

Case No. 17-3427

In the United States Court of Appeals
For the Sixth Circuit

R. ALEXANDER ACOSTA, SECRETARY OF LABOR,
Plaintiff – Appellee,

v.

CATHEDRAL BUFFET, INC., et al.
Defendants-Appellants,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO, EASTERN DIVISION
CIVIL ACTION NO. 5:15-cv-01577

BRIEF OF APPELLANTS, CATHEDRAL BUFFET, INC. AND
REVEREND ERNEST ANGLE

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DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST

Pursuant to 6th Cir. R. 26.1, Defendant-Appellants, Cathedral Buffet, Inc. and Reverend Ernest Angley, make the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

/s/ Todd Anthony Mazzola

Dated: June 30, 2017

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STATEMENT REGARDING ORAL ARGUMENT

Appellants, Cathedral Buffet, Inc. and Ernest Angley believe that oral argument is warranted for this appeal. The appeal involves application of the Fair Labor Standards Act (“FLSA”) to church-member volunteers who have volunteered their time based on religious beliefs and without expectation of compensation (or compensation in fact). The traditional “economic reality” tests developed to determine whether an individual is an independent contractor or an employee on the one hand, and a trainee/student or an employee on the other hand, are ill-suited for determining whether a true volunteer without economic motivation for his or her action(s) is an employee under FLSA.

Appellants believe that the Supreme Court’s decision in *Tony & Susan Alamo Found. v. Sec’y of Labor*, 471 U.S. 290 (1985) expressly requires a determination of expected remuneration as an independent antecedent inquiry to determining employee status under FLSA in circumstances where an individual volunteers his or her time based on religious motivation.

This case also involves a Free Exercise Clause challenge that is different than that discussed in *Alamo*. The District Court determined FLSA employment status in the first instance by substituting a finding of religious influence motivating volunteerism for the traditional economic control or dependency inquiry that is at the heart of an employment relationship. This determination, if

left to stand, tramples First Amendment rights and threatens the very type of church volunteerism that *Alamo* stated it was protecting through its required prerequisites to FLSA application.

JURISDICTIONAL STATEMENT

I. Basis for District Court Subject-Matter Jurisdiction

The District Court had subject matter jurisdiction over this case pursuant to Sections 16(c) and 17 of the Fair Labor Standards Act (hereinafter "FLSA" or "Act"), 29 U.S.C. § 216(c) and 29 U.S.C. § 217, and pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1345 (vesting jurisdiction in the district courts over suits commenced by an agency or officer of the United States).

II. Filing Dates

After a bench trial, the District Court awarded the Secretary judgment on all of his remaining claims set forth in his Complaint against the Defendants in the full amount of damages requested by the Secretary on March 29, 2017, and issued a corresponding injunction on April 12, 2017. ECF Doc. # 89, Findings of Fact and Conclusions of Law (hereinafter "FOF & COL"); ECF Doc. #90, Judgment Entry (hereinafter "J.E."); ECF Doc. #92, Permanent Injunction (hereinafter "Injunction").

The Defendants/Appellants filed a timely Notice of Appeal on April 25, 2017. ECF Doc. #93, Notice of Appeal.

III. Court of Appeals Jurisdiction

28 U.S.C. § 1291 invests the Court of Appeals with jurisdiction of appeals from final decisions of the District Courts of the United States.

STATEMENT OF ISSUES

1. Does the United States Supreme Court's decision in *Tony & Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290 (1985) (“*Alamo*”) require remuneration as an independent antecedent inquiry in a church-member volunteer context, such that an employment analysis under FLSA proceeds only when the volunteer relationship fairly approximates an employment relationship – *i.e.*, where the volunteer receives or expects to receive compensation or seeks future employment.

2. Did the District Court ignore economic reality and the totality of the circumstances of the situation presented where it based its decision on Cathedral Buffet's corporate “for profit” filing status and the evidence established that Cathedral Buffet: (1) is wholly owned by a 501(c)(3) tax-exempt religious organization, (2) has never turned a profit, (3) is not operated to generate profit, (4) is heavily subsidized by its sole-shareholder church to enable its continued operation at a substantial loss, and (5) is operated on church property to benefit church members, the church's religious objectives, and the local community and not for commercial gain?

3. Are concerns of “fair competition” under FLSA implicated so as to justify its application to volunteers who have no expectation of compensation or future employment where the putative employer is not competing with any local entity for profit because it is not intended to generate profit and has never generated profits over a long period of operation?

4. May religiously-motivated pressure or persuasion stand in for the existence of any economic relationship (immediate or potential) between a putative employer and putative employee to establish an employment relationship under FLSA?

5. Did the evidence offered at trial support a conclusion that the 230-plus volunteers named in the Secretary's Complaint were coerced into volunteering at the Cathedral Buffet?

6. Even if the District Court believed that the volunteers were coerced to provide services by non-economic means, does that provide grounds to impose liability under FLSA, or would any claim for back wages rely on application of the private right of action available under the Trafficking Victims Protection and Reauthorization Act, 18 U.S.C. § 1589 *et. seq.*, which the Secretary has no authority to enforce?

7. Does the District Court's determination that religiously-based pressure or persuasion to volunteer can replace the existence of an economic relationship

between a putative employer and putative employee under FLSA violate the Free Exercise Clause of the First Amendment to the United States Constitution?

STATEMENT OF THE FACTS AND CASE

Over a two-year period covered by the Secretary's Complaint, more than two hundred and thirty Grace Cathedral church members volunteered their time at the Cathedral Buffet. This appeal involves whether those volunteers are properly classified as employees within the meaning of the FLSA.

The Cathedral Buffet is a buffet-style restaurant operating on church property in Cuyahoga Falls, Ohio. ECF #36, Stipulations, PageID##: 1143-144. It is open to the public for lunch on Tuesday through Friday. It is also open to the public on Saturday and Sunday, and for three special holidays – Thanksgiving, Easter and Mother's Day (two of which fall on Sundays). It serves a church-members-only "midnight brunch" after church services on Friday evening. ECF Doc. #75, Tr. Vol. I, PageID##: 1597-1601, 1676, 1742; ECF Doc. #76, Tr. Vol. I, PageID##: 1840; 1934-35.

The Cathedral Buffet is organized under Ohio law as a "for profit" corporation. Its sole shareholder is Grace Cathedral, who is itself a 501(c)(3) tax-exempt religious organization. Despite being organized as a "for profit" corporation, Cathedral Buffet has never generated a profit and, in fact, was not operated to make a profit. ECF Doc. #36, Stipulations, PageID##: 1143-144; ECF

Doc. #85, Tr. Vol. IV, PageID#: 2366. Instead, the Cathedral Buffet offered low-priced buffet-style dining to church members and the general public as an extension of the church – to interact with the local community, to allow church members a place to gather (particularly after church services), and to help people. ECF Doc. #75, Tr. Vol. I, PageID##: 1697, 1708. The church subsidized the Cathedral Buffet to enable its continued operation, spending over \$1 million for the 4-year period between 2012 and the time of trial alone. ECF Doc. #85, Tr. Vol. IV, PageID#: 2365-66.

The Cathedral Buffet employed thirty-five full time staff members during the period covered by the Secretary’s Complaint. ECF Doc. #75, Tr. Vol. I, Page ID#: 1739. This appeal does not involve those paid staff members – it involves only the church-member volunteers.

Volunteering at the Cathedral Buffet was one of the many ways that members were encouraged to volunteer for the church. Other volunteer opportunities included mission trips, participating in the choir, teaching Sunday school, being an usher at services, maintaining church grounds, and going out in the community to invite people to attend church services. ECF Doc. #85, Tr. Vol. I, PageID#: 2364. Church members who volunteered their time at the Cathedral Buffet believed that, in doing so, they were serving God. Specifically, they believed that they were carrying forward their anointings to Cathedral Buffet

customers (who were other church members and members of the local community) when they volunteered. See ECF Doc. #75, ECF Vol. I, PageID#: 1689. Reverend Angley and other church members reached out to members asking them to volunteer by calling them on the telephone and by asking for help at church services from the pulpit. ECF Doc. #75, Tr. Vol. I, PageID#: 1626.

After interviewing only 14 persons (including a subset of volunteers) regarding the volunteer activity at the Cathedral Buffet, the Secretary filed a single Complaint, in essence alleging that over 230 individuals that it included in Appendix A to the Complaint were “improperly classified as volunteers” and not paid the minimum wage. ECF Doc. #1, Complaint; ECF Doc. #76, Tr. Vol. II, PageID#: 1947-49. The Secretary began his case by relying on his often judicially-rejected, internally-formulated policy that for-profit companies cannot utilize volunteer labor consistent with the FLSA. ECF Doc. #12, Rule 12(b)(6) Response, PageID#: 113. Remnants of this theme persisted through the Secretary’s opening statement at trial. ECF Doc #75, Tr. Vol. I, PageID#: 1587. When directly questioned on the issue, however, Investigator Stephen Banig stated his belief that under the FLSA, a volunteer for a for-profit corporation is not automatically determined to be an employee under the FLSA, and that the central focus was instead the existence of an employment relationship. ECF Doc. #76, Tr. Vol. II, PageID #: 1930.

At both the summary judgment stage and at trial, Defendants produced and the trial court admitted into evidence sworn affidavits from the volunteers that the Secretary claims in his Complaint are employees under the Act. Each of those 134 uncontroverted, sworn affidavits state that: (1) the individual volunteer was not economically dependent on the Defendants, and (2) the individual volunteered at the Buffet of his or her own volition, for his or her own personal purposes, and without expectation of compensation. DVD (digital copy)¹ Doc. #16, Def. Trial Exh. 3, ECF Doc. #85, Tr. Vol. IV, PageID#: 2374;² ECF No. 26-7 through 112, PageID #: 239-450; ECF No. 39-1 through 28; PageID #: 1159- 1214; ECF No. 57; PageID #: 1402.

Based on the stipulations and testimony at trial, the District Court did not find that any volunteer volunteered at the Buffet with an expectation of compensation or future employment, or was economically dependent on any Defendant in any way. See ECF Doc. #89, FOF & COL, PageID#: 2469.

¹ Four copies of all trial exhibits admitted in the United States District Court of the Northern District of Ohio, Eastern Division, Civil Action No. 5:15-cv-01577 in DVD format (i.e., a “digital copy”) were sent to the Clerk of Courts for filing via Federal Express on Thursday, June 29, 2017 in accordance with the Sixth Circuit Rules and published Appendix checklist.

