No. 16-1362

IN THE

Supreme Court of the United States

ENCINO MOTORCARS, LLC,

Petitioner,

v.

HECTOR NAVARRO; MIKE SHIRINIAN; ANTHONY PINKINS; KEVIN MALONE; AND REUBEN CASTRO,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS, AND RETAIL LITIGATION CENTER AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether "service advisors" at car dealerships are exempt under 29 U.S.C. § 213(b)(10)(A) from the Fair Labor Standards Act's overtime-pay requirements.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

STATUTES

TABLE OF AUTHORITIES
(continued)

Page(s)

OTHER AUTHORITIES

INTERESTS OF THE *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America ("the Chamber") is the world's largest federation of businesses and associations. The Chamber represents three hundred thousand direct members and indirectly represents an underlying membership of more than three million U.S. businesses and professional organizations of every size and in every economic sector and geographic region of the country. An important function of the Chamber is to represent the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of vital concern to the nation's business community.

The National Federation of Independent Business Small Business Legal Center ("NFIB Legal Center") is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the Nation's courts through representation on issues of public interest affecting small businesses. NFIB is the nation's leading small business association, representing members across the country. To fulfill its role as the voice for small business, the NFIB Legal Center frequently files *amicus curiae* briefs in cases that will impact small businesses.

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[1] Counsel for both Petitioner and Respondents have filed, with the Clerk of this Court, blanket consent to the filing of *amicus curiae* briefs. As required by Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part and that no person or entity other than *amici*, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

The Retail Litigation Center, Inc. ("RLC") is a public policy organization that identifies and engages in legal proceedings that affect the retail industry. The RLC's members include many of the country's largest and most innovative retailers. The member entities whose interests the RLC represents employ millions of people throughout the United States, provide goods and services to tens of millions more, and account for tens of billions of dollars in annual sales. The RLC seeks to provide courts with retail-industry perspectives on important legal issues, and to highlight the potential industry-wide consequences of significant pending cases.

Collectively, the foregoing *amici* represent a wide cross-section of the employer community throughout the United States. American employers dedicate considerable time, energy, and resources to achieving compliance with the myriad statutes governing the workplace, including the Fair Labor Standards Act ("FLSA" or "Act"), while at the same time maintaining and creating much-needed jobs. *Amici*'s members therefore have a strong interest in fostering statutory interpretation that is fair, predictable, and evenhanded—rather than having courts unjustifiably put a thumb on the scales at the outset of the interpretive process. This case affords the Court an opportunity to advance this sensible approach to interpretation of workplace laws by rejecting the unwarranted canon that FLSA exemptions must be narrowly construed.

INTRODUCTION AND SUMMARY OF ARGUMENT

"On occasion, a would-be doctrinal rule or test finds its way into [this Court's] case law through simple repetition of a phrase—however fortuitously coined." *Lingle v. Chevron USA Inc.*, 544 U.S. 528, 531 (2005). When it becomes apparent, however, that such "repetition of a phrase" is "doctrinally untenable," this Court has properly stepped in to "correct course" and hold that the phrase—however familiar it may be—"has no proper place in [its] jurisprudence." *Id.* at 531, 544, 548 (emphasis omitted).

This case calls for just such a clarification. From time to time, this Court has stated "that remedial statutes should be liberally construed" to effectuate their remedial purpose. *SEC v. CM Joiner Leasing Corp.*, 320 U.S. 344, 353 (1943). In 1945, this Court went one step further by stating that, because the FLSA was "designed to extend the frontiers of social progress," purposeful, *explicit exemptions* to such "humanitarian and remedial legislation" should "be narrowly construed." *AH Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945) (internal quotation marks omitted). "[T]hrough simple repetition," *Lingle*, 544 U.S. at 531, this statement has seeped into the caselaw and produced the "made-up canon" that FLSA exemptions should be narrowly construed, *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2131 (2016) (Thomas, J., dissenting).

While this Court has in practice placed little weight on the notion that FLSA exemptions should be narrowly construed, the Ninth Circuit placed substantial weight on that canon to hold that service

advisors at automobile dealerships are not exempt from the FLSA's overtime-pay provision. *See Navarro v. Encino Motorcars, LLC*, 845 F.3d 925, 935–36 (9th Cir. 2017). That reliance was misplaced.

