No. 24-626

In the Supreme Court of the United States

F.W. WEBB COMPANY, PETITIONER

v.

VINCENT N. MICONE, III, ACTING SECRETARY, DEPARTMENT OF LABOR

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that certain sales representatives employed by petitioner are not exempt from the minimum wage and overtime compensation requirements of the Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.*, as administrative employees because their primary job duty does not directly relate to the running or servicing of petitioner's business.

TABLE OF CONTENTS

Page

Opinions below 1
Jurisdiction 1
Statement 2
Argument 5
Conclusion 16

TABLE OF AUTHORITIES

Cases:

Bothell v. *Phase Metrics, Inc.*, 299 F.3d 1120 (9th Cir. 2002) 11, 12
Brooklyn Sav. Bank v. *O'Neil*, 324 U.S. 697 (1945) 2
Burton v. *Appriss, Inc.*, 682 Fed. Appx. 423 (6th Cir. 2017) 14
Calderon v. *GEICO Gen. Ins. Co.*, 809 F.3d 111 (4th Cir. 2015), cert. denied, 580 U.S. 817 (2016) 12
Davis v. *J.P. Morgan Chase & Co.*, 587 F.3d 529 (2d Cir. 2009), cert. denied, 559 U.S. 1107 (2010) 10, 13
Schaefer-LaRose v. *Eli Lilly & Co.*, 679 F.3d 560 (7th Cir. 2012) 12-14
Smith v. *Johnson & Johnson*, 593 F.3d 280 (3d Cir. 2010) 14
Walsh v. *Unitil Serv. Corp.*, 64 F.4th 1 (1st Cir. 2023) 4, 7, 8, 9, 11, 12

Statutes and regulations:

Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.* 2
29 U.S.C. 206 2
29 U.S.C. 207 2
29 U.S.C. 213(a) 2
29 U.S.C. 213(a)(1) 2, 6

Regulations—Continued: Page

29 C.F.R. Pt. 541 6
Section 541.200(a) 2
Section 541.200(a)(2) 5, 6, 9
Section 541.201(a) 3, 5, 7-9, 15
Section 541.201(b) 10, 11
Section 541.700(a) 10

Miscellaneous:

Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 69 Fed. Reg. 22,122 (Apr. 23, 2004) 6, 11, 13

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 110 F.4th 391. The memorandum and opinion of the district court (Pet. App. 17a-51a) is reported at 677 F. Supp. 3d 7. A subsequent judgment and order of the district court is available at 2023 WL 6439451.

JURISDICTION

The judgment of the court of appeals was entered on August 1, 2024. A petition for rehearing en banc was denied on September 4, 2024 (Pet. App. 52a). The petition for a writ of certiorari was filed on December 3, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress enacted the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 *et seq.*, to protect workers by establishing federal minimum-wage and overtime guarantees for any hours worked over 40 in a workweek. See *Brooklyn Sav. Bank* v. *O'Neil*, 324 U.S. 697, 706-707 & n.18 (1945); see also 29 U.S.C. 206 (minimum wage); 29 U.S.C. 207 (overtime pay). The FLSA exempts several categories of employees from its minimum-wage and overtime requirements. See 29 U.S.C. 213(a). As relevant here, the FLSA exempts "any employee employed in a bona fide * * * administrative * * * capacity." 29 U.S.C. 213(a)(1). The statute further authorizes the Secretary of Labor to "define[] and delimit[]" the terms of that exemption by regulation. *Ibid.*

Under the applicable regulations, an employee is employed in a bona fide administrative capacity if: (1) he is compensated on a salary or fee basis in excess of the applicable salary level under the regulations; (2) his "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) his "primary duty includes the exercise of discretion and independent judgment with respect to matters of significance." 29 C.F.R. 541.200(a). All three prongs must be satisfied for an employee to be exempt, but only the second prong is at issue here. Pet. 4. Under that prong, in order for an employee's primary duty to be "directly related to the management or general business operations," the 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." 29 C.F.R. 541.201(a).

2. Petitioner F.W. Webb Company is a wholesale distributor of engineering and construction products, including plumbing, heating, cooling, and pipes. Pet. App. 2a. Petitioner generates its revenue from employees making wholesale sales of those products directly to customers—typically, contractors in various industries. *Ibid.* Those employees include more than 600 inside sales representatives, the group of employees at issue here. *Ibid.* The inside sales representatives interact directly with petitioner's customers throughout the sales process, from a customer's initial contact with the business to the delivery of purchased products. *Id.* at 3a. Inside sales representatives generate sales by working with customers to identify which products best fit their needs, in order to accomplish the "end game" of "completing the sale." *Id.* at 4a. Petitioner evaluates inside sales representatives' performance and sets their compensation in large part based on their success in generating orders, closing sales, and meeting sales and profit targets. *Id.* at 5a-6a. Petitioner classified these inside sales representatives as administrative employees exempt from the FLSA's minimum wage and overtime compensation requirements. *Id.* at 6a.