² As admitted at trial and as shown in DVD (digital copy) Doc. #16, Def. Trial Exh. 3, ECF Doc. #85, Tr. Vol. IV, PageID#: 2374, there are 137 affidavits in all, but three sets are duplicates: Def. Exh. 3-97 through 3-100 (Michele Hatch); Def. Exh. 3-71 through 3-74 (Lonnie Eisenbraum) and Def. Exh. 3-213-214 and 3-273-274 (Laura Lingle).

It is clear from the Secretary's answers to Requests for Admissions filed in this case and from the testimony of Investigator Stephen Banig that when the Department of Labor filed its Complaint against the Defendants, it was not grounded in a theory that the Defendants had coerced volunteers to volunteer at the Cathedral Buffet. ECF Doc. #75, Tr. Vol. I, PageID##: 1937-1941. Investigator Banig testified that he did not ask any questions of the small number of volunteers that he interviewed before the Secretary filed his Complaint regarding "pressure or coercion" to volunteer. *Id.* It was only weeks before the trial that Investigator Banig began to speak to people about the issue, after being directed to do so by the Solicitor. In response to requests for admissions, the Secretary had admitted that he had no evidence that any volunteer did not provide services of his or her own volition. DVD (digital copy) Doc. #14, Def. Trial Exh. 1, ECF Doc. #85, Tr. Vol. IV, PageID#: 2374. While the Secretary was permitted to amend his response to the request for admission over objection at trial,³ no evidence supported the amendment.

The Secretary essentially argued at trial that economic considerations inherent in the "economic reality" test for FLSA employment should be abandoned because the volunteer activities were alleged to have been solicited through religiously-motivated persuasion or coercion.

³ ECF Doc. #75, Tr. Vol. I, PageID#: 1556.

The Secretary attempted to offer testimony through his witnesses that volunteers were influenced by statements made from the pulpit to volunteer at the Buffet as a means of serving God and the church instilled a fear into members that they would “fail God” if they refused to volunteer. A few of the Secretary’s witnesses stated that they volunteered because they did not want to “fail God.” ECF Doc #75, Tr. Vol. I, PageID##: 1605-08, 1621: 1657, 1689; ECF Doc #76, Tr. Vol. II, PageID##: 1814, 1836-40. Secretary witness Ralph Gay, III testified to his belief that the work of the Church and the work of the Buffet were inseparable: “[F]rom my perspective, you can’t separate the church and the Buffet. You can on paper, but in that particular environment, that’s one entity.” *Id.*, PageID#: 1837. Mr. Gay testified that the volunteers were there for the “religious aspect” of volunteering and without the religious aspect of volunteering 90% of those people would not have volunteered. *Id.*, PageID##: 1839-40.

The Secretary’s witnesses also consistently testified that Grace Cathedral members were encouraged by Reverend Anglely to both eat at the Buffet and to volunteer there in order to carry forward their anointing. ECF Doc. #75, Tr. Vol. I, PageID#: 1689; ECF Doc. #76, Tr. Vol. II, PageID#: 1839-40. Ralph Gay, III testified as to a general sentiment that he believed was shared by church members: "Man, I'm so glad we're helping take Jesus to the world and blessing these people, sharing our anointings at the Buffet." *Id.*

The testimony of other volunteers who gave live testimony at trial was consistent with Mr. Gay's statements. For instance, Ellen Osborne, one of the witnesses who produced a sworn affidavit for Defendants and who was selected for cross examination by the Secretary, testified that she volunteered at the Buffet "[b]ecause I love to do it and I love the Lord and it's blessing people, because when they come in, I'm there to show my Jesus smile and welcome them to the Buffet." ECF Doc. #78, Tr. Vol. III, PageID#: 2082.

The testimony at trial was that the Buffet's normal lunch service on Tuesday through Friday had no need for volunteer staffing. ECF Doc. #75, Tr. Vol. I, PageID#: 1742. The need arose for additional staffing to serve Friday midnight brunch that was closed to non-church members, and on Saturday and Sunday – days on which church services were held – and on special holidays. See ECF Doc. #75, Tr. Vol. I, PageID##: 1597-1601, 1676; ECF Doc. #76, Tr. Vol. II, PageID#: 1840, 1934-35. The Secretary's witnesses testified that sermons were piped into the Buffet for the volunteers and that some of the volunteers would be scheduled to depart church services for the Buffet at "alter call." ECF Doc. #75, Tr. Vol. I, PageID ##: 1598-99, 1651.

None of the Secretary's witnesses testified that their free will had been overborne, causing them to volunteer at the Buffet. Much of the testimony of the Secretary's witnesses, in fact, had little to do with the 2012-2014 time frame

applicable to the Secretary's Complaint, or even to volunteer services that were provided. For instance, both Rebecca Roadman and Christopher Newby testified that they had meetings with Reverend Angley where they were persuaded by him not to leave the Buffet, but both were *paid staff employees of the Buffet and not volunteers at the time of those conversations!* ECF Doc. #76, Tr. Vol. II, PageID##: 1806-1809(conversation occurred in 2005); ECF Doc. #75, Tr. Vol. I, PageID##: 1651-52. When asked about the time period that he volunteered at the Cathedral Buffet, Newby testified that he volunteered because he "wanted to be a blessing to the church," it made him "feel good" and that he was proud to have been asked to volunteer. ECF Doc. #76, Tr. Vol. II, PageID##: 1820, 1825-1827.

Ralph Gay, III testified that he intermittently worked at the Buffet because sometimes he didn't want to volunteer. He would either decline to answer his phone when Buffet staff members called or would just say "no" to them. ECF Doc. #76, Tr. Vol. II, PageID #: 1832-35. He also testified that some church members chose not to volunteer at all. *Id.*, PageID #: 1849.

Dr. Alicia Gay had earned her graduate degree by the time-frame in question under the Secretary's Complaint. She testified that she left the church in October of 2014 and quit volunteering at the Buffet six months earlier. ECF Doc #75, Tr. Vol. I, PageID#: 1613. Dr. Gay testified that she suffered no adverse consequences when she left the Buffet. *Id.* In fact, Dr. Gay volunteered a total of only six and

one-half hours during the two-year time period in question, and testified that when called to volunteer she felt free to say that she couldn't work at the time requested because she was busy. *Id.*, PageID#: 1617. Even before that time, Dr. Gay testified that she cut her volunteer time due to increased demands in her personal life, and requested and received alternative volunteer assignments on occasions when she did volunteer. *Id.*, PageID#: 1600-01, 1603.

Over and above the four volunteers who testified for the Secretary, the Secretary adduced no evidence or testimony sufficient to demonstrate that any other church member volunteered at the Buffet because they were coerced. In fact, the Secretary's representative at trial, Stephen Banig, testified that based on his investigation and the testimony he heard at trial, he was not willing to say that any of the volunteers did not volunteer of his or her own free will. ECF Doc # 76, Tr. Vol. II, PageID #: 1941. Dr. Gay testified that she was speaking for her motivations for volunteering only. ECF Doc. #75, Tr. Vol. I, PageID#: 1619. Angela Osborne testified that if people didn't want to work they would call off or just say "no" when asked. ECF Doc. #75, Tr. Vol. I, PageID#: 1775. Angela Osborne also testified that a lot of people called up the buffet manager Sonya Neale freely offering to volunteer. *Id.*, PageID #: 1752.

The Defendants produced 134 affidavits from individuals claimed by the Secretary to be FLSA employees in his Complaint, who gave sworn testimony that

they provided volunteer services for their own personal purposes and not due to any pressure, threat or coercion of any type. DVD (digital copy) Doc. #16, Def. Trial Exh. 3, ECF Doc. #85, Tr. Vol. IV, PageID#: 2374. The Secretary did nothing to rebut the sworn testimony of these individuals. The testimony of the volunteers for whom Defendants produced sworn affidavits and the Secretary chose to cross-examine only confirmed that the volunteers provided services of their own free will, without pressure or coercion. ECF Doc. #78, Tr. Vol. III, PageID #: 1985-86, 1998-99, 2002, 2014, 2027-30, 2033, 2044-45, 2047, 2073-74, 2082-83, 2087. In fact, many of these volunteers were regular church-goers who disaffirmed the Secretary's suggestion that Angley pervasively preached from the pulpit that failing to volunteer at the Buffet would equate to failing God. *Id.*, PageID #: 1989, 2005, 2020, 2034, 2088. Even the Secretary's key witness, Angela Osborne, disagreed with the way the Secretary's other witnesses' characterized the supposed "failing God" statements as exaggerated. ECF Doc. #75, Tr. Vol. I, PageID# 1766-77.

The Secretary's presentation of his case-in-chief revealed nothing whatsoever about the motivations, state of mind, or potential mental or psychological infirmities of any of the nearly 100 volunteers listed on the Secretary's Exhibit 1 to his Complaint who did not testify at trial by affidavit or by live testimony.

In the face of this state of evidence, the District Court nevertheless gave effect to the Secretary's coercion theory, determining that all of the 230-plus volunteers were statutory employees, despite tacitly acknowledging that not a single one of them had an expectation of compensation or future employment when he or she volunteered. The District Court stated as the crux of her finding that "economic realities" revealed the volunteers to be FLSA employees: "[t]he Buffet's constant solicitation of volunteer labor, Reverend Angley's admission that the use of volunteer labor was intended to save money, and the volunteers' feelings of pressure and coercion to provide the labor all demonstrates that the volunteers were actually employees." ECF Doc. #89, FOF &COL, Page ID#: 2484.

Further, despite determining that the "pressure and coercion" driving the District Court's "economic realities" determination was religiously motivated, the District Court gave slight consideration to the Defendants' Free Exercise challenge, intimating that the Federal Constitutional proscription did not qualify as a limited "exception" under the FLSA (as opposed to a limitation on government action), and that such an argument would be at odds with the Supreme Court's decision in *Alamo*.

Finally, the District Court generally cited FLSA's legislative purpose of promoting "fair competition" mentioned in *Alamo* as guiding its decision, and partially applied both the established independent contractor/employee factors and

its own more restrictive variation of the trainee/employee “beneficiary” test to conclude that the volunteers were FLSA employees.

Appellants filed this timely appeal. ECF Doc. #93, Notice of Appeal.

