

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ASSOCIATION OF CHRISTIAN)	
SCHOOLS INTERNATIONAL)	
)	
)	
PLAINTIFF,)	
)	
V.)	
)	Case No. _____
UNITED STATES DEPARTMENT OF)	
LABOR; JULIE SU, as the acting U.S.)	
Secretary of Labor; ADMINISTRATOR)	
JESSICA LOOMAN, as head of U.S.)	
Department of Labor’s Wage and Hour)	
Division; and U.S. DEPARTMENT OF)	
LABOR WAGE AND HOUR DIVISION)	
)	
DEFENDANTS.)	

VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. The Association of Christian Schools International (ACSI) is a nonprofit Christian education organization that advances excellence in Christian schools by enhancing Christian educators’ professional and personal development and providing vital support for Christian schools. ACSI serves over 2,000 member schools in the United States and helps over five million students connect to Christian education worldwide.

2. ACSI challenges a Department of Labor (“the Department”) Overtime Rule (“the 2024 Rule” or “the Overtime Rule”) that will force employers—including ACSI and its member schools—to reclassify roughly four million employees presently employed in executive, administrative, and professional roles and exempted from the Fair Labor Standards Act’s

overtime-pay requirement. The Overtime Rule not only threatens the ability of business owners and workers to earn an honest living but also impedes ACSI and its member schools in their mission to provide quality education to their students.

3. The Overtime Rule is unlawful. It drastically raises the salary-level threshold (below which employees in executive, administrative, and professional roles are no longer exempted from overtime-pay requirements) from \$684 per week (equivalent to \$35,568 per year) to \$1,128 per week (equivalent to \$58,656 per year). Yet a federal court has already held that a similar rule (the 2016 Overtime Rule) was unlawful because its increase of the salary-level threshold made “overtime status depend predominately on a minimum salary level, thereby supplanting an analysis of an employee’s job duties.” *See Nevada v. U.S. Dep’t of Labor*, 275 F. Supp. 3d 795, 806 (E.D. Tex. 2017). More fundamentally, the Department has no authority to impose *any* salary-level requirement. As Justice Kavanaugh explained, the FLSA “focuses on whether the employee performs executive duties, not how much an employee is paid.” *Helix Energy Sols. Grp., Inc. v. Hewitt*, 598 U.S. 39, 67 (2023) (Kavanaugh, J., dissenting). The Overtime Rule is also unlawful because it calls for the automatic updating of the salary-level threshold every three years. That means that the Rule will continue to affect the rights and obligations of employers such as ACSI without providing them with notice and the opportunity to comment. This Court should set aside the Overtime Rule so that ACSI and its member schools can focus their resources where they are needed most: on their students.

JURISDICTION AND VENUE

4. This action arises under the Administrative Procedure Act, 5 U.S.C. § 702, *et seq.* This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 702, 706.
5. Declaratory and injunctive relief are authorized by the Declaratory Judgment Act, 28 U.S.C. § 2201, and the Administrative Procedure Act, 5 U.S.C. §§ 705, 706(2). This Court's authority to vacate unlawful agency action rests on 5 U.S.C. § 706.
6. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) and 28 U.S.C. § 1391 (e)(1)(B) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

PARTIES

7. Plaintiff ACSI is an international non-profit organization whose mission is to strengthen and equip Christian schools and educators. ACSI promotes and offers a wide range of services, including legal advocacy, support, training, and other resources to Christian schools and educators. ACSI is the largest Protestant educational association in the world and has approximately 2,300 member schools, including 97 in Tennessee.
8. Defendant U.S. Department of Labor is an executive department of the United States federal government. The Department administers and enforces more than 180 federal laws. The Department issued the Overtime Rule at issue in this lawsuit.
9. Defendant U.S. Department of Labor, Wage and Hour Division, administers the Fair Labor Standards Act and promulgated the Overtime Rule at issue in this lawsuit.

10. Defendant Julie Su is the Acting United States Secretary of Labor. Acting Secretary Su is sued only in her official capacity.
11. Defendant Administrator Jessica Looman is the head of the United States Department of Labor's Wage and Hour Division. Administrator Looman is sued only in her official capacity.