3. On July 31, 2020, the Secretary filed suit alleging, as relevant here, that petitioner had violated the FLSA's overtime and recordkeeping requirements by improperly classifying these inside sales representatives as administrative employees. Pet. App. 6a. The government moved for summary judgment on the second prong of the administrative exemption, arguing that the inside sales representatives did not qualify for the exemption because their primary duties were not directly related

to the management or general operations of petitioner's business. *Id.* at 8a-9a.

The district court granted summary judgment to the Secretary, holding that the inside sales representatives do not satisfy the second prong of the administrative exemption. Pet. App. 2a, 8a-9a. Relying on circuit precedent, the district court explained that the second prong of the administrative-exemption regulation involves a comparison—that is, a "relational analysis"—between the employee's primary duty and the employer's business operations. *Id.* at 33a (quoting *Walsh* v. *Unitil Serv. Corp.*, 64 F.4th 1, 5 (1st Cir. 2023)). Where the employee's primary duty "directly relate[s]" to the business's overall operations and management, "the second element is satisfied." *Ibid.* (quoting *Unitil*, 64 F.4th at 5). But where "the employees' primary duty relates to their employer's business purpose," "'in that [they] produce the product or provide the service that the company is in business to provide,'" the employee is not exempt. *Ibid.* (quoting *Unitil*, 64 F.4th at 7).

The district court held that petitioner had failed to show that the primary duty of the inside sales representatives directly related to petitioner's management or general business operations. Pet. App. 34a. The court found that the employees' primary duty did not involve assisting with the running or servicing of petitioner's business; rather, the undisputed facts showed that petitioner's business purpose was to "produce wholesale sales of its products to its customers" and that the employees' primary duty involved "help[ing] sell [petitioner's] products"—*i.e.*, providing the very service petitioner is in business to provide. *Id.* at 34a-35a. The court rejected petitioner's argument that the inside sales representatives' primary duty was to "create solutions for

[petitioner's] customers" through customer service and consulting, rather than to produce sales. *Id.* at 35a (citation omitted). The court explained that no reasonable jury could reach that conclusion where the representatives engaged in such customer service and consulting work as part of their efforts to "make discrete sales." *Ibid.*

4. The court of appeals affirmed. Pet. App. 1a-16a. The court agreed with the district court that the inside sales representatives' "primary duties are not 'administrative' in any sense of the word"; they do not "'perform work directly related to assisting with the running or servicing'" of petitioner's business. *Id.* at 12a (quoting 29 C.F.R. 541.201(a)). Rather, petitioner "is a wholesaler, and [inside sales representatives] make those wholesales"; their "primary duty is to 'help sell [petitioner]'s products' by delivering discrete customer sales." *Id.* at 10a-12a (citation omitted).

In so holding, the court of appeals rejected petitioner's claim that the representatives' primary function is "to 'promote sales generally' or to provide some amorphous advisory or technical support role as opposed to delivering individual sales of [p]etitioner's products themselves." Pet. App. 11a. "[C]ustomer advice rendered in the context of making a particular sale," the court emphasized, "is simply not 'directly related to the management or general business operations' of an employer whose core business purpose is making sales." *Id.* at 13a (quoting 29 C.F.R. 541.200(a)(2)).

ARGUMENT

Petitioner contends (Pet. 14-23) that the court of appeals erred in applying the second prong of the administrative exemption, which requires that an employee's primary duty be "directly related to the management or

general business operations of the employer." 29 C.F.R. 541.200(a)(2). The court of appeals properly applied the controlling regulations and correctly determined that the inside sales representatives at issue here are not employed in a bona fide administrative capacity. The First Circuit's approach is also consistent with that used in other circuits. Further review is unwarranted.

1. The court of appeals correctly held that the primary duty of the inside sales representatives does not directly relate to petitioner's management or business operations.

a. The FLSA specifies that its minimum wage and overtime compensation requirements shall not apply to "any employee employed in a bona fide executive, administrative, or professional capacity * * * (as such terms are defined and delimited from time to time by regulations of the Secretary [of Labor])." 29 U.S.C. 213(a)(1). Consistent with that express statutory authorization, the Secretary has issued regulations defining and delimiting the administrative exemption, most recently in 2004. See *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*, 69 Fed. Reg. 22,122 (Apr. 23, 2004) (2004 Rule) (codified at 29 C.F.R. Pt. 541).