ARGUMENT AND ANALYSIS

I. Summary of Arguments

A. The District Court erred when it determined that the church-member volunteers were employees within the meaning of FLSA. *Tony & Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290 (1985)(hereinafter “*Alamo*”) expressly required the District Court to engage in a two-part analysis, the second part of which requires that the volunteer possess an expectation of compensation before the volunteer will be determined to be an employee under FLSA. *Id.* at 302–03. The District Court did not find that any of the volunteers expected compensation based on their volunteer activities, or that any volunteer was economically-dependent on either Defendant, or that any volunteer had any promise or expectation of future employment at the Cathedral Buffet, but nevertheless determined that they were all employees under FLSA.

B. The District Court erred in determining that the volunteers were employees within the meaning of FLSA based on the Secretary's argument that they volunteered because of religiously-motivated coercion or pressure. As a matter of law, non-economic influence or even coercion cannot stand in for the

existence of an economic relationship between the putative employer and putative employee. Moreover the evidence at trial does not support the District Court's finding of fact that any volunteer was coerced into volunteering at the Cathedral Buffet (much less that all of them were).

Defendants provided 134 volunteer affidavits that were admitted into evidence by the District Court. Each affiant swore that he or she volunteered of his or her own free will, without pressure or coercion. That testimony is unrebutted. The Secretary produced the testimony from four volunteers. None of the Secretary's volunteer witnesses testified that their will was overborne, causing them to provide volunteer services. Finally, for the almost 100 volunteers for whom the Secretary produced no evidence, a determination that they volunteered because of pressure or coercion requires wild speculation as to those volunteers' state of mind that cannot be based on any reasonable inference drawn from the evidence presented at trial. Without the testimony from (or specifically regarding) these non-testifying witnesses, it cannot be simply assumed that they volunteered due to pressure or coercion.

C. The District Court erred when it determined that it does not violate the Free Exercise Clause of the First Amendment to the United States Constitution to substitute some element of religious pressure, influence or motivation for the economic relationship generally required to demonstrate an employment

relationship under FLSA. Evidence at trial demonstrated that the church members had a genuinely-held religious belief that by volunteering at the Buffet and interacting with church members and the public at the Buffet, they were sharing their anointings and serving God. “[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 714 (1981). The District Court essentially adjudged that the Grace Cathedral volunteers' beliefs were not worthy of protection under the First Amendment.

II. The Standard of Review

Whether a particular situation is an employment relationship under FLSA is a question of law. *Fegley v. Higgins*, 19 F.3d 1126, 1132 (6th Cir. 1994). Therefore, on appeal, this Court must engage in a *de novo* review of the District Court's ruling that the Grace Cathedral volunteers are employees within the meaning of FLSA. *Id.* The District Court necessarily relied on various factual findings it made after a bench trial. This Court reviews those findings for clear error, but reviews *de novo* the District Court's application of the legal standard to them. *Sec'y of Labor, U.S. Dep't of Labor v. 3Re.com, Inc.*, 317 F.3d 534, 537 (6th Cir. 2003). “A district court's factual findings are clearly erroneous if, based on the entire record, the Court is left with the definite and firm conviction that a mistake has been committed.” *Shelby Cnty. Health Care Corp. v. Majestic Star*

Casino, 581 F.3d 355, 364–65 (6th Cir. 2009)(citation and internal quotation marks omitted).

III. The District Court erred in its application of the law in determining that the volunteers were FLSA employees.

A. The Supreme Court’s decision in *Alamo* requires a threshold economic remuneration analysis in determining whether a religiously-motivated volunteer is a statutory employee.

The United States Supreme Court applied FLSA to volunteer activities undertaken in connection with an individual’s religious affiliation in *Alamo*. The unanimous *Alamo* court expressly required two independent findings to determine that the claimed church volunteers in that case were subject to the Act: “[f]irst, the Foundation’s businesses must constitute an “[e]nterprise engaged in commerce or in the production of goods for commerce.” 29 U.S.C. § 203(s) [and] [*s*]econd, *the associates must be “employees” within the meaning of the Act.*” *Id.* at 295. (Emphasis added.)

This appeal does not involve the first of those two issues. Appellants do not contest that the Cathedral Buffet was engaged in a commercial *activity* within the meaning of the FLSA. That alone, however, does not make the volunteers statutory employees. See *Alamo* at 299 (“That the Foundation’s commercial activities are within the Act’s definition of “enterprise” does not, as we have noted, end the inquiry.”)

The *Alamo* court determined that in deciding whether the claimed volunteers were employees within the meaning of FLSA, the employment test is one of “economic reality.” *Id.* at 301. Because the *Alamo* volunteers received food, shelter and benefits from the foundation, which sustained them for long periods of time, the *Alamo* court determined that the individuals were employees within the meaning of the Act. Not only did the *Alamo* “volunteers” expect compensation – ***they actually received it***, albeit in the form of non-wage compensation. The unanimous *Alamo* court assured that its holding would not be leveraged to outlaw or chill church volunteerism, stating: “[t]he Act reaches only the ‘ordinary commercial activities’ of religious organizations, 29 CFR § 779.214 (1984), ***and only those who engage in those activities in expectation of compensation.***” *Id.* at 302–03. (Emphasis added).

Focusing on the “goals” of FLSA in curbing unfair competition, the District Court lost sight of this two-part test and the unrebutted fact established at trial that ***none of the volunteers had any expectation of compensation*** for volunteering their time. By doing so, the District Court read critical language out of the *Alamo* decision.

By analogy, in the Title VII employment context, all of the Circuit Courts of Appeal except the Sixth and Ninth Circuit to have considered the circumstances under which a volunteer is an employee have exalted remuneration as an

independent antecedent inquiry, such that the traditional common law agency analysis is only employed when the volunteer relationship fairly approximates an employment relationship. *Marie v. Am. Red Cross*, 771 F.3d 344, 353 (6th Cir. 2014). The threshold-remuneration line of cases followed in the majority of Circuit courts in Title VII cases teaches that: (1) remuneration may consist of direct remuneration, *i.e.*, salary or wages, or significant indirect benefits that are not incidental to the service performed, *i.e.*, job-related benefits [as was shown in *Alamo*]; (2) ***if there is no showing of remuneration, courts will not proceed to the common law agency test***; and (3) if there is remuneration supporting a plausible employment relationship, courts will proceed to the common law agency test. *Juino v. Livingston Par. Fire Dist. No. 5*, 717 F.3d 431, 437–38 (5th Cir. 2013)(Emphasis added).

In declining to apply a threshold test of remuneration as an independent antecedent requirement in the Title VII volunteer context, the Sixth Circuit Court of Appeals panel in *Bryson v. Middlefield Volunteer Fire Dep't, Inc.*,⁴ stressed that in *Cnty. for Creative Non–Violence v. Reid*, 490 U.S. 730 (1989) “the [Supreme] Court's instruction to apply the common law of agency is not limited to when the individual receives significant remuneration but rather when Congress has used the term ‘employee’ without defining it.” *Bryson, supra* at 354. Here, in contrast – and

⁴ 656 F.3d 348, 349 (6th Cir. 2011)

at least where a volunteer is religiously motivated – the United States Supreme Court’s instruction *expressly requires a threshold test of remuneration for FLSA*, stating, quite clearly, that FLSA reaches only the those who engage in ordinary commercial activities’ of religious organizations *in expectation of compensation*. *Alamo* at 302–03.

The District Court was not free to ignore the Supreme Court’s express directive in *Alamo*.

B. The District Court ignored economic reality when it focused on the Cathedral Buffet’s “for profit” corporate filing status.

It is expected that the Secretary will argue that the quoted language of *Alamo* is inapplicable because the volunteers gave their time to a “for-profit” corporate entity – Cathedral Buffet, Inc. (that is wholly-owned by the church) as opposed to the church itself. The argument is short-sighted in several respects.

First, the “for profit” filing status of the Cathedral Buffet goes only to the first part of the two-part inquiry in *Alamo* concerning whether the putative employer is engaged in ordinary commercial activity. It tells nothing of the employer-employee relationship that is at issue, which is the second independent requirement for FLSA application under *Alamo*. *Id.* at 295. To make this “for profit” distinction determinative of “employee” status would essentially eliminate the mandated inquiry into the employment relationship.

Second, the text of FLSA makes no distinction between corporations that are organized as “for profit” entities and those that are organized as “non-profit” entities. In this case it is a stipulated fact that the Cathedral Buffet has never made a profit and is consistently subsidized by its shareholder, Grace Cathedral to enable its continued operation. The undisputed testimony before the District Court was that the Cathedral Buffet is not operated to generate a profit and that the church spent upwards of \$1 million to keep Cathedral Buffet afloat over the most recent four-year period. Compare *Golden Rule Church Ass'n v. Commissioner*, 41 T.C. 719, 731 (1964)(considering “consistent non-profitability” to be evidence of an absence of commercial purpose for purposes of IRS tax exempt classification). Although a business may engage in *commercial activity*, that does not mean that it is organized or run for a *commercial purpose*.

Looking solely to a corporation’s filing status is an exercise in form over substance that cheats the “totality of the circumstances” inquiry as is required to determine “economic realities.” Compare *Ortega v. Denver Inst. L.L.C.*, No. 14-CV-01351-MEH, 2015 WL 4576976, at *15 (D. Colo. July 30, 2015)(applying a totality-of-the-circumstances test in a case alleging FLSA violations against a teaching salon that charged guests to cover costs and to ensure that the guests “attach a level of reasonable value to the services provided,” and finding it

particularly important to economic reality that the entity operated “at a loss of nearly a half-million dollars a year.”)

The *only* evidence of record before the District Court was that the Cathedral Buffet was run as an arm of the church. It operated on church property, it paid no rent or utilities, its business hours largely coincided with church services, it allowed church members a place on church property to congregate for meals and allowed the church and its volunteer members to interact with the local community by providing a low-cost, buffet-style meal. Testimony at trial was that the Buffet operated to help people. There certainly was no evidence that Ernest Angley or the church was financially enriched by the Cathedral Buffet’s continued operation or that the Cathedral Buffet was anything resembling a profit-generating business.