FACTUAL ALLEGATIONS

The Fair Labor Standards Act and the EAP Exemption

12. The Fair Labor Standards Act (FLSA) requires covered employers to pay overtime of one and one-half times the regular rate of pay for all hours worked over 40 hours in a workweek. 29 U.S.C. § 207.
13. The FLSA imposes criminal penalties and civil liability on covered employers that fail to abide by the requirements of the FLSA. 29 U.S.C. § 216.
14. The FLSA contains numerous exemptions to the overtime-pay requirement. As relevant here, 29 U.S.C. § 213(a)(1) provides that overtime requirements "shall not" apply to "any employee employed in a bona fide executive, administrative, or professional capacity." This exemption is commonly referred to as the EAP Exemption or the "white-collar" exemption. 88 Fed. Reg. 62152 (Proposed 2024 Rule).
15. Exemptions in the FLSA, including the EAP Exemption, "are as much a part of the FLSA's purpose as the overtime-pay requirement." *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1142 (2018).
16. The employer bears the burden of establishing the applicability of the EAP Exemption. 89 Fed. Reg. 32842 (Final 2024 Rule).

17. The FLSA does not define the terms “executive,” “administrative,” or “professional.” Instead, the FLSA delegates to the Secretary of Labor to “define[] and delimit[]” these terms from “time to time.” 29 U.S.C. § 213(a)(1).
18. Section 213(a)(1) in the FLSA does not use the term “salary” or “compensation.” Nor does it instruct the Secretary of Labor to set salary level requirements to determine whether an employee is working in an executive, administrative, or professional capacity.
19. Congress established compensation or salary requirements for various types of employees in other provisions of the FLSA. For example, Congress was explicit in setting salary level requirements for exempt baseball players in 29 U.S.C. § 213(a)(19).
20. Since 1940, the Department’s regulations have required employers seeking to claim an EAP Exemption for an employee to demonstrate: (1) that the employee is paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the salary basis test); (2) that the amount of salary paid meets a minimum specified amount (the salary level test); and (3) that the employee’s job duties primarily involve executive, administrative, or professional duties as defined by the regulations (the duties test). 89 Fed. Reg. 32844; *see also* 29 C.F.R. § 541.600 (codifying Department’s ability to set the “amount of salary required” for the EAP exemption).
21. In 1949, the Department adopted the “long test” and “short test” to determine EAP exemptions. The “long test” paired a lower earnings threshold with a more rigorous duties test and the “short test” test paired a higher salary level and a less rigorous duties test. 88 Fed. Reg. 62155.

The Department's Overtime Rules from 2004 to 2019

22. In 2004, the Department eliminated the “long” and “short” tests for determining whether an employee was eligible for the EAP Exemption and replaced them with a single test. *Id.*
23. In the 2004 Rule, the Department set a minimum salary level for employees to be eligible for the EAP Exemption. The Department based the salary level on the 20th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (the South). The 2004 Rule’s salary level was \$455 per week (\$23,660 annually). *Id.*
24. In 2016, the Department increased the salary level to \$913 per week (\$47,476 annually) and used a different methodology than the 2004 Rule. The 2016 Rule based the salary level on the 40th percentile (rather than the 20th percentile) of weekly earnings of full-time salaried workers in the lowest-wage Census Region (the South). *Id.*
25. The 2016 Rule also added a mechanism to automatically increase the salary level every three years. *Id.*
26. On August 31, 2017, the U.S. District Court for the Eastern District of Texas issued a summary judgment order holding that the 2016 Rule’s salary level and automatic updating mechanism exceeded the Department’s statutory authority under the FLSA and were unlawful. *See Nevada v. U.S. Dep’t of Labor*, 275 F. Supp. 3d 795, 799 (E.D. Tex. 2017).
27. In 2019, the Department raised the salary level from \$455 to \$684 per week (\$35,568 annually). In the 2019 Rule, the Department used the same methodology from the 2004 Rule to increase the salary level (20th percentile of weekly earnings in the lowest wage region). 88 Fed. Reg. 62156.

