No. 17-3427

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

R. ALEXANDER ACOSTA,
SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR,

Plaintiff-Appellee,

v.

CATHEDRAL BUFFET, INC.;
ERNEST ANGLEY,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Ohio, Eastern Division

RESPONSE BRIEF FOR THE SECRETARY OF LABOR

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STATEMENT REGARDING ORAL ARGUMENT

The primary issue in this case is whether workers classified by Defendants as "volunteers" at a for-profit restaurant owned by a church qualify as employees under the Fair Labor Standards Act ("FLSA" or "Act"). Several decades ago, the Supreme Court expressly held that purported "volunteers" working in commercial businesses operated by a religious organization were covered by the Act. *See Tony & Susan Alamo Found. v. Sec'y of Labor* ("*Alamo*"), 471 U.S. 290 (1985).

Relying in part on *Alamo*, the U.S. Department of Labor (the "Department") has for many years interpreted the FLSA to generally prohibit for-profit, private-sector entities from utilizing the services of unpaid volunteer labor. Although the Secretary of Labor (the "Secretary") will gladly participate in any oral argument scheduled by this Court, he does not believe that oral argument is necessary in this case because the issues presented on appeal are definitively answered by this clear judicial precedent and agency guidance and thus may be resolved based on the parties' briefs.

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The district court had subject matter jurisdiction over this case pursuant to section 17 of the FLSA, 29 U.S.C. 217; 28 U.S.C. 1331 (federal question); and 28 U.S.C. 1345 (suits commenced by an agency or officer of the United States). This Court has jurisdiction to review the March 29, 2017 Findings of Fact and Conclusions of Law ("Decision") and accompanying Judgment Entry, as well as the April 12, 2017 Judgment and Order Regarding Injunction, of United States District Court Judge Benita Y. Pearson pursuant to 28 U.S.C. 1291 (final decisions of district courts). *See* R.89, Decision; R.90, Judgment Entry; R.92, Judgment and

Order Regarding Injunction.[1] Defendants filed a timely Notice of Appeal from those orders on April 25, 2017. *See* R.93, Notice of Appeal.

STATEMENT OF THE ISSUES

1. Whether the district court correctly concluded that the Cathedral Buffet restaurant workers classified as "volunteers" by Defendants were in fact employees under the FLSA and thus entitled to the protections of the Act.

2. Whether the district court properly determined that application of the FLSA to this case did not violate the Free Exercise Clause of the First Amendment.

STATEMENT OF THE CASE

A. Factual Background

1. *Ownership and Operation of the Cathedral Buffet Restaurant*: Defendant Cathedral Buffet, Inc. ("Cathedral Buffet") is organized as a for-profit corporation in the state of Ohio. *See* R.89, Decision, Page ID# 2462. Grace Cathedral, Inc. ("Grace Cathedral" or the "Church") is the sole shareholder of Cathedral Buffet. *Id*.[2] Cathedral Buffet operates a restaurant in Cuyahoga Falls, Ohio. *Id*. During

[1] Pursuant to Local Rules 28(b)(1)(A)(i) and 30(g)(1), the Secretary has included in this brief an addendum designating the relevant district court documents, and cites to those documents as "R. (number corresponding to district court docket entry)" and "Page ID# (page number indicated by district court docket)."

[2] Cathedral Buffet was incorporated in Ohio on February 25, 2013. *See* R.89, Decision, Page ID# 2470. Prior to February 2013, Cathedral Buffet was owned by the Winston Broadcasting Network, Inc. ("Winston"). *Id*. The Church is the only shareholder of both Cathedral Buffet and Winston. *Id*. Many aspects of Cathedral

the investigative period, the Cathedral Buffet restaurant was open to the public and was located in a shopping district populated by many other restaurants, including Taco Bell, Aladdin's Eatery, Arby's, and Subway. *Id*. Indeed, Cathedral Buffet solicited business from the general public by advertising on television, *see* R.85, Transcript ("Tr.") Vol. 4, Page ID# 2368-69, and it charged customers for meals, *see* R.76, Tr. Vol. 2, Page ID# 1878. Cathedral Buffet's workers handled goods that moved through interstate commerce and the corporation had an annual dollar volume of sales of at least $500,000. *See* R.89, Decision, Page ID# 2462.

For approximately twenty years, Sonya Neale ("Neale") has been the manager of Cathedral Buffet. *See* R.89, Decision, Page ID# 2462-63. Neale began working at Cathedral Buffet in 1996 and, a few years later, was promoted to general manager by Defendant Ernest Angley ("Angley"