As an initial matter, there is no basis in either law or logic to infer that Congress means more (or less) than it says in a statute, simply because the legislation might be described as "remedial." *See, e.g.*, Antonin Scalia, *Assorted Canards of Contemporary Legal Analysis*, 40 Case W. Res. L. Rev. 581, 581–86 (1990). Indeed, the canon that remedial statutes should be liberally construed rests on a fundamental misconception about the legislative process—namely, that Members of Congress draft statutes to pursue a single objective without compromise or moderation. Moreover, the liberal-construction canon is unsupportable because it is "indeterminate, as to both when it applies and what it achieves." *Id.* at 586. For these reasons, courts should not assume that Congress intends for so-called "remedial" statutes to extend more broadly than their text, structure, and purpose indicate.

Moreover, the liberal-construction canon's supposed corollary—that courts should assume Congress is less than sincere when it includes explicit exemptions to a "remedial" statute—is doubly flawed, particularly in the FLSA context. The numerous exemptions to the so-called "remedial" provisions of the Act clearly demonstrate that Congress did *not* intend the Act to impose limitless burdens on employers. It is especially problematic to assume that the exemption at issue here—which encompasses "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles," 29 U.S.C.

§ 213(b)(10)(A)—should be construed more narrowly than its plain text would otherwise indicate. Congress amended this exemption repeatedly to calibrate its scope, making perfectly clear that it did not wish the FLSA to be unthinkingly extended in this context.

The Court should make clear that exemptions to the FLSA should be reflexively construed neither narrowly nor broadly but, rather, should be construed correctly. The proper approach to interpreting FLSA exemptions is of course squarely presented in this case, which calls for the Court to interpret § 213(b)(10)(A)'s automobile dealership exemption. Moreover, *stare decisis* presents no obstacle to disapproving the canon, because *amici* are unaware of any decision in which the canon represented an essential part of this Court's holding. At the same time, FLSA caselaw suggests that the canon is not simply an ill-advised, yet harmless turn of phrase; rather, lower court opinions indicate that this canon has distorted the process of interpreting the FLSA. Consequently, the Court should make clear that this rule "has no proper place in [its] jurisprudence," *Lingle*, 544 U.S. at 548. *See Encino Motorcars, LLC*, 136 S. Ct. at 2131 (Thomas, J., dissenting) (urging the Court to reject this "made-up canon").

ARGUMENT

I. THIS COURT SHOULD REJECT THE UNJUSTIFIABLE CANON THAT EXEMPTIONS TO THE FLSA MUST BE NARROWLY CONSTRUED.

The canon that FLSA exemptions should be narrowly construed descends from the following statement of the Court in *AH Phillips*:

> The Fair Labor Standards Act was designed to extend the frontiers of social progress by insuring to all our able-bodied working men and women a fair day's pay for a fair day's work. Any exemption from such humanitarian and remedial legislation must therefore be narrowly construed . . . . To extend an exemption to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people.

324 U.S. at 493 (internal quotation marks and citation omitted). This hostile view toward exemptions to "remedial" statutes, in turn, is an application of "the familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes." *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967).

As discussed in detail below, the canon that remedial statutes should be liberally construed is flawed. *See infra* at § I.A. And this canon's purported corollary—that courts should narrowly construe exemptions to remedial statutes—only exacerbates the flaws inherent in the liberal-construction canon. *See infra* at § I.B. Perhaps this is why Respondents offer only a tepid endorsement of the notion, featured prominently in the decision below, that FLSA exemptions must be narrowly construed. *See* Br. in Opp'n 16–17.

A. The Canon That a Remedial Statute Should Be Liberally Construed to Effectuate Its Purposes Is Flawed.

The notion that a remedial statute must be broadly construed to advance its purposes—which an eight-Justice majority aptly labeled the "last redoubt of losing causes," *OWCP v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 135 (1995)—suffers from three severe flaws.

1. The liberal-construction canon rests on an elemental misunderstanding of the legislative process. Leading jurists and commentators have laid bare the erroneous premise that underlies this canon—namely, that Congress intends statutes to extend as far as possible in service of a single objective. *See Encino Motorcars, LLC*, 136 S. Ct. at 2131 (Thomas, J., dissenting); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 21, 362–63 (2012); Richard Posner, *Statutory Interpretation—In the Classroom and in the Courtroom*, 50 U. Chi. L. Rev. 800, 808–09 (1983). Simply put, this canon "goes wrong by being unrealistic about legislative objectives." *Statutory Interpretation*, *supra* at 808–09.