28. In promulgating the 2019 Rule, the Department acknowledged that the methodology it used to set the salary level in the 2016 Rule was excessive and that the salary level test cannot overtake the statutory text of the FLSA. “[T]he laudable goal of reducing misclassification cannot overtake the statutory text, which grounds an analysis of exemption status in the ‘capacity’ in which someone is employed—i.e., that employee’s duties.” 84 Fed. Reg. 51244 (Final 2019 Rule).

The Department’s 2024 Overtime Rule

29. On September 8, 2023, the Department announced rulemaking to further increase the salary level to determine if an employee is eligible for the EAP Exemption. 88 Fed. Reg. 62152.

30. On April 26, 2024, the Department issued its Final Rule (2024 Rule). The Final Rule encompasses two salary level increases: an initial increase on July 1, 2024, and a second increase on January 1, 2025. The Final Rule also includes a mechanism to automatically increase the salary level requirement every three years. 89 Fed. Reg. 32842; 29 C.F.R. § 541.600.

a. The July 1, 2024, Salary Level Increase

31. The 2024 Rule includes an initial increase in the salary level on July 1, 2024, using the methodology of the 2004 and 2019 Rules (20th percentile weekly earnings of full-time salaried workers in the lowest-wage Census Region) to increase the salary level from \$684 to \$844 per week (\$43,888 annually). 89 Fed. Reg. 32843.

32. The Department estimates that one million employees will lose their exempt status under the EAP Exemption because of the July increase. 89 Fed. Reg. 32843.

b. The January 1, 2025, Salary Level Increase

33. On January 1, 2025, the Department will make its second increase to the salary level. The Department will set the salary level at the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region. This methodology results in a salary level of \$1,128 per week (\$58,656 annually). 89 Fed. Reg. 32842.
34. The second increase in the 2024 Rule is a 65 percent increase in the salary level from the 2019 Rule and is a greater increase in percentage terms than most of the Department's prior updates. 89 Fed. Reg. 32874.
35. As a result of the January 2025 increase, three million employees will lose their exempt status under the EAP Exemption. 89 Fed. Reg. 32843.
36. In total, under the 2024 Rule, more than four million workers will lose their EAP Exemption status. 89 Fed. Reg. 32891, 32900.
37. The Department has previously acknowledged that “[f]or most white-collar, salaried employees, the exemption should turn on an analysis of their actual functions, not their salaries, as Congress commanded.” 84 Fed. Reg. 10908 (Proposed 2019 Rule).

c. The Automatic Update Provision

38. The 2024 Rule, like the 2016 Rule, added a mechanism to automatically increase the salary level every three years starting from July 1, 2024. 89 Fed. Reg. 32848.
39. The Department estimates that five million employees will lose their eligibility for the EAP Exemption by 2034. 89 Fed. Reg. 32891.

40. The Department will not conduct notice and comment rulemaking under the Administrative Procedure Act when automatically updating and increasing the salary level every three years. 89 Fed. Reg. 32857.
41. The Department previously stated that automatic increases to the salary level are “both contrary to congressional intent and inappropriate.” 69 Fed. Reg. 22171-72 (2004 Rule).
42. The 2024 Rule’s use and increase of the minimum salary level, including its automatic increase mechanism, improperly eliminates the duties test (as prescribed by Section 213(1)(a) of the FLSA) and categorically reclassifies millions of employees who work in a “bona fide executive, administrative, or professional capacity” in violation of the FLSA.

Injury to ACSI

43. ACSI is a covered employer under the FLSA.
44. On November 7, 2023, ACSI submitted a public comment opposing the Proposed 2024 Overtime Rule.
45. As a result of the 2024 Rule’s increase of the salary level on January 1, 2025, ACSI must reclassify six exempt employees to non-exempt status.
46. As a result of the January 1, 2025, increase in salary level, ACSI must incur added labor costs or limit the number of hours that newly non-exempt employees may work.
47. The Overtime Rule’s increase in salary level impedes ACSI’s ability to provide its services to schools and educators in Tennessee. ACSI provides services such as accreditation and teacher certification to its member schools. Among ACSI’s member schools in this District are Born Again Church Christian Academy in Nashville, Brentwood Academy in Brentwood, and Grace Christian Academy in Franklin.