As relevant here, the regulations defining the administrative exemption explicitly contemplate a relational analysis—that is, an examination of the relationship between an employee's primary duty and his employer's management and business operations. Specifically, an administrative employee is defined as an employee "[w]hose primary duty is 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) (emphasis added). To satisfy that requirement, the "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." 29 C.F.R. 541.201(a) (emphasis added).

As the First Circuit explained in *Walsh* v. *Unitil Service Corp.*, 64 F.4th 1 (2023), "[i]t is thus necessary to clearly identify the primary duty of the employee(s) in question, and to determine whether that duty is directly related to 'running or servicing of the business'" or, conversely, involves "'working on a manufacturing production line or selling a product in a retail or service establishment.'" *Id.* at 6 (quoting 29 C.F.R. 541.201(a)). Because the latter duties involve "produc[ing] the product or provid[ing] the service that the company is in business to provide," "it is often useful to identify and articulate the business purpose of the employer." *Id.* at 6-7. Doing so allows a court to differentiate between employees whose primary duty directly relates to the running or servicing of the employer's business, who may be exempt, and employees whose primary duty directly relates to the employer's business purpose, who are not. *Ibid.*

b. Here, the court of appeals properly analyzed the relationship between the primary duty of the inside sales representatives and petitioner's management and business operations and determined that the inside sales representatives' "duties are not 'administrative'" in any sense of the word." Pet. App. 12a. The inside sales representatives do not "perform work directly related to assisting with the running or servicing" of petitioner's business: as petitioner conceded, these employees "do not

work in 'marketing,'" "do not perform any customer-service duties 'outside the context of making sales,'" do not "have any policymaking authority within [petitioner] apart from providing information to those formulating policy," and do not "have managerial duties over other employees." *Id.* at 9a, 11a-12a, 14a-15a. To the contrary, the inside sales representatives "primarily function" to "deliver[] individual sales of [petitioner's] products themselves"; petitioner "is a wholesaler, and [inside sales representatives] make those wholesales." *Id.* at 11a-12a.

Petitioner principally contends (Pet. i, 15-18) that the relational analysis undertaken by the court of appeals is "extratextual" and in "substantial tension" with the applicable regulations. According to petitioner (Pet. 16), the regulations require a "focus on the type of work done by the employee, rather than the employer."

Petitioner is correct (Pet. 28) that the ultimate question to be answered is whether the employee's primary duty "directly relates" to the employer's "management or general business operations." But to answer that question, the applicable regulations specifically contrast work that is "directly related to assisting with the running or servicing of the business," which qualifies as "work directly related to the management or general business operations of the employer," with "working on a manufacturing production line or selling a product in a retail or service establishment," which does not. 29 C.F.R. 541.201(a). The regulation highlights the latter duties as examples of non-exempt work precisely because they involve "produc[ing] the product or provid[ing] the service that the company is in business to provide," *Unitil*, 64 F.4th at 7—and are therefore unlikely to be directly related to the employer's management or general

business operations. The court of appeals thus correctly recognized that identifying the employer's business purpose will often be "useful" in answering the ultimate question: whether an employee's primary duty is "directly related to the management or general business operations" of the employer. Pet. App. 10a (quoting *Unitil*, 64 F.4th at 6; 29 C.F.R. 541.201(a)).

Petitioner further argues (Pet. 17) that the court of appeals erred in requiring "that an exempt administrative employee perform work that is distinct from the core business of the employer." But again, the applicable regulations contemplate an analysis of the relationship between the employee's primary duty and the employer's core business—*i.e.*, the products or services the employer produces or provides. See pp. 8-9, *supra*. Here, moreover, the court of appeals did not "disregard[] the nonproduction duties" of the inside sales representatives because it believed the representatives to be "categorically" ineligible for the administrative exemption given their sales work on petitioner's behalf. Pet. 10, 21. Rather, the court rejected petitioner's argument that the inside sales representatives' customer service and consulting duties transformed their primary duty into "'promot[ing] sales generally'" or "some amorphous * * * advisory or technical support role" unrelated "to delivering individual sales." Pet. App. 11a. The court explained that "customer advice rendered in the context of making a particular sale is simply not 'directly related to the management or general business operations' of an employer whose core business purpose is making sales." *Id.* at 13a (quoting 29 C.F.R. 541.200(a)(2)).