In reality, "no legislation pursues its purposes at all costs." *Rodriguez v. United States*, 480 U.S. 522, 525–26 (1987) (per curiam); *see also OWCP*, 514 U.S. at 135–36. Instead, legislators inevitably balance how far a statute should go toward achieving one particular objective against various other objectives that they or their colleagues also value. *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2033–34 (2014) ("'Congress wrote the statute it wrote'—meaning, a

statute going so far and no further."); *Rodriguez*, 480 U.S. at 525–26; *OWCP*, 514 U.S. at 135–36. "Legislation is, after all, the art of compromise," and "the limitations expressed in statutory terms [are] often the price of passage." *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (2017).[2] Indeed, "[d]eciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice." *Rodriguez*, 480 U.S. at 525–26; *see also OWCP*, 514 U.S. at 136 ("Every statute proposes, not only to achieve certain ends, but also to achieve them by particular means—and there is often a considerable legislative battle over what those means ought to be."). In short, as the Court in *Bay Mills* recently explained, "[t]his Court has no roving license . . . to disregard clear language simply on the view that . . . Congress 'must have intended' something broader." 134 S. Ct. at 2034.

As a result, when courts analyze the balance struck by Congress in a remedial statute, the goal "should be neither liberally to expand nor strictly to constrict its meaning, but rather to get the meaning precisely right." *Assorted Canards*, *supra* at 582; *see also id.* at 581–86; *Reading Law*, *supra* at 21, 362–63. Doing otherwise "would upset the compromise that the [remedial] statute was intended to embody." *Statutory Interpretation*, *supra* at 809; *see also Bay Mills*, 134 S. Ct. at 2034; *Rodriguez*, 480 U.S. at 526. To be sure, divining congressional intent "may often be difficult, but [there is] no reason, *a priori*, to compound the difficulty, and render it even more unlikely that the

[2] This point is uncontroversial; in fact, the Court unanimously reiterated it just last Term. *See Henson*, 137 S. Ct. at 1725.

precise meaning will be discerned, by laying a judicial thumb on one or the other side of the scales" when interpreting a remedial statute. *Assorted Canards*, *supra* at 582.

Because the aim of statutory interpretation is to assess congressional intent, the rule of construing remedial statutes broadly reflects an assumption that Congress would have intended for some statutes to prohibit or require more than their text, structure, and purpose would otherwise indicate. But there is no reason to think that Congress is more or less timid in expressing its will through the text and structure of certain statutes, simply because those laws might be "remedial" in some vague, undefined sense. Consequently, the Court has emphasized that "it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law." *Rodriguez*, 480 U.S. at 526; *see also Henson*, 137 S. Ct. at 1725; *Bay Mills*, 134 S. Ct. at 2034.

2. Another ill that infects the liberal-construction canon is that there is virtually no clarity about *when* the canon should apply. Indeed, "there is not the slightest agreement on what . . . the phrase 'remedial statutes'" means. *Assorted Canards*, *supra* at 583; *see also id.* at 586. Accordingly, even accepting the liberal-construction canon on its own terms, courts are left to speculate about *when* the canon should apply. This ambiguity creates a risk that courts will inconsistently apply the canon—perhaps only when it suits the desired result.

To be sure, the term "remedial" has been defined as "'intended for a remedy or for the removal or

abatement of an evil.'" *Assorted Canards*, *supra* at 583 (quoting *Webster's Third New International Dictionary* 1920 (1961)). Similarly, *Black's Law Dictionary* defines the phrase "remedial statute" to mean (1) "[a]ny statute other than a private bill; a law providing a means to enforce rights or redress injuries" or (2) "[a] statute enacted to correct one or more defects, mistakes, or omissions." *Id.* (10th ed. 2014). These definitions, however, serve only to illustrate how unworkable the liberal-construction canon is: If courts must liberally construe any statute that aims to create a remedy or mitigate an evil, then *all* statutes are in some sense remedial, "since one can hardly conceive of a law that is not meant to solve some problem." *Assorted Canards*, *supra* at 583; *see also Reading Law*, *supra* at 364 ("Is any statute *not* remedial? Does any statute *not* seek to remedy an unjust or inconvenient situation?"); *Statutory Interpretation*, *supra* at 809. And if the liberal-construction canon applies to *all* statutes, thus "leaving nothing to be construed straight down the middle," *Assorted Canards*, *supra* at 585, then the canon has little or no meaning.

3. Assuming for the sake of argument that one could settle on a useful definition of what statutes are "remedial," the liberal construction canon would still remain hopelessly malleable and manipulable. After all, after one lets go of the conventional tools of statutory interpretation, there is no objective means of determining "[h]ow liberal is liberal." *Assorted Canards*, *supra* at 582.