48. ACSI hosts events and workshops—including events and workshops in this District—to further its mission of helping Christian educators. On October 22, 2024, ACSI will host a leadership network meeting in Franklin, Tennessee. On November 5, 2024, ACSI will host a workshop on early education in Mt. Juliet, Tennessee.
49. The Overtime Rule will hinder ACSI’s ability to manage its workforce effectively and flexibly.
50. ACSI will incur legal, payroll, and accounting costs to comply with the new Overtime Rule, both before and after its effective dates.
51. The automatic salary level increase mechanism in the 2024 Rule will also injure ACSI. The 2024 Rule does not provide ACSI with notice or the opportunity to comment on further changes to salary levels. Yet the 2024 Rule’s automatic salary level increases will likely force ACSI to reclassify employees who are presently entitled to the EAP Exemption.

LEGAL CLAIMS

FIRST CLAIM FOR RELIEF

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C)—Imposition of a Salary Level Requirement in 29 C.F.R. § 541.600 is in Excess of Statutory Authority

52. The Administrative Procedure Act (APA) directs courts to hold unlawful and set aside agency rules that are “in excess of statutory jurisdiction [or] authority.” 5 U.S.C. § 706(2)(C).
53. “Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided.” *Nat’l Fed’n of Indep. Bus. v. OSHA*, 142 S. Ct. 661, 665 (2022).

54. The Department’s 2024 Rule deviates from the plain text of the FLSA. The 2024 Rule therefore exceeds the Department’s statutory authority and must be set aside.
55. The FLSA unambiguously states that employers have no obligation to pay overtime to “any employee employed in a bona fide executive, administrative, or professional capacity...” 29 U.S.C. § 213(a)(1).
56. The 2024 Rule’s use and increase of the salary level on July 1, 2024, to determine whether an employee is eligible for the EAP Exemption contradicts the plain text of Section 213(a)(1).
57. Nothing in Section 213(a)(1), or any other provision of the Act, grants or implies any authority to the Department to categorically preclude employees who work in a “bona fide executive, administrative, or professional capacity” from the EAP Exemption based on a salary level requirement.
58. Given Congress’s intent and the plain language of the EAP Exemption under Section 213(a)(1), the requirement of a certain salary-level threshold to determine whether an employee is eligible for the EAP Exemption is beyond the Department’s statutory authority.
59. For these reasons, the July 1, 2024, increase under the 2024 Rule should be held unlawful and set aside.

SECOND CLAIM FOR RELIEF

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C)—January 1, 2025, Increase and Subsequent Automatic Increase in Excess of Statutory Authority

60. The Administrative Procedure Act (APA) directs courts to hold unlawful and set aside agency rules that are “in excess of statutory jurisdiction [or] authority.” 5 U.S.C. § 706(2)(C).

61. “Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided.” *Nat’l Fed’n of Indep. Bus. v. OSHA*, 142 S. Ct. 661, 665 (2022).
62. The Department’s 2024 Rule deviates from the plain text of the FLSA. The 2024 Rule therefore exceeds the Department’s statutory authority and must be set aside.
63. The FLSA unambiguously states that employers shall have no obligation to pay overtime to “any employee employed in a bona fide executive, administrative, or professional capacity...” 29 U.S.C. § 213(a)(1).
64. The 2024 Rule’s use and increase of the salary level on January 1, 2025, to determine whether an employee is eligible for the EAP Exemption contradicts the plain text of Section 213(a)(1).
65. Nothing in Section 213(a)(1), or any other provision of the Act, grants or implies any authority to the Department to categorically preclude employees who work in a “bona fide executive, administrative, or professional capacity” from the EAP Exemption based on a salary level requirement.
66. Given Congress’s intent and the plain language of the EAP Exemption under Section 213(a)(1), the requirement of a certain salary-level threshold to determine whether an employee is eligible for the EAP Exemption is beyond the Department’s statutory authority.
67. Even if the Department is authorized to use a minimal salary level as a “screening function” to identify employees who obviously do not perform executive, administrative, or professional duties and functions, the dramatic increase on January 1, 2025, of the salary

level disqualifies millions of employees who work in a bona fide executive, administrative, and professional capacity in violation of Section 213(a)(1) of the FLSA.