Petitioner's contention (Pet. 22) that the relational analysis leads to "absurd results" lacks merit. It is not

surprising—let alone absurd—that the nature of a particular employer's business may affect whether a particular employee is employed in an administrative capacity. Because the inquiry contemplated by the regulations asks whether the employee's work is "directly related" to the "running or servicing of the business," "as distinguished" from work aimed at "produc[ing] the product or provid[ing] the service that the company is in business to provide," Pet. App. 33a (citations and internal quotation marks omitted), two employees with similar job duties may be categorized differently depending on how their duties relate to the business operations of their particular employers. See, *e.g.*, *Davis* v. *J.P. Morgan Chase & Co.*, 587 F.3d 529, 535 (2d Cir. 2009) ("The context of a job function matters: a clothing store accountant deciding whether to issue a credit card to a consumer performs a support function auxiliary to the department store's primary function of selling clothes. An underwriter for Chase, by contrast, is directly engaged in creating the 'goods'—loans and other financial services—produced and sold by Chase."), cert. denied, 559 U.S. 1107 (2010). That is precisely why application of the administrative exemption turns "on all the facts in a particular case." 29 C.F.R. 541.700(a).

For similar reasons, petitioner is wrong to suggest (Pet. 18) that consideration of an employer's business purpose renders the illustrative examples of administrative work in 29 C.F.R. 541.201(b) "superfluous." It is true that an employee working in one of the specified areas may not be exempt if, given the facts of a particular case, the employee's work directly relates to the employer's core productive function rather than its management or general business operations. But that is precisely what the applicable regulations contemplate. The

list of examples found at Section 541.201(b) "is intended only to be illustrative"; "it is a list of functional areas or departments that generally relate to management and general business operations of an employer or an employer's customers, *although each case must be examined individually*." 69 Fed. Reg. at 22,142 (emphasis added).

Finally, petitioner contends that the court of appeals' analysis improperly relied on "superseded law" involving the "administrative-production dichotomy," which asks whether an employee is engaged in administrative rather than production work in determining whether he is exempt. Pet. 18 (citation omitted). But as the Department explained in adopting the 2004 Rule, "the [administrative-production] dichotomy" remains "one analytical tool" that can be used "toward answering the ultimate question, whether work is 'directly related to management policies or general business operations.'" 69 Fed. Reg. at 22,141. It is not "an end in itself," but it is "a relevant and useful tool in appropriate cases to identify employees who should be excluded from the exemption" because their work "falls squarely on the production side of the line." *Ibid.* (quoting *Bothell* v. *Phase Metrics, Inc.*, 299 F.3d 1120, 1126-1127 (9th Cir. 2002) (internal quotation marks omitted)).

The First Circuit's approach in *Unitil* and the decision below is consistent with that approach. In *Unitil*, the court explained that "the [administrative-production] dichotomy itself is not dispositive and should be employed 'only to the extent it clarifies the' broader question of whether an employee's work is directly related to the running or servicing of the business." 64 F.4th at 7 (quoting *Bothell*, 299 F.3d at 1127). And in the decision below, the First Circuit again explained that the

dichotomy is "not dispositive" but can simply be "instructive," particularly in a case involving a wholesale seller of goods. Pet. App. 11a & n.3.

2. The decision below does not conflict with the decision of any other court of appeals.

Petitioner contends that the courts of appeals have adopted divergent approaches with respect to the administrative-production dichotomy, asserting that the Ninth and Fourth Circuits have "ma[d]e the administration/production dichotomy explicitly non-dispositive," while the First, Second, and Seventh Circuits, treat the dichotomy as "dispositive." Pet. 11-12. That is incorrect. Each of those courts treats the dichotomy as a useful but not dispositive tool in the administrative-exemption analysis, consistent with the applicable regulations.

As petitioner notes, the Ninth and Fourth Circuits have both expressly recognized that the administrative-production dichotomy is not dispositive of the second prong of the administrative exemption. See *Bothell*, 299 F.3d at 1126; *Calderon* v. *GEICO Gen. Ins. Co.*, 809 F.3d 111, 123 (4th Cir. 2015), cert. denied, 580 U.S. 817 (2016). But as already explained, the First Circuit, in both *Unitil* and the decision below, likewise explained that the administrative-production dichotomy is "not dispositive." Pet. App. 11a n.3; see *Unitil*, 64 F.4th at 7; pp. 11-12, *supra*. Indeed, the *Unitil* court cited both *Bothell* and *Calderon* for the proposition that the dichotomy "should be employed 'only to the extent it clarifies the' broader question of whether an employee's work is directly related to the running or servicing of the business." 64 F.4th at 7 (citation omitted).