The District Court found that “[t]he Buffet does not primarily serve a religious purpose.” ECF Doc. #89, FOF & COL, Page ID#: 2470. It is unclear, however, what the District Court determined the Buffet’s “primary purpose” to be. Based on the evidence presented, it clearly was not a commercial or business purpose. With no expectation of (or design for) profit, and no profit in fact, the question obviously posed is what justifies the District Court’s concern for unfair

competition that is used to override the non-existence of any economic motivation for the volunteer to provide their services?⁵

Moreover, the testimony at trial supported a genuine belief held by the church-member volunteers that they were serving a religious purpose through their volunteer activities – they were sharing their anointings with other church members and the public.

This case is unlike *Alamo*. The *Alamo* “volunteers” engaged in commercial activities that generated profit to financially support the foundation (*i.e.*, the Alamo foundation had a *commercial or business purpose* in running its businesses – it was not merely engaging in a commercial activity). In contrast, the Grace Cathedral volunteers merely helped their church to continue to lose large sums of money operating a buffet so that it could provide a unique dining experience to its members and the local community, while employing a paid staff of 35 full-time employees. No *commercial or business purpose* for operating the Buffet at a loss year after year is apparent or was demonstrated at trial. The *Alamo* court concluded its discussion by stating that “[t]he Foundation's commercial activities, *undertaken with a ‘common business purpose,’* are not beyond the reach of the Fair Labor Standards Act because of the Foundation's religious character.” *Id.* at

⁵The Secretary offered no evidence regarding “unfair competition” aside from the fact that various types of eateries operate in the immediate area. ECF Doc. #76, Tr. Vol. I, PageID#: 1946-48.

306. Here, Grace Cathedral had no “*business purpose*” for operating the Cathedral Buffet.

Finally, courts that have considered the DOL’s stance that anyone providing services to a “for profit” corporation cannot do so on a volunteer basis have consistently rejected the argument. See, e.g., *Okoro v. Pyramid 4 Aegis*, No. 11-C-267, 2012 WL 1410025, at *8 (E.D. Wis. Apr. 23, 2012); *Patel v. Patel*, No. 2:14-CV-0031 KJN, 2014 WL 6390893, at *8 (E.D. Cal. Nov. 17, 2014); *Atkins v. Capri Training Ctr., Inc.*, No. 2:13-CV-06820 SDW, 2014 WL 4930906, at *9 (D.N.J. Oct. 1, 2014)). See, also *Walling v. Portland Terminal Co.*, 330 U.S. 148 (1947)(involving a “for profit” railroad employer).

This Court has previously declined to provide deference to DOL policy statements regarding volunteerism where the DOL’s policy is “overly rigid and inconsistent with a totality-of-the-circumstances approach.” *Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 642 F.3d 518, 525 (6th Cir. 2011). The Secretary’s representative at trial, Stephen Baning, himself acknowledged that this DOL policy does not reflect the proper inquiry for determining employment status. ECF Doc #76, Tr. Vol. II, PageID#: 1930.

C. The FLSA independent contractor/employee and trainee/employee factors used to determine employee status do not fit the volunteer/employee distinction here.

1. The District Court's application of the test developed for independent contractors.

The District Court discussed some the factors that were developed for determining whether a person who is claimed to be an independent contractor is, in fact, a FLSA employee under *Donovan v. Brandel*, 736 F.2d 1114 (6th Cir. 1984) and its progeny. In applying these factors, the District Court ignored the Defendants' arguments that, if these factors are applicable at all, their application requires modification as guided by the *Marie v. Am. Red Cross* court.⁶

The District Court apparently relied, in part, on its finding that the church members were scheduled to volunteer on specific dates and times at the Buffet. ECF Doc. #89, FOF & COL, PageID##: 2468, 2484-85. The District Court cited *Marie* in concluding that application of this factor favored employee status, but ignored the *Marie* court's emphasis that it was not particularly meaningful that the employer issues a schedule to the volunteers and assigns them tasks. Instead, what was important was whether the volunteer retained significant discretion over her own time and work – *i.e.*, whether the volunteer had the right to refuse and negotiate work schedules. *Id.* at 357. As discussed in the Statement of Facts, it was clear that all the testifying volunteers – whether testifying live or by affidavit – stated that they had the ability to refuse and/or schedule alternative volunteer time

⁶The *Marie* court expressly recognized that “there is at best no material difference” and at worst, “minimal substantive differences” between the economic realities test and the common law agency test employed in Title VII cases. *Id.* at 358.

when being contacted with a scheduling request and even request different assignments. As further example, volunteer Leah Ester Barrows testified at trial that she sometimes did not show up at the Buffet at the times she was scheduled to volunteer and there was no consequence to her whatsoever. ECF Doc. #78, Tr. Vol. III, PageID##: 1999-2000.

The District Court applied the factor that “the volunteers had no opportunity to make a profit” – again, apparently to support employee status. ECF Doc. #89, FOF & COL, PageID##: 2468. This is, however, the essence of true volunteerism – the lack of financial motivation. If, as it appears, the District Court applied this factor in favor of employee status, it essentially negated any meaningful consideration that the volunteers gave their time with no expectation of compensation.

The District Court found that the volunteers did not need any special skill to do the assigned work for which they volunteered, and made no investment in equipment or materials, apparently as facts supporting employment status. ECF Doc. #89, FOF & COL, PageID#: 2469. Once again, the District Court ignored the *Marie* court’s guidance that these factors are not particularly instructive of whether a volunteer should be considered an employee, and failed to provide any analysis of why its findings favor an employment relationship in this context. *Id.* at 359.

The District Court also found that the volunteers were integral to the Buffet's operation because they did many of the same tasks as the paid employees and because if the volunteers did not perform the tasks, paid employees would need to do it. In support of that finding, the District Court stated that "[d]uring her testimony, [Sonya] Neale admitted that if the volunteers did not perform this work, paid employees would need to do it." ECF Doc. # 89, FOF & COL, PageID#: 2484. Ms. Neale's actual trial testimony was as follows:

Q. If the Buffet had no volunteers, it would need paid employees to do the work of the volunteers, correct?

A. We could run the Buffet in a completely different manner.

Q. But my question remains, if the volunteers -- if you did not have volunteers to do the duties we discussed earlier, a paid staff member would need to do it, correct?

A. I disagree with that. Tr., pp. 88-92, ECF Doc. #75, Tr. Vol. I, PageID #: 1628-32.

Instead of trial testimony, the District Court relied on the deposition transcript of Sonya Neale (no portion of which was admitted at trial) to support its findings.⁷ Even if that were proper, reading the surrounding portions of the same

⁷ In its FOF & COL, the District Court picked and chose between trial testimony and evidence and supporting materials filed in connection with (and in response to) the Defendants' Motion for Partial Summary Judgment, apparently based on its "consolidation" of trial and the Defendants' Fed.R.Civ.P. 56 motion. Such consolidation itself, in effect, denied Defendants their right to summary adjudication under the Civil Rules: "The court *shall grant summary judgment* if the movant shows that there is no genuine dispute as to any material fact and the

deposition, Neale testified that the volunteers were assigned non-essential duties “helping the paid staff” and that “basically we could operate the Buffet without these folks.” ECF Doc. #28, Neale Depo., PageID##: 951-52. In fact, when asked what happens and who “picks up the slack” when volunteers fail to show up, Neale testified that there is really no slack to pick up and that the paid employees just do the work. *Id.* at PageID##: 960-961.

In addressing what it means to be integral in the volunteer context, the United States District Court of New Jersey explained in *Todaro v. Twp. of Union*, 27 F. Supp. 2d 517, 536 (D.N.J. 1998):

As a general rule (though the Court notes preemptively that exceptions surely exist to this rule), employees constitute a more integral part of a business than volunteers do. When someone's services are essential to the operation of a business, that person is more often an employee of the business than a volunteer. A volunteer, on the other hand, usually fills an adjunct or supplementary role in the operation of the business. Although the services provided by volunteers is of high value, an employee is more likely to be indispensable to a business than a volunteer is. A volunteer, after all, serves at his or her own whim. If a particular volunteer were vital to the operation of a business, the business would be likely to attempt to ensure the continued performance of the volunteer by forming a more permanent (and compensatory) bond between them. Furthermore, if the volunteer were vital to the business, the volunteer would be likely to exploit his or her importance to secure a wage from the business.

movant is entitled to judgment as a matter of law.” The District Court’s election not to rule on Defendants’ Motion for Partial Summary Judgment, however, provided no license to relax adherence with the Federal Rules of Evidence to permit the consideration of evidence not properly moved for and admitted at trial.

Todaro framed the question as whether a particular individual is vital to the operation of a business, not merely whether the work he performs is of the type ordinarily performed in the business.

Angela Osborne testified that the Buffet's paid staff of 35 employees were termed the Buffet's "essential staff." ECF Doc #75, Tr. Vol. I, PageID##: 1738-39. The volunteers performed many of the same tasks as paid employees, but the Secretary provided no testimony or evidence that any volunteer's role at the Buffet was anything other than "adjunct" or "supplemental" to the Buffet's operation. As stated in *Todaro*, a volunteer may fill a role that is of high value to the operation of a business and not be integral.

Finally, even assuming solely for the sake of argument that the District Court properly determined from the evidence submitted by the Secretary at trial that some or all of the volunteers were integral to the operation of the Buffet, that itself does not establish an employment relationship. In *Donovan v. Brandel, supra* at 1120, this Court determined that the facts favored a finding that the seasonal harvesters that the Secretary claimed to be employees under FLSA were integral to the farming operations at issue, but in determining that they were not employees within the meaning of the Act stated "that the concept of a task being 'integral' to an operation is only one factor in determining the question of employment status. A central question is the worker's economic dependence upon the business for which

he is laboring.” Similarly, under its Title VII analysis the *Marie* court found the facts favored a conclusion that the volunteer nuns were integral to the Red Cross’s disaster relief operations, but nonetheless determined that they were volunteers and not employees.

It will be true that many (if not most) volunteer events will rely on volunteer labor for the event’s viability. It will also be true that the volunteers will be solicited by event organizers in some manner to provide volunteer services, and will be asked to work at a specific time and date when the volunteer event is scheduled to take place. A volunteer event could never happen without this communication. These organizational necessities do not transform volunteerism into employment. To base an employment relationship on these types of findings ignores economic reality.

The factors that are designed to determine if an independent contractor is a FLSA employee is a means to an end. The ultimate question they are designed to answer is “whether the worker is economically dependent upon the alleged employer or is instead in business for himself.” See *Laurelbrook, supra* at 523. The undisputed evidence demonstrates that the volunteers were in no way economically dependent on either Defendant and did not volunteer with any expectation that they would receive compensation. Twisting the *Donovan* factors in an attempt to prove employment in the face of such facts is antithetical.