"[I]t is virtually impossible to expect uniformity and objectivity when there is added, on one or the other side of the balance, a thumb of indeterminate weight." Antonin Scalia, *A Matter of Interpretation:*

Federal Courts and the Law 28 (1997). The result is that this canon "can be used, or not used, or half-used, almost *ad libitum*, depending mostly upon whether its use, or nonuse, or half-use, will assist in reaching the result the court wishes to achieve." *Id.*; *A Matter of Interpretation*, *supra* at 27–28.

B. The Notion That FLSA Exemptions Should Be Narrowly Construed Against Employers Doubles Down on the Flaws Inherent in the Liberal-Construction Canon.

The purported corollary of the liberal-construction rule is that exemptions to the FLSA should be narrowly construed. But this principle, which was spawned in *AH Phillips*, only doubles down on the flaws inherent in the liberal-construction canon.

Even assuming that "remedial" statutes should be broadly construed, there is simply no basis to conclude that Congress intends remedial statutes to be extended *in the face of an express exemption*. In such instances, by definition, Congress has explicitly stated that it does *not* wish the statute to be extended broadly. And there is no reason to believe, in the abstract, that Congress in these situations does not mean what it says, or that it feels more strongly about the statute's prohibitions than its exemptions.

Indeed, one could just as easily say that *exemptions* to remedial statutes are themselves "remedial," as they are intended to remedy the otherwise excessive scope of more general provisions. Accordingly, if one took seriously the rule of broadly construing "remedial" provisions, there is at least as strong an argument that statutory *exemptions* should be read

broadly. Of course, such complexity and confusion can be avoided simply by interpreting the exemptions through the standard tools of statutory construction, without handicapping one outcome over another.

Placing a thumb on the interpretive scale is particularly inappropriate in the context of the FLSA for two reasons, each of which is explored below.

1. Congress included so many exemptions to the so-called "remedial" provisions of the FLSA that it is particularly implausible to assume Congress had no concern for the FLSA's breadth. Like any statute, the FLSA embodies a balance of legislative priorities. On the one hand, the Act protects the "'health, efficiency, and general well-being of workers,'" *Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 739 (1981) (quoting 29 U.S.C. § 202(a)), by requiring employers to provide certain employees with benefits such as overtime pay, 29 U.S.C. §§ 206, 207. On the other hand, the Act includes numerous exemptions recognizing that FLSA protections are unnecessary and even ill-advised where employers and employees alike would benefit from alternative compensation practices. *See* 29 U.S.C. § 213(a).

Specifically, Congress excluded from the FLSA's general protections over 50 categories of employees ranging from white collar workers, to fishermen and seamen, to employees of movie theaters or the maple syrup industry. It is, therefore, implausible to suggest that Congress was shy about carving out exemptions or that it intended to disfavor employers at every turn. In fact, as discussed below, Congress amended the FLSA precisely "to curtail employee-protective interpretations of the FLSA." *Anderson v. Cagle's,*

Inc., 488 F.3d 945, 958 (11th Cir. 2007). Consequently, construing the FLSA based on the assumption that Congress uniformly intended to disfavor employers "contravenes . . . the readily apparent intent" of Congress. *Id.*

The FLSA's automobile dealership exemption provides a perfect example. In 1961, Congress exempted *all* employees of automobile dealerships from the FLSA's overtime pay provision. Fair Labor Standards Amendments of 1961, Pub. L. No. 87-30, § 9, 75 Stat. 65, 73 (codified at 29 U.S.C. § 213(a)(19) (1964)) (exempting "any employee of a retail or service establishment which is primarily engaged in the business of selling automobiles"); *see also Encino Motorcars, LLC*, 136 S. Ct. at 2122. Five years later, however, Congress amended the automobile dealership exemption so that it would apply only to a specific subset of dealership employees: "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles . . . ." Fair Labor Standards Amendments of 1966, Pub. L. No. 89-601, § 209, 80 Stat. 830, 836; *see also Encino Motorcars, LLC*, 136 S. Ct. at 2122. Congress again amended the exemption in 1974, but not in ways that are directly relevant here. *See* Fair Labor Standards Amendments of 1974, Pub. L. No. 93-259, § 14, 88 Stat. 55, 65. Through this process of legislative tinkering, Congress carefully calibrated—and recalibrated—the scope of the automobile dealership exemption. In such a scenario, it is fanciful to think that loading the dice in favor of a particular interpretation—by narrowly construing the exemption against employers—is the best way to honor Congress's intent. Rather, courts should deploy the ordinary tools of statutory

construction to determine the exemption's intended meaning.