The Seventh and Second Circuit decisions cited by petitioner are likewise consistent with that approach. In *Schaefer-LaRose* v. *Eli Lilly & Co.*, 679 F.3d 560

(2012), the Seventh Circuit explicitly stated that "[a]lthough the [administrative-production] distinction is not determinative unless an employee is engaged unequivocally in production, it remains 'one analytical tool that should be used toward answering the ultimate question.'" *Id.* at 574 n.22 (quoting 69 Fed. Reg. at 22,141). And the court's analysis focused on the "ultimate question" of whether the employees' duties were directly related to the general business operations of the employers, answering that question in the affirmative. *Id.* at 574-577.

Similarly, in *Davis* v. *J.P. Morgan Chase & Co.*, *supra*, the Second Circuit did not treat the administrative-production dichotomy as dispositive. Rather, as noted above, see p. 10, *supra*, the court concluded that a credit underwriter who issued loans on behalf of J.P. Morgan Chase "did not perform work directly related to management policies or general business operations" only after the court engaged in an extensive analysis of the nature of the employee's duties, including that he had "no involvement in determining the future strategy or direction of the business," did not set credit policy, did not "perform any other function that in any way related to the business's overall efficiency or mode of operation," and did not manage employees or supervise internal financial activities. *Davis*, 587 F.3d at 535-537.

Nor can petitioner show that the outcome of this case would have been any different in any other court of appeals. To be sure, courts have found some employees with the word "sales" in their job title to be administrative employees. Pet. 12-13. But that is because application of the administrative exemption turns on a particular employee's duties, not her job title; in each of the cases on which petitioner relies, the employee's duties

were related to the general running or servicing of the employer's business.

Petitioner emphasizes (Pet. 22), for example, the Seventh Circuit's decision in *Schaefer-LaRose*, *supra*, which held that certain pharmaceutical sales representatives qualified as administrative employees. But as the Seventh Circuit explained, the employees at issue there "neither produce[d] the employers' products nor generate[d] specific sales." *Schaefer-LaRose*, 679 F.3d at 576-577. Instead, those employees performed an administrative role in their employer's pharmaceutical business: they "service[d] the production and sales aspects of the business by communicating the employers' message to physicians," representing "the company to the professional community that is in a unique position to make, or deny, a viable market for the company's product." *Id.* at 575 & n.23, 577. That primary duty differentiated those employees from sales representatives that focus on individual sales in other industries, like the employees at issue here.

Likewise, the Third Circuit found that the employee at issue in *Smith* v. *Johnson & Johnson*, 593 F.3d 280 (2010), had "independent and managerial qualities," requiring her to form a "strategic plan" to maximize sales in her territory. *Id.* at 285. And the Sixth Circuit found that the primary duty of the account manager at issue in *Burton* v. *Appriss, Inc.*, 682 Fed. Appx. 423 (2017) was *not* "sell[ing] [the employer's] products and services," but instead involved "manag[ing] relations with, support[ing], servic[ing], and be[ing] a liaison to, existing clients regarding their computer software needs." *Id.* at 427-428, 430.

3. In any event, this case would be an unsuitable vehicle in which to explore the precise role of the employer's

business purpose in the relational analysis contemplated by 29 C.F.R. 541.201(a). Even setting aside petitioner's business purpose—as petitioner urges—a reasonable jury would be unable to determine that the primary duty of the inside sales representatives at issue here relates to petitioner's management or general business operations. As both courts below recognized, the undisputed record shows that the primary duty of the employees at issue here does not relate to running or servicing petitioner's business—or to any of the illustrative areas of management or operational work. Pet. App. 11a-13a, 34a-38a; 29 C.F.R. 541.201(a). The inside sales representatives' primary duty is not marketing, advertising, research, or human resources; they do not have managerial duties; and they do not otherwise assist with petitioner's general business operations. Pet. App. 11a-15a; see pp. 7-9, *supra*. Instead, the primary duty of petitioner's inside sales representatives involves "selling a product"—one of the two paradigmatic examples of duties that are not exempt. 29 C.F.R. 541.201(a) ("distinguish[ing]" work directly related to management or general business operations from "working on a manufacturing production line or selling a product in a retail or service establishment"). There is thus no reason to think that petitioner would prevail even under its preferred approach.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 2025