2. The District Court's application of a "beneficiary" test.

The District Court provided a modified application of the test used to determine if a trainee is, in fact, a FLSA employee. ECF Doc. #89, FOF & COL, PageID##: 2479-81. The District Court quoted language from *Portland Terminal* and proceeded to opine that if a volunteer's work benefits the putative employer in any way, the volunteer is properly classified as a FLSA employee. ECF Doc. #89, FOF & COL, PageID##: 2480 (emphasizing the terms "solely for his personal benefit" and "whose work serves only his own interest").

In a true volunteer scenario, however, the District Court's determination will *always yield a finding that the volunteer is an employee*. If the volunteer provided no benefit to the organizing entity whatsoever, why would he be asked to volunteer? Compare *Marshall v. Baptist Hosp., Inc.*, 473 F. Supp. 465, 469 n.5 (M.D. Tenn. 1979) ("While language from *Portland Terminal* would, if taken to extreme, indicate an employment relationship where the alleged employer derives any benefit at all, this would not, of course, comport with the flexibility of the 'economic realities' test"); *Laurelbrook* at 527-31 (even where students performed services for which their private boarding school billed and received revenues from the public, the students were still deemed to be volunteers under FLSA).

In *Laurelbrook*, at 525, this Court explained that *Portland Terminal* "suggests that the ultimate inquiry *in a learning or training situation* is

whether the employee is the primary beneficiary of the work performed.” (Emphasis added.) The *Laurelbrook* court carefully limited the application of its “primary beneficiary” test to trainee/student situations and did not suggest that it reaches volunteers influenced by non-economic, religious motivations.

Whereas a comparison of a trainee's benefit in providing services against a putative employer/trainer's benefit in receiving them may be instrumental to the “economic reality” of the trainee/employment relationship, it would be difficult, if not impossible, to apply where, as here, an individual is not concerned with a path to employment and his or her volunteerism is motivated by religious convictions. The intrinsic value of a volunteer’s personal volunteer experience – charity, grace, fellowship, community and altruism – is individually realized and largely incapable of quantification by a third party. A fact-finder's view of the sense of personal gratification a volunteer receives from volunteering almost inevitably will be influenced by the fact-finder's own personal convictions, beliefs and biases. That appears to have occurred here, where the District Court has given no credit to the consistent, unrebutted testimony in the 134 sworn affidavits that it admitted into evidence, each stating that the volunteer (1) provided volunteers services for his or her own personal purpose, pleasure and satisfaction, (2) enjoyed volunteering and did so to experience a sense of community and fellowship and to stay active, (3) had no expectation of compensation or future employment at the

Buffet, and (4) that the volunteer believed that the work he or she performed was not integral to the Buffet's operation.

Portland Terminal, as later referenced in *Alamo* does **not** compel application of a "beneficiary" test where the circumstances do not involve an individual whose motivation for providing services includes advancing his or her own position in business or commerce – *i.e.*, training or vocational school scenarios. *Portland Terminal* clearly does not require that the organization benefiting from the volunteer work derive **no benefit** or even **negligible benefit** therefrom to place the volunteer outside the scope of FLSA as the District Court suggests – only that the volunteer engaged in the volunteer activity solely for pleasure (or profit) **as opposed to some compensating motive**.

Again, the *Alamo* court ended its discussion of the volunteers' employment status by expressing that "[t]he Act reaches only the "ordinary commercial activities" of religious organizations, 29 CFR § 779.214 (1984), **and only those who engage in those activities in expectation of compensation.**" It determined that **both** of those factors were indeed present before determining that the *Alamo* volunteers were FLSA employees.⁸

⁸The *Alamo* court mentioned that the *Portland Terminal* court had determined that the railroad company received no immediate benefit from the volunteers. However, *Alamo* does not support a theory that irrespective of compensatory motive an immediate benefit to the alleged employer yields employment status. It would have been the much easier road for the *Alamo* court to say that the

D. The District Court took certain quotations from *Alamo* out of context to support its conclusion.

Guided by the arguments of the Secretary, the District Court leveraged two statements from *Alamo* as underpinning its ultimate conclusion.

The first comes from page 302 of the *Alamo* opinion:

That the associates themselves vehemently protest coverage under the Act makes this case unusual but the purposes of the Act require that it be applied even to those who would decline its protections. If an exception to the Act were carved out for employees willing to testify that they performed work “voluntarily,” employers might be able to *use superior bargaining power to coerce employees to make such assertions, or to waive their protections under the Act.* * * * Such exceptions to coverage would affect many more people than those workers directly at issue in this case and would be likely to exert a general downward pressure on wages in competing businesses. (Emphasis added, internal quotations omitted.)

The District Court appears to have used this language to discount consideration of the 134 volunteer affidavits admitted into evidence. The language does not provide such license. The 134 volunteer affiants did not merely protest FLSA coverage. Instead, the affidavits provided the *only evidence that was before the District Court* on important issues to resolution of the Secretary’s assertion that the affiants are employees within the meaning of the FLSA, such as the person’s reason for volunteering, the personal benefit the volunteer derived (for

foundation received an immediate benefit from the volunteers (having determined that they constituted its workforce) and been done with it. *Id.* at 292. Instead, the *Alamo* court based its decision on receipt of compensation, not on the fact that the employees provided a benefit to the foundation.

purposes of any comparative benefit test employed), how that volunteer viewed the work they performed, and whether the volunteer felt any kind of pressure or coercion to volunteer. It should also be noted that the *Alamo* court supplied quotation marks around the word “voluntarily” and spoke directly to “bargaining power” in the above quotation. Because the *Alamo* foundation economically supported the *Alamo* volunteers, the foundation held *economic (i.e., bargaining) power* over the alleged volunteers that is akin to a typical employer-employee relationship. This economic power, the *Alamo* court reasoned, could be used to pressure or coerce workers into declining the protections of the Act. In contrast, there was no evidence before the District Court that either Defendant held any economic power over any volunteer that could induce such a waiver.

The second quotation that the Court appears to have relied upon to discount the volunteer affidavits is on pages 300-301 of *Alamo*:

Relying on the affidavits and testimony of numerous associates, petitioners contend that the individuals who worked in the Foundation's businesses, like the trainees in *Portland Terminal*, expected no compensation for their labors. It is true that the District Court found that the Secretary had “failed to produce any past or present associate of the Foundation who viewed his work in the Foundation's various commercial businesses as anything other than ‘volunteering’ his services to the Foundation.” An associate characterized by the District Court as typical “testified convincingly that she considered her work in the Foundation's businesses as part of her ministry,” and that she did not work for material rewards. *Ibid.* This same associate also testified that “no one ever expected any kind of compensation, and the thought is totally vexing to my soul.”

What is lost by focusing on this paragraph in isolation, however, is that regardless of the *Alamo* volunteer testimony, the Court determined that the volunteers, *in fact* received non-wage benefits and were economically dependent on the foundation. The Court determined “the fact that the compensation was received primarily in the form of benefits rather than cash is in this context immaterial. These benefits are, as the District Court stated, wages in another form.” *Id.* at 301. In footnote 22, the *Alamo* court rounded out its discussion of the “vexing to my soul” testimony: “Ann Elmore, for example, testified that the thought of receiving compensation was “vexing to [her] soul.” *But in the same paragraph, in answer to a question as to whether she expected the benefits, she stated that “the benefits are just a matter of-of course, we went out and we worked for them.”* (Emphasis added.)

This quoted language relied upon by the District Court provided no reason to discount the volunteer affidavits or to sidestep the Secretary’s lack of evidence regarding the existence of any economic relationship between any volunteer and either Defendant.

IV. The District Court erred in its factual finding that the volunteers were “coerced” and also in concluding that non-economic coercion provides a basis for determining an employment relationship under FLSA.

Assuming solely for the sake of argument that religious “pressure” or “coercion” can act as a stand in for an economic relationship akin to employment

under the “economic reality” test as the District Court apparently determined, there was a void evidence that *any volunteer* worked at the Buffet as a result of coercive religious pressure. It was the Secretary’s burden to prove an employment relationship between each volunteer and the Defendants. See *Kowalski v. Kowalski Heat Treating, Co.*, 920 F.Supp. 799, 806 (N.D.Ohio 1996). The Secretary fell far short of meeting that burden.⁹

The District Court found that the volunteers were pressured or coerced to volunteer at the Buffet in the face of 134 volunteer affidavits, each providing sworn evidence that the volunteer gave his or her time for his or her own personal benefit and satisfaction, and without pressure or coercion. No other testimony exists on the subject to support the trial court’s findings as to these individuals. The individuals giving affidavits that the Secretary chose to cross-examine all confirmed the absence of coercion or pressure.¹⁰

⁹ It is questionable whether the District Court imposed the burden of proof in demonstrating that the volunteers were FLSA employees on the Secretary. The District Court does not discuss its assignment of the burden. Much of its discussion focuses on “exceptions” under the Act (which must be proven by the Defendants), when no exceptions were, in fact, even argued. Compare *Reich v. ConAgra, Inc.*, 987 F.2d 1357 (8th Cir.1993)(Secretary of Labor has the burden of proving that certain employees of defendant were “employed” when they “volunteered” to perform certain services.)

¹⁰ Even Zacharias Kostenko, who the District Court singled out in its FOF & COL, testified that the information contained in his affidavit was true and that he enjoyed working at the Buffet at the time he volunteered. ECF Doc. #78, Tr. Vol. III, PageID##: 2059-60, 2064.

Even the few witnesses that the Secretary offered in his case provided no evidence of coercion.

Christopher Newby testified that he volunteered because he “wanted to be a blessing to the church,” it made him “feel good” and that he was proud to have been asked to volunteer.

Ralph Gay, III testified that he only intermittently volunteered when he wanted to do so. He would either decline to answer his phone when Buffet staff members called or would just say “no” to them. He further testified that many Church members chose not to volunteer at all.

Dr. Alicia Gay worked a total of six and a half hours at the Buffet for the two-year time-period covered by the Complaint and testified that when called by staff members she felt free to say that she couldn’t work the weekend requested because she was busy. Dr. Gay also testified that she reduced her volunteer time due to increased demands in her personal life, and asked for and received alternative volunteer assignments on occasions when she did volunteer.