2. The argument that FLSA exemptions should be narrowly construed is animated by a desire to protect employees' wage and hour rights. *See AH Phillips*, 324 U.S. at 493. But this argument is misguided because, in many cases, the FLSA exemptions serve the interests of employees as well as employers. That the Act's exemptions do not inherently trench on employees' rights confirms that the exemptions should be interpreted fairly, not in an unduly narrow manner.

Congress believed that the best way to ensure "a fair day's pay" was to require overtime in *some circumstances*. *Id.* That said, Congress likewise believed (as demonstrated by the inclusion of explicit exemptions), that alternative compensation arrangements could provide better and fairer pay in *other circumstances*. *See Nicholson v. World Bus. Network, Inc.*, 105 F.3d 1361, 1363 (11th Cir. 1997) ("The chief financial officer of a company, for instance, would be less likely to [need statutorily required overtime pay] than a janitor or assembly linesman."). Courts should draw the line between these two sets of circumstances by interpreting the text and purpose of the statutory exemption, not by "laying a judicial thumb on one or the other side of the scales." *Assorted Canards*, *supra* at 582.

Again this case is illustrative. Service advisors are well compensated: They earn an average of more than $64,000 per year, with the top 10% earning an average in excess of $97,000 per year. Br. of *Amici Curiae* Nat'l Auto. Dealers Ass'n *et al.* 7 (filed June 12, 2017); *see also id.* at 7–8 (noting that service advisors in the

states falling within the Ninth Circuit earn considerably more). And Respondents are compensated solely via commissions. *See Encino Motorcars, LLC*, 136 S. Ct. at 2124. Thus, to the extent they worked long hours, they did so not "out of desperation," *Mechmet v. Four Seasons Hotels, Ltd.*, 825 F.2d 1173, 1176 (7th Cir. 1987), but instead based on an incentive to increase their compensation. "They are, after all, already highly compensated, so it is unlikely that a victory in this lawsuit will improve their net position, and it might worsen it." *Id.* at 1179.

In short, forced overtime would saddle automobile dealerships and service advisors with a compensation model in which service advisors would be limited in the hours they could work and unable to earn extra pay for better performance. Accordingly, while Respondents themselves would obtain a windfall if they were to prevail in this suit, their narrow construction of the FLSA's automobile dealership exemption would *undermine* rather than promote the interests of service advisors going forward. There is no basis to assume *a priori* that Congress would wish this result, simply because the FLSA might be deemed, in some vague sense, "remedial."

II. THE COURT SHOULD SEIZE THIS OPPORTUNITY TO REJECT THE PURPORTED CANON THAT FLSA EXEMPTIONS MUST BE NARROWLY CONSTRUED.

The Court should seize the opportunity presented in this case to reject the "made-up canon" that FLSA exemptions must be narrowly construed. This supposed canon is wreaking havoc in the lower courts—a situation that would be remedied if this

Court were to banish the anti-employer canon once and for all. The canon's validity is squarely presented here, and prudential considerations counsel strongly in favor of addressing this question now.

Lower courts often perceive themselves to be bound by this Court's dicta regarding the narrow construction of FLSA exemptions. This perception creates a risk that lower courts will pull up short of the careful analysis needed to decide close cases, defaulting instead to the canon in order to construe an exemption narrowly. For instance, in the decision below, the Ninth Circuit repeatedly emphasized that it was "bound by Supreme Court precedent to construe the exemption narrowly." *Navarro*, 845 F.3d at 935.[3] Yet the Supreme Court of Montana reached the opposite conclusion on the merits when not relying on the canon. *See Thompson v. J.C. Billion, Inc.*, 294 P.3d 397, 401 (Mont. 2013) (failing to apply the canon, although noting that the lower court did so, and holding that service advisors fall within the FLSA's automobile dealership exemption). Indeed, at least one other court has suggested expressly that the canon was the dispositive factor in its analysis. *Amendola v. Bristol-Myers Squibb Co.* 558 F. Supp. 2d 459, 472 (S.D.N.Y. 2008) (distinguishing decisions in factually identical cases because the courts did "not acknowledge that the FLSA's exemptions must be

[3] *See also Navarro*, 845 F.3d at 935 (explaining the Ninth Circuit's view that "the Supreme Court's longstanding principle of narrow construction applies here" and that lower courts "may not disregard the Court's existing, binding precedent" as to this point); *id.* (relying on "the longstanding rule that exemptions in § 213 of the FLSA 'are to be narrowly construed against the employers seeking to assert them'"); *id.* at 936 (repeating the purported "rule" yet again).

narrowly construed against employers"); *see Miller v. Team Go Figure*, No. 3:13-CV-1509-0, 2014 WL 1909354, at *7 (N.D. Tex. May 13, 2014) (relying heavily on the canon).

