov](mailto:ruslan.moldovanov@ncla.org), 202-869-5237

NCLA Asks Court to End DOL’s Illegal Power Grab, Overturn Wage and Overtime Exemption Rule

Flint Avenue, LLC v. U.S. Department of Labor; Julie Su and Jessica Looman, in their official capacities

Washington, DC (August 8, 2024) – The New Civil Liberties Alliance has [requested](#) summary judgment in *Flint Avenue v. Department of Labor*, urging the U.S. District Court for the Northern District of Texas to vacate a new rule that exceeds DOL’s statutory authority. The Final Rule sets a \$58,656 minimum-salary requirement for determining whether “white collar” employees are exempt from the Fair Labor Standards Act’s (FLSA) minimum wage and overtime requirements. In so doing, the Rule would unlawfully prevent employers, including countless small businesses, from claiming the exemption for 7.7 million white-collar employees nationwide who are paid less than the new salary requirement.

The new salary requirement would require employers to either raise salaries or reclassify these employees as hourly, thus preventing them from offering flexible work arrangements. NCLA’s client, Flint Avenue, LLC, is a small software company that competes with large corporations to recruit high-skilled workers by offering its seven employees flexible arrangements, like unlimited vacation. The Rule would force it to reclassify several of those employees as hourly, making such mutually beneficial arrangements no longer feasible.

The FLSA’s “white collar” exemption statutorily exempts anyone “employed in an executive, administrative, or professional *capacity*” from its minimum wage and overtime requirements, a definition based on a job’s *function*, not its *salary level*. The Rule defies the statute by denying employees the exemption unless they are paid a fixed weekly salary of at least \$1,128 (equivalent to \$58,656 annually), regardless of the capacity in which they are employed. The FLSA does not authorize DOL to impose a minimum weekly salary requirement on over 45 million white-collar employees nationwide in the guise of an exemption. Indeed, Congress could not delegate such lawmaking power to DOL without violating the Vesting Clause in Article I, § 1 of the Constitution.

DOL’s attempt to set minimum salaries for white-collar employees is also prohibited by the Major Questions Doctrine, which requires courts to reject agencies’ claims that Congress conferred regulatory authority on subjects of “vast economic and political significance” in the absence of a clear statement. To make matters worse, the Rule allows DOL to automatically ratchet up the minimum salary level every three years, ignoring the notice-and-comment requirements of the Administrative Procedure Act and the statute’s requirement to define the exemption “from time to time by regulation[.]”

NCLA released the following statements:

“The Fair Labor Standards Act very clearly requires DOL to define the white-collar exemption based on the ‘capacity’ in which workers are employed, not their amount of pay. Nothing in the Act gives DOL the authority to set minimum wages for the nation’s 45 million white-collar workers. Only Congress can exercise that power.”

— **Sheng Li, Litigation Counsel, NCLA**

“DOL’s power grab will not survive scrutiny in a post-*Chevron* world. The Court should stop this arrogation of power by DOL, prevent it from setting minimum wages, and enforce the FLSA the way Congress wrote it.”

— **Mark Chenoweth, President, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

###