Angela Osborne testified that if people didn’t want to work they would call off or just say “no” when asked. Osborne also testified that a lot of church members called the manager Sonya Neale offering to volunteer.

Rebecca Roadman testified that she didn’t like working at the Buffet and that she had a personal conversation with Reverend Angley where she was

convinced to stay, but her testimony revealed that this pre-dated the time-period covered by the Secretary's Complaint and that she was a paid employee of the Buffet at the time.

The Secretary's representative, Investigator Banig, himself testified that he could not reasonably say that any volunteer did not volunteer of his or her own free will.

No evidence was produced by the Secretary as to the motivations for volunteering of the close to 100 volunteers represented in the Secretary's Complaint that did not give testimony at trial or by affidavit. The District Court nevertheless appeared to credit the testimony of the Secretary's witnesses who said that Reverend Angley would state from the pulpit that the members were "failing God" if they did not answer calls to volunteer at the Buffet and the church's teachings that repeatedly saying no to God is "blaspheming against the Holy Ghost" and lose their connection to God. ECF Doc. #89, FOF & COL, Page ID#: 2467. But even the Secretary's own witness, Angela Osborne, disputed that Reverend Angley made the "failing God" statements in accordance with the testimony of other Secretary witnesses. Instead, she testified that Reverend Angley's statements were more along the lines of the following:

Most of the times when he needed volunteers and people weren't answering, he would get up in the pulpit and say things like, "You guys -- Stacey is calling you to work at the Buffet. You all are saying no. What if when you call up heaven, God says no?" ECF Doc. #75,

Tr. Vol. I, PageID#: 1767.

Even if the District disbelieves Ms. Osborne on this point of her testimony, and chooses to believe the conflicting testimony of other Secretary witnesses, it is a massive leap to simply assume, as the District Court did, that such statements: (1) were actually heard by any of the almost 100 volunteers who did not give testimony (where many of the volunteers who testified at trial denied ever hearing such statements); (2) had any effect on the state of mind of such non-testifying volunteers (*i.e.*, that they felt pressure or coercion based on these statements, even if heard); and/or (3) that such statements provided any non-testifying volunteer's impetus for volunteering at the Buffet.

The District Court's determination that the 230-plus volunteers represented in the Secretary's Complaint were coerced or pressured into volunteering is at odds with the evidence at trial. It is directly contrary to all 134 volunteers who testified by affidavit, it is not supported by the testimony of the Secretary's four testifying volunteers, and there is a void of evidence on the subject as to the almost 100 volunteers who did not testify by affidavit or at trial.

Finally, even pretending that the evidence supported a finding of coercion, non-economic coercion in the absence of an otherwise-defined employment relationship has been determined not to state a claim under FLSA. In *Shuvalova v. Cunningham*, No. C 10-02159 RS, 2010 WL 5387770, at *5 (N.D. Cal. Dec. 22,

2010), for instance, the reviewing district court dismissed a claim under the FLSA without leave to refile based on an allegation of forced labor, determining that claims of “forced labor” (in that case based on fraud, force and threat of force) state a claim for relief directly under the Trafficking Victims Protection Reauthorization Act (for which back wages may be recovered), but not under FLSA.

V. The District Court’s determination that the volunteers are FLSA employees despite the absence of any expectation of compensation and based on aspects of “religious pressure” violates the Free Exercise Clause of the First Amendment.

Without any evidence of an economic motivation for any volunteer to provide volunteer services, the District Court relied on three things to support its conclusion that the volunteers were FLSA employees: [1] “[t]he Buffet’s constant solicitation of volunteer labor, [2] Reverend Angley’s “admission” that the use of volunteer labor was intended to save money, and [3] the volunteers’ feelings of [religiously-motivated] pressure and coercion to provide the labor . . .” ECF Doc. #89, FOF & COL, Page ID# 2484.

The “pressure or coercion” referenced in the District Court’s decision stems from statements made from the pulpit asking church members to volunteer at the Buffet as a means of serving God. Witnesses testified that they volunteered to share their anointings with church members and members of the public dining at the Buffet. The Secretary produced no evidence that the members’ beliefs in this

regard were not genuinely held.

Secretary witness Ralph Gay, III testified to his belief that the work of the Church and the work of the Buffet were inseparable: “[F]rom my perspective, you can't separate the church and the Buffet. You can on paper, but in that particular environment, that's one entity.” Mr. Gay testified that the volunteers were there for the “religious aspect” of volunteering and without the religious aspect of volunteering 90% of those people would not have volunteered.

Reverend Angley testified that the Buffet is an arm of the church and is operated to help people.

The Secretary's witnesses consistently testified that Grace Cathedral members were encouraged by Reverend Angley to both eat at the Buffet and to volunteer there in order to carry forward their anointing. Ralph Gay, III testified as to a general sentiment that he believed was shared by church members: "Man, I'm so glad we're helping take Jesus to the world and blessing these people, sharing our anointings at the Buffet."

The importance of church members sharing their anointing is rooted in concepts of Christian fellowship and a textually-supported religious belief that those who have accepted God into their hearts are filled with the blessings of the Holy Ghost and, by association and acts, share their anointing with others: “He that believeth on me, as the scripture hath said, out of his belly shall flow rivers of

living water.” John 7:38, King James Bible.

Consistent with these concepts, Ellen Osborne, one of the witnesses who produced a sworn affidavit for the Defendants, and who was selected for cross examination by the Secretary, testified that she volunteered at the Buffet “[b]ecause I love to do it and I love the Lord and it’s blessing people, because when they come in, I’m there to show my Jesus smile and welcome them to the Buffet.” All of the testimony presented at trial is consistent on this point.

The testimony at trial was that the Buffet’s need for volunteer staffing existed to serve Friday midnight brunch that was closed to non-church members, and on Saturday and Sunday – days on which church services were held – and on special holidays.

The Secretary’s witnesses also testified that sermons were piped into the Buffet for the volunteers and that some of the volunteers would be scheduled to depart church services for the Buffet at “alter call” to volunteer.

The Free Exercise Clause of the First Amendment withdraws from legislative power, state and federal, the exertion of any restraint on free exercise of religion. “[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 714 (1981).

In *Alamo*, the Court stated that “[i]t is virtually self-evident that the Free

Exercise Clause does not require an exemption from a governmental program unless, at a minimum, inclusion in the program actually burdens the claimant's freedom to exercise religious rights.” *Id.* at 303. There, the Court reasoned that because the defendant foundation was already compensating the claimed volunteers with substantial non-wage benefits, application of the FLSA did not materially increase any burden to the church or its volunteers: “The religious objection does not appear to be to receiving any specified amount of wages. Indeed, petitioners and the associates assert that the associates' standard of living far exceeds the minimum.” *Id.* at 304.

Here, in contrast to *Alamo*, there is no economic relationship between the Buffet and the church volunteers. Instead of proving an economic relationship between the Buffet and the volunteers, the Secretary convinced the trial court that religious persuasion or inducement is a proper proxy for finding an employer-employee relationship under the FLSA.

Religious organizations commonly rely on people giving of their time to make the church's continued operation viable. Common sense dictates that use of volunteers will require organization and some degree of solicitation. In turn, solicitation for volunteer labor will rely upon an appeal to the individual based on his or her moral, civic or religious responsibility. Finally, it is obvious that any request for volunteer labor will come as an alternative to contracting for paid labor

and that volunteer labor is commonly used to “save costs” and make an endeavor economically viable. All of these things are part of a typical volunteer dynamic. None of these things are grounds to impose an employment relationship under FLSA based on any reported decision of any federal court.

Forbidding solicitation of volunteer services through means of religious appeal unreasonably burdens the free exercise of religious rights and violates the Free Exercise Clause of the United States Constitution. *Compare Int'l Soc. For Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 442–43 (2nd Cir. 1981)(missionary evangelism at the core of the Chaitanya movement can only be sustained by voluntary contributions, and therefore a restraint on soliciting funds would chill the exercise of the underlying religious activity as well). “The free exercise of religion promotes the inviolability of individual conscience and voluntarism, recognizing that private choice, not official coercion, should form the basis for religious conduct and belief. *Walz v. Tax Commission*, 397 U.S. 664, 694, 90 S.Ct. 1409, 1424, 25 L.Ed.2d 697 (1970) (Harlan, J., concurring).

The Grace Cathedral ministry and its congregation have existed since 1954. Volunteerism is at the heart of church life. The church, as Cathedral Buffet’s sole shareholder, was not financially enriched by the Buffet’s continued operation. Instead, the Church financially subsidized the Buffet to provide a place on the church’s campus for members to gather and dine around church services and to

interact with community members in a way that furthers its religious, civic and charitable beliefs and objectives of the church and its members. The Buffet never competed for profit with local businesses – it was not engaged in profit-making activity at all. The Buffet did not wield economic pressure over the church-member volunteers to secure their volunteer services – it had no such economic power to wield. Church-member volunteers genuinely believe that the Buffet's operation and their presence at the Buffet (as a contributing church member) is a means of serving God, promoting their church in the community and helping people. To prohibit them from doing so because the Secretary and/or the District Court does not find their religiously-based convictions and beliefs logical or comprehensible violates the First Amendment's guarantee of Free Exercise of religion.

Finally, it may be argued based on *Alamo* that there is no substantial burden imposed by requiring the Buffet to pay (and the volunteers to accept) wages for volunteer activities because the volunteers can return the wages received to the church through donations. See *Alamo* at 304. But testimony at trial demonstrated that this dynamic imposes real burdens on both the church and the volunteer. The volunteer is left to pay income taxes on his or her wages received for volunteer activities undertaken with no expectation of compensation and with the intent to further religious beliefs and serve the community. ECF Doc. #75, Tr. Vol. I,

PageID#: 1721. In essence, under a “donate-back-the-wages” scenario, the volunteer is forced to pay a tax on his volunteerism, which in turn chills a church member’s willingness to volunteer and/or lessens his or her impact in volunteering.

Moreover, the District Court’s injunction issued in this case arguably forbids Reverend Angley, or anyone on his behalf, from even asking any volunteer to donate the wages received for volunteering at the Cathedral Buffet, despite the language in *Alamo* stating that “nothing in the Act to prevent the associates from returning the amounts to the Foundation, provided that they do so voluntarily”:¹¹

Defendants shall not solicit or coerce, directly or indirectly, any employee – including those workers classified as “volunteers” – to return or to offer to return to the Defendants or to someone else on behalf of Defendants any money in the form of cash, check, or any other form, for wages previously due or to become due in the future to said employee under the provisions of this Judgment and Order or the Act. In the event such money is received from any employee, Defendants shall immediately remit such amount to the U.S. Department of Labor at the address specified in Paragraph 2.A., above.