68. For these reasons, the January 1, 2025, increase under the 2024 Rule should be held unlawful and set aside.

THIRD CLAIM FOR RELIEF

Violation of U.S. Constitution, Non-Delegation Doctrine, and Separation of Powers

69. Article I, § 1, of the Constitution provides: “All legislative Powers herein granted shall be vested in a Congress of the United States.”

70. Congress may not “abdicate or [] transfer to others the essential legislative functions with which it is thus vested.” *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 529 (1935).

71. The President, acting through his agencies, may not exercise Congress’ legislative power to declare entirely “what circumstances . . . should be forbidden” by law. *Panama Refining Co. v. Ryan*, 293 U.S. 388, 418–19 (1935).

72. Congress must make fundamental policy decisions and provide an intelligible principle for agencies to apply the law to a given set of facts.

73. The authority to “define[] and delimit[]” the EAP Exemption provides no intelligible principle governing whether or under what conditions the Secretary of Labor should impose a minimum salary level requirement. The EAP Exemption also provides no intelligible principle to guide the Secretary of Labor’s exercise of discretion in deciding how high to set a minimum salary level. No other provision of the Act provides a governing intelligible principle.

74. If Section 213(a)(1) is construed as authorizing the Secretary of Labor to exercise the legislative power to establish a minimum salary level requirement for EAP employees, then the 2024 Rule violates the non-delegation doctrine and must be set aside.

FOURTH CLAIM FOR RELIEF

The 2024 Rule’s Automatic Update Mechanism to Increase the Standard Salary Level Violates the Administrative Procedure Act

75. The APA requires courts to hold unlawful and set aside any agency action that is “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

76. Section 213(a)(1) of the FLSA mandates that the EAP Exemption be “defined and delimited from time to time by regulations of the Secretary.”

77. Agencies must go through notice and comment rulemaking for substantive rules. 5 U.S.C. § 553.

78. The 2024 Rule’s automatic update mechanism affects the rights and obligations of individuals and businesses.

79. The 2024 Rule’s increase of the salary level to determine EAP exemptions is therefore a legislative or substantive rule.

80. The Department must go through notice and comment rulemaking to increase the salary level under the EAP Exemption. But the 2024 Rule allows the Department to increase the salary level every three years without providing notice or an opportunity to comment.

81. The 2024 Rule’s automatic update mechanism violates the notice-and-comment rulemaking requirements of the APA. It is therefore unlawful and must be set aside.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court issue:

1. Preliminary and permanent injunctions prohibiting Defendants from enforcing 29 C.F.R. § 541.600;
2. A declaratory judgment, pursuant to 5 U.S.C. § 706(2) and 28 U.S.C. § 2202, holding that 29 C.F.R. § 541.600 is unlawful, and an Order setting aside 29 C.F.R. § 541.600;
3. An award of attorneys' fees and costs to Plaintiff pursuant to 28 U.S.C. § 2412, or any other applicable authority; and
4. Any other relief as the Court deems just and proper.

Dated: August 12, 2024.

Respectfully submitted,

s/ Wencong Fa

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VERIFICATION

I, PHILIP SCOTT, hereby declare as follows:

I am the Vice President for Legal Affairs for Plaintiff Association of Christian Schools International (ACSI). I am authorized by ACSI to execute this Verification.

I have read the Verified Complaint for Injunctive and Declaratory Relief and know its contents. The facts alleged in this matter are within my own personal knowledge, and I know these facts to be true, except for matters stated on information and belief and, as to such matters, I reasonably believe them to be true.

I verify under penalty of perjury under the laws of the United States of America that the factual statements are true and correct. If called upon, I would competently testify to them. This Verification was executed this 24 day of July 2024, in 2024_____.



PHILIP SCOTT