In recent years, this Court has twice declined to apply the canon that FLSA exemptions must be narrowly construed. In *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156 (2012), the Court concluded that FLSA's "outside salesman" exemption did "not furnish a clear answer" to the question at issue, but the Court nonetheless declined to apply the canon. *Id.* at 2170, 2172 n.21 (reasoning that the canon "is inapposite where . . . [the Court is] interpreting a general definition that applies throughout the FLSA"). In *Sandifer v. U.S. Steel Corp.*, 134 S. Ct. 870 (2014), the Court again chose not to apply the canon. *Id.* at 879 n.7. Indeed, eight Justices joined an opinion that went out of its way to avoid reliance on the canon. *See id.* ("This Court has stated that 'exemptions' in the Fair Labor Standards Act 'are to be narrowly construed against the employers seeking to assert them.' *We need not disapprove that statement to resolve the present case.*") (emphasis added).

Then, last Term, when this Court held that the Ninth Circuit improperly had accorded *Chevron* deference to the Department of Labor's interpretation, Justices Thomas and Alito indicated that they would have reached the merits and rejected "the made-up canon that courts must narrowly construe the FLSA exemptions." *Encino Motorcars, LLC*, 136 S. Ct. at 2131 (Thomas, J., dissenting). As Justice Thomas's opinion forcefully underscored, there is absolutely "no basis to infer that Congress means anything beyond

what a statute plainly says simply because the legislation in question could be classified as 'remedial.'" *Id.* In fact, the opinion highlighted that the purported canon "appears to rest on an elemental misunderstanding of the legislative process, viz., that Congress intends statutes to extend as far as possible in service of a singular objective." *Id.* (internal quotation marks and brackets omitted).

The Court should squarely reject this canon in this case. Addressing the canon's validity would be proper under this Court's Rules. Rule 14(1)(a) dictates that the question presented "is deemed to comprise every subsidiary question fairly included therein." *Id.* Here, the question presented is whether the FLSA's automobile dealership exemption applies to service advisors. And determining the proper standard to be used when interpreting that exemption is an issue that is antecedent to—and "fairly included" within—the question presented. *See id.*; *see also* Pet. 30–31 (discussing the canon in the context of addressing whether service advisors fall within the automobile dealership exemption).

Moreover, although this Court has previously endorsed the canon that FLSA exemptions should be narrowly construed, *e.g.*, *AH Phillips, Inc.*, 324 U.S. at 493, *stare decisis* presents no obstacle to rejecting it now. "[T]his Court is bound by holdings, not language." *Alexander v. Sandoval*, 532 U.S. 275, 282 (2001); *see Lingle*, 544 U.S. at 545–46 ("We emphasize that our holding today—that the 'substantially advances' formula is not a valid takings test—does not require us to disturb any of our prior holdings. To be sure, we applied [this] inquiry in *Agins* itself . . . . But in no case have we found a compensable taking based

on such an inquiry."). *Amici* are not aware of any decision in which this canon was an essential part of the Court's holding. For example, the Court recited the canon in *Mitchell v. Ky. Finance Co.*, 359 U.S. 290 (1959), but it did so only in one line in the last paragraph of the opinion. *Id.* at 295. The Court described its holding in *Mitchell* as supported by "abundant pointed evidence"—including "detailed and explicit" legislative history (at a time when the Court placed great weight on such authority), *id.* at 293, 296, and so any interpretive presumption was irrelevant. The Court in *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388 (1960), likewise recited the canon in passing, but it did not need to rely on the canon because it found the answer to the interpretive question to be "clear." *Id.* at 393 ("It is clear that respondent does not meet at least two of the three standards . . . ."); *id.* at 391 ("clear legislative history"); *id.* at 394 ("clearly"); *id.* at 392.

In sum, this Court should take the opportunity presented in this case to reject the notion that exemptions to remedial statutes must be narrowly construed, at least as applied to the FLSA.

CONCLUSION

For the foregoing reasons and those stated by Petitioner, the Ninth Circuit's decision should be reversed.

Respectfully submitted,

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