ECF Doc. #92, Injunction, PageID#: 2545.

Accordingly both the District Court’s Judgment Entry and its Permanent Injunction violate the Free Exercise Clause of the United States Constitution and must be reversed and vacated.

¹¹ *Alamo*, 471 U.S. at 304.

CONCLUSION

For all the reasons set forth above, the Court should enter judgment reversing the District Court's entire award in favor of the Secretary in the case below and vacating the permanent injunction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

- This brief contains 11,546 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

- This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point font size and Times New Roman type style.

/s/Todd Anthony Mazzola

Todd A. Mazzola (OH Sup. Ct. 0062160)

Attorney for Defendants-Appellants

Cathedral Buffet, Inc. and Reverend Ernest Angley

CERTIFICATE OF SERVICE

I certify that on June 30, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

/s/Todd Anthony Mazzola

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Cathedral Buffet, Inc. and Reverend Ernest Angley

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

U.S. District Court, Northern District of Ohio		
Record Entry	Page ID#	Description
1	1-44	Complaint against Ernest Angley, Cathedral Buffet, Inc., filed by Thomas E. Perez. (Attachments: # (1) Exhibit 1: List of Employees Owed Back Wages)
9	79-102	Motion to dismiss for failure to state a claim upon which relief may be granted and for lack of subject matter jurisdiction filed by Ernest Angley, Cathedral Buffet, Inc. (Attachments: # (1) Exhibit Affidavit of Cathy Shupe, # (2) Exhibit Letter from United States Department of Labor to Cathedral Buffet, # (3) Exhibit Proof of Payment to the United States Department of Labor)
12	112-120	Opposition to Motion to dismiss for failure to state a claim upon which relief may be granted and for lack of subject matter jurisdiction filed by Thomas E. Perez.
14	123-136	Reply to Plaintiff's brief in opposition to Motion to dismiss for failure to state a claim filed by All Defendants.
15	137-142	Memorandum Opinion and Order denying Motion to dismiss for failure to state a claim
16	143-146	Defendants' Answer to Complaint.
26	176-673	Motion for partial summary judgment filed by Ernest Angley, Cathedral Buffet, Inc. Related document(s) (Attachments: # (1) Memorandum in Support, # (2) Exhibit Certificate of Compliance with Paragraph 13 of Case Management Conference Order, # (3) Exhibit Certificate of Compliance with Page Limitations for Dispositive Motion Set on Standard Track, # (4) Exhibit A Affidavit of Cathy Shupe, # (5) Exhibit B Affidavit of Sonya Neale, # (6) Exhibit C Affidavit of Brandon Pauley, # (7) Affidavit of JoAnn Alderman, # (8) Affidavit of Randall Arbogast, # (9) Affidavit of

Patty Armstrong, # (10) Affidavit of Tamara Armstong, # (11) Affidavit of Shirley Ash, # (12) Affidavit of Claude E. Bailey III, # (13) Affidavit of John Vernon Bailey, Jr., # (14) Affidavit of Pamela Bailey, # (15) Affidavit of Leah Barrows, # (16) Affidavit of Corinthia Nicole Bell, # (17) Affidavit of Jason Bell, # (18) Affidavit of Joshoua Bell, # (19) Affidavit of Tina M. Beverly, # (20) Affidavit of Barbara Boyle, # (21) Affidavit of Robert E. Boyle, # (22) Affidavit of Linda Sue Brady-Rosado, # (23) Affidavit of Wanda Buckner, # (24) Affidavit of Brian Canzonetta, # (25) Affidavit of James Chisnell, # (26) Affidavit of Jason Clifford, # (27) Affidavit of Carmen Cockerham, # (28) Affidavit of Steven Conner, # (29) Affidavit of Jeanine M. Copeland, # (30) Affidavit of Leslie Cordero, # (31) Affidavit of Linda S. Counts, # (32) Affidavit of Daniel J. Cremati, # (33) Affidavit of Ronald Cummings, # (34) Affidavit of Wayne Dallachiesa, # (35) Affidavit of Joseph DeFranco, # (36) Affidavit of Matthew Michael Doepker, # (37) Affidavit of Pamela J. Dourm, # (38) Affidavit of Timothy A. Dourm, # (39) Affidavit of Emily Durkin, # (40) Affidavit of Michelle Durkin, # (41) Affidavit of Scott E. Durkin, # (42) Affidavit of Lonnie Eisenbraun, # (43) Affidavit of Timothy H. Eisenbraun, # (44) Affidavit of Terry Floyd, # (45) Affidavit of Mary A. Gallo, # (46) Affidavit of Janice Gemind, # (47) Affidavit of Greta Gerrard, # (48) Affidavit of Laura Gerrard, # (49) Affidavit of Stephen Michael Giles, # (50) Affidavit of Mike Gillard, # (51) Affidavit of Nicole R. Gillard, # (52) Affidavit of Charly Grether, # (53) Affidavit of David Grether, # (54) Affidavit of Kevin Hastings, # (55) Affidavit of Michele Hatch, # (56) Affidavit of David Victor R. Hessing, # (57) Affidavit of Rubie R. Hessing, # (58) Affidavit of Brandin Jackson, # (59) Affidavit of GayLynn Kapish, # (60) Affidavit of Annie Keith, # (61) Affidavit of Lisa M. Kelly, # (62) Affidavit of Nathan Knapp, # (63) Affidavit of Zacharias Kostenko, # (64) Affidavit of Eric Labbe, #

		<p>(65) Affidavit of Katie M. Labbe, # (66) Affidavit of Etsuko Leffler, # (67) Affidavit of Edward Lim, # (68) Affidavit of Carol Lowther, # (69) Affidavit of Allan K. Lunda, # (70) Affidavit of Keith McClintock, # (71) Affidavit of Christie McEntire, # (72) Affidavit of Stephen Meadows, # (73) Affidavit of Rose Mendicino, # (74) Affidavit of Vincent L. Metheney, # (75) Affidavit of Daphne Midcap, # (76) Affidavit of Darcy Midcap, # (77) Affidavit of Catherine A. Millar, # (78) Affidavit of Jennifer Miller, # (79) Affidavit of Matthew D. Miller, # (80) Affidavit of Danny R. Mills, # (81) Affidavit of Christina Minjares, # (82) Affidavit of Donna Murphy, # (83) Affidavit of Jack Murphy, # (84) Affidavit of Vickie Murray, # (85) Affidavit of Heidi Nelson, # (86) Affidavit of Nancy Papadelis, # (87) Affidavit of Daniel A. Parker, # (88) Affidavit of Jennifer Parker, # (89) Affidavit of Jackie Lynn Patterson, # (90) Affidavit of Kevin Phillips, # (91) Affidavit of Heather Pyers, # (92) Affidavit of Mark Quintero, # (93) Affidavit of Winston Ernest Ray, # (94) Affidavit of Eric F. Rogers, # (95) Affidavit of Linda M. Ross, # (96) Affidavit of Catherine E. Rudolph, # (97) Affidavit of Kareem Salem, # (98) Affidavit of Sven Andrew Salna, # (99) Affidavit of Michelle Schrock, # (100) Affidavit of April Nicole Smith, # (101) Affidavit of Leah G. Stanovich, # (102) Affidavit of Mark D. Stone, # (103) Affidavit of Ethel Sullivan, # (104) Affidavit of Tisha V. Swain, # (105) Affidavit of Andrew Jymes Swartz, # (106) Affidavit of Ronald Eugene Swartz, # (107) Affidavit of Tamara A. S. Swartz, # (108) Affidavit of Valentina Tereschuk, # (109) Affidavit of Chad Triola, # (110) Affidavit of Joe Wayne, # (111) Affidavit of Dawn Weissling, # (112) Affidavit of Deborah S. Witzky, # (113) Exhibit Deposition Transcript of Stephen Banig)(Chris, William)</p>
27	674-677	Errata Sheet for Stephen Banig Deposition Transcript (ECF No. 26-113)
28	678-1098	Opposition to Motion for partial summary judgment filed by Thomas E. Perez. (Attachments: # (1) Exhibit

		1: Banig Declaration, # (2) Exhibit 2: Neale Deposition Transcript from Tort Suit, # (3) Exhibit 3: Buffet Articles of Incorporation, # (4) Exhibit 4: FCC Online Records, # (5) Exhibit 5: Network's Motion for Summary Judgment in Tort Suit, # (6) Exhibit 6: Shupe Deposition Transcript for Tort Suit, # (7) Exhibit 7: Akron Beacon Journal Article, # (8) Exhibit 8: Buffet Website Screenshot, # (9) Exhibit 9: Neely Declaration, # (10) Exhibit 10: Neale Deposition Transcript, # (11) Exhibit 11: Angley Deposition Transcript, # (12) Exhibit 12: McClintock Deposition Transcript, # (13) Exhibit 13: Roadman Declaration)(Steele, Hema)
29	1099-1111	Reply in support of Motion for partial summary judgment filed by Cathedral Buffet, Inc.
36	1143-1149	Joint Undisputed Fact Stipulations filed by Thomas E. Perez.
39	1157-1213	Supplemental Affidavits to Motion for partial summary judgment filed by All Defendants. (Attachments: # (1) Affidavit Amanda M. Allen, # (2) Affidavit Marie Canzonetta, # (3) Affidavit Janet Counts, # (4) Affidavit Allyson Diaz, # (5) Affidavit Clay Ether, # (6) Affidavit Defloria Ether, # (7) Affidavit Natalie Fetzer, # (8) Affidavit Bruce Gramoy, # (9) Affidavit Winnie Gramoy, # (10) Affidavit Stephanie Hanshaw, # (11) Affidavit Travis Hanshaw, # (12) Affidavit Ruth H. Harouff, # (13) Affidavit Luann M. Ingrassia, # (14) Affidavit Bernice Isaiah, # (15) Affidavit Kevin Liston, # (16) Affidavit Ellen Osborne, # (17) Affidavit Cindy Parker, # (18) Affidavit Colleen M. Parks, # (19) Affidavit Jessica N. Pesek, # (20) Affidavit Joyce A. Pesek, # (21) Affidavit Lisa Poindexter, # (22) Affidavit Jacqueline A. Quintero, # (23) Affidavit Timothy L. Simmons, # (24) Affidavit Kimberly S. Sizemore, # (25) Affidavit Xavier O. Smith, # (26) Affidavit Matthew Smolic, # (27) Affidavit Tracy Smolic, # (28) Affidavit Sylvia Ware)
40	1214-1245	Trial Brief and Witness List filed by All Defendants.

