

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

STATE OF NEVADA, et al.,

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF
LABOR, et al.,

Defendants-Appellants.

No. 16-41606

**UNOPPOSED MOTION FOR 30-DAY EXTENSION OF TIME
IN WHICH TO FILE REPLY BRIEF**

For the following reasons, the federal government respectfully requests a 30-day extension of time, to and including March 2, 2017, in which to file the reply brief. This extension request is unopposed.

1. Section 13(a)(1) of the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. § 213(a)(1), exempts from the Act’s minimum wage and overtime pay requirements “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]).” Regulations implementing this exemption generally have required that employees meet three criteria in order to be subject to the exemption. To be treated as exempt, the employee must: (1) be paid

on a salary basis; (2) receive a specified minimum salary; and (3) have primarily executive, administrative, or professional duties. *See* 29 C.F.R. Part 541.

The Department of Labor has periodically updated the salary-level test. In May 2016, the Department issued a Final Rule revising that test. *See* 81 Fed. Reg. 32,391 (May 23, 2016); 29 C.F.R. § 541.600. The Final Rule sets a minimum-salary level equal to the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region (currently the South). 81 Fed. Reg. 32393; 29 C.F.R. § 541.600(a). This methodology results in a salary level of \$913 per week based on data from the fourth quarter of 2015. *Id.* The Final Rule further provides that, beginning January 1, 2020, the Secretary will update the minimum-salary level every three years using the same methodology. 81 Fed. Reg. 32393; 29 C.F.R. § 541.600(b).

2. Nevada and twenty other States, suing in their capacity as employers, filed this suit challenging the Final Rule and moved for a preliminary injunction. The district court consolidated the States' suit with a suit filed by private employers challenging the Final Rule, and treated the private plaintiffs' summary judgment motion as an amicus brief in support of a preliminary injunction. ROA.3810. On November 22, 2016, the district court issued a nationwide preliminary injunction that bars the Department of Labor from implementing and enforcing the Final Rule's updated salary level and the mechanism for updating that salary level. ROA.3825-26.

3. This Court expedited this appeal at the federal government's request. The federal government filed its opening brief on December 13, 2016. Plaintiffs'

responsive brief was filed on January 17, 2017. Amicus briefs in support of plaintiffs were filed on January 24, 2017. The federal government's reply brief is currently due January 31, 2017.

3. The federal government respectfully requests a 30-day extension of time, to and including March 2, 2017, in which to file its reply brief. The requested extension is necessary to allow incoming leadership personnel adequate time to consider the issues. Plaintiffs' counsel has authorized us to state that they consent to this extension motion.

Respectfully submitted,

MICHAEL S. RAAB

s/Alisa B. Klein

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JANUARY 2017

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2017, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Alisa B. Klein

Alisa B. Klein