41	1246-1265	Trial Brief filed by Thomas E. Perez. (Attachments: # (1) Exhibit 1: 1999 Opinion Letter)
42	1266-1270	Motion to clarify filed by Plaintiff Thomas E. Perez. (Attachments: # (1) Brief in Support)
43	1271-1273	Motion in limine Regarding Prior Investigation filed by Plaintiff Thomas E. Perez.
44	1274-1301	Proposed Findings of Fact and Conclusions of Law filed by All Defendants.
45	1302-1308	Motion in limine to Admit Documents Showing Hours Worked filed by Plaintiff Thomas E. Perez. (Attachments: # (1) Exhibit Banig Declaration)
46	1309-1336	Proposed Findings of Fact, Conclusions of Law, and Statement of Issues filed by Thomas E. Perez.
47	1337-1342	Motion in limine and Response in Opposition to Secretary's Motion in Limine filed by Ernest Angley, Cathedral Buffet, Inc.
48	1343-1347	Motion in limine to Exclude Akron Beacon Journal Bob Dyer Article filed by Ernest Angley, Cathedral Buffet, Inc.
49	1348-1351	Motion in limine to Exclude Volunteer Dates and Hours filed by Ernest Angley, Cathedral Buffet, Inc.
50	1352-1357	Motion in limine of Cathedral Buffet's Predecessor Information filed by Ernest Angley, Cathedral Buffet, Inc.
51	1358-1360	Opposition to Motion in limine to Exclude Akron Beacon Journal Bob Dyer Article filed by Thomas E. Perez.
52	1361-1375	Motion in limine of Cathedral Buffet's Predecessor Information filed by Thomas E. Perez. (Attachments: # (1) Exhibit 1: Defendants' Responses to Interrogatories)
53	1376-1379	Opposition to Motion in limine to Exclude Volunteer Dates and Hours filed by Thomas E. Perez.
54	1380-1384	Witness List and Exhibit List filed by Thomas E. Perez.

56	1392-1400	Motion to Compel and Response in Opposition to the Secretary's Motion for Clarification [ECF DOC. #42] filed by Ernest Angley, Cathedral Buffet, Inc. (Attachments: # (1) Memorandum in Support of Motion to Compel and Response in Opposition to Secretary's Motion for Clarification)
57	1401-1402	Affidavit/Declaration of Linda Lingle to Motion for partial summary judgment filed by All Defendants.
59	1405-1408	Witness List and Exhibit List filed by All Defendants.
60	1409-1413	Amended Witness List and Exhibit List filed by Ernest Angley, Cathedral Buffet, Inc.
61	1414-1420	Partial Consent Judgment and Order.
62	1421-1427	Opposition to [56] Motion to Compel and Response in Opposition to the Secretary's Motion for Clarification filed by Thomas E. Perez. (Attachments: # (1) Exhibit 1: 10/5/16 Bill Chris Email, # (2) Exhibit 2: Administrator Weil Declaration)
63	1428-1434	Memorandum of Opinion and Order Plaintiff's Motion for Clarification (ECF No. [42]) is granted. Plaintiff's Motion in Limine to Admit Evidence of Prior Investigation of Defendants (ECF No. [43]) is granted. Plaintiff's Motion in Limine to Admit Documents Showing the Number of Hours Worked by Volunteers (ECF No. [45]) is granted. Defendants' Motion in Limine (ECF No. [47]) is denied. Defendants' Motion in Limine to Exclude Akron Beacon Journal Bob Dyer Article (ECF No. [48]) is denied. Defendants' Motion in Limine to Exclude Volunteer Dates and Hours (ECF No. [49]) is denied. Defendants' Motion in Limine Regarding Cathedral Buffet's Predecessor Information (ECF No. [50]) is denied. Defendants' Motion to Compel (ECF No. [56]) is granted in part and denied in part.
66	1446-1462	Notice of Filing Trial Exhibits filed by All Defendants. Related document(s). (Attachments: # (1) Exhibit Secretary's Objections and Responses to Defendants' Combined Interrogatories, Requests for Production of Document and Request for Admissions, # (2) Exhibit Cathedral Buffet, Inc.'s Articles of

		Incorporation and Filings with Ohio Secretary of State)
67	1463-1466	Objection to Defendants' Witness and Exhibit List filed by Thomas E. Perez.
68	1467-1471	Motion in limine to Exclude Plaintiff's Allegations of Coercion filed by Ernest Angley, Cathedral Buffet, Inc.
69	1472-1490	Opposition to Motion in limine to Exclude Plaintiff's Allegations of Coercion filed by Thomas E. Perez. (Attachments: # (1) Exhibit 1: May 8th Chris Email, # (2) Exhibit 2: DOL Responses to Discovery, # (3) Exhibit 3: October 5th Emails)
71	1493-1502	Defendants' Position on Admissibility of Volunteer Affidavits at Trial filed by Ernest Angley, Cathedral Buffet, Inc. Related document(s)[63]. (Attachments: # (1) Exhibit 1 - E-mail communication dated 102716)
72	1503-1505	Objection to testimony of Plaintiff's witness Rebecca Roadman not timely identified on Plaintiff's witness list filed by All Defendants.
75	1541-1796	Transcript of Bench Trial held on 10/31/16 before Judge Benita Y. Pearson. Volume I.
76	1797-1980	Transcript of Bench Trial held on 11/1/16 before Judge Benita Y. Pearson. Volume II.
78	1982-2102	Transcript of Bench Trial held on 11/10/16. Vol. III.
80	2104-2187	Memorandum in Support of [81] Motion for Summary Judgment on Partial Findings and Memorandum in Support of Motion to Dismiss filed by Ernest Angley, Cathedral Buffet, Inc.
81	2188-2189	Motion for Summary Judgment on Partial Findings filed by Ernest Angley, Cathedral Buffet, Inc. Related document(s)[80]. (Bach, Lawrence). Added Motion to dismiss on 11/21/2016
82	2190-2235	Amended complaint against Ernest Angley, Cathedral Buffet, Inc. Filed by Thomas E. Perez. (Attachments: # (1) Exhibit 1: Summary of Unpaid Wages)
83	2236-2240	Defendants' Answer to [82] Amended complaint filed by Cathedral Buffet, Inc. and Ernest Angley
85	2242-2378	Transcript of Bench Trial held on 11/21/16 before Judge Benita Y. Pearson. Vol. IV

87	2380-2413	Post-Trial Brief filed by All Defendants.
88	2414-2460	Post-Trial Brief filed by Thomas E. Perez. (Attachments: # (1) Exhibit 1 Statute of Limitations Tolling Agreement, # (2) Exhibit 2 Administrator's Letter)
89	2461-2496	Findings of Fact and Conclusions of Law Defendants' Motion for Partial Summary Judgment (ECF No. [26]) was merged into the bench trial. The Court also deferred until the conclusion of the case its decision on Defendants' Motion to Dismiss and Renewed Motion for Summary Judgment (ECF No. [81]). Defendants' Motion for Partial Summary Judgment (ECF No. [26]) and Motion to Dismiss and Renewed Motion for Summary Judgment (ECF No. [81]) are denied.
90	2497-2498	Judgment is hereby rendered in favor of Plaintiff Edward Hugler, Acting Secretary of Labor, United States Department of Labor against Defendants Cathedral Buffet, Inc. and Ernest Angley in the amount of \$388,507.90.
92	2543-2586	Judgment and Order Regarding Injunction with attached Exhibit 1, Summary of Unpaid Wages.
93	2587-2588	NOTICE OF APPEAL to the Sixth Circuit Court of Appeals from the Judgment Entry of 3/29/17, Judgment and Order regarding Injunction of 4/12/17, filed by Ernest Angley, Cathedral Buffet, Inc.
DVD digital copy	Doc. Nos. 2-16	Exhibits admitted at trial: Secretary's Exhibit 1: Defendants' Responses to Secretary's First Set of Requests for Admissions (DVD Doc. #2), Secretary's Exhibit 2: Defendants' Responses to Secretary's First Set of Interrogatories (DVD Doc. #3), Secretary's Exhibit 3: Defendants' Responses to Secretary's First Set of Requests for Production of Documents (DVD Doc. #4), Secretary's Exhibit 4: Secretary's Amended Objections and Responses to Defendants' Combined Interrogatories, Requests for Production of Documents, and Requests for Admissions (DVD Doc. #5), Secretary's Exhibit 5: Summary of Hours Worked By Volunteers (DVD Doc. #6), Secretary's Exhibit 6: Spreadsheet of Hours Worked By

	<p>Volunteers (DVD Doc. #7), Secretary's Exhibit 8: 1999 WHISARD Case Summary Report (DVD Doc. #8), Secretary's Exhibit 9: 2003 WHISARD Case Summary Report (DVD Doc. #9), Secretary's Exhibit 10: Final Amended WH-56 Form (DOL Summary of Unpaid Wages) (DVD Doc. #10), Secretary's Exhibit 11: Corporate Registration Information for Cathedral Buffet, Inc. from Ohio Secretary of State Website (DVD Doc. #11), Secretary's Exhibit 12: 10/19/2014 Akron Beacon Journal Article (DVD Doc. #12), Secretary's Exhibit 18: Information Sheet re: List of Corporate Officers for Cathedral Buffet, Inc. (DVD Doc. #13), Defendants' Exhibit 1 - Secretary's Objections and Responses to Defendants' Requests for Admissions (DVD Doc. #14), Defendants' Exhibit 2 - Cathedral Buffet, Inc.'s Articles of Incorporation (DVD Doc. #15), Defendants' Exhibit 3 - 134 Volunteer Affidavits (DVD Doc. #16)</p> <p><i>* Four copies of all trial exhibits admitted in the United States District Court of the Northern District of Ohio, Eastern Division, Civil Action No. 5:15-cv-01577 in DVD format (i.e., a "digital copy") were sent to the Clerk of Courts for filing via Federal Express on Thursday June 29, 2017 in accordance with the Sixth Circuit Rules and published Appendix checklist.</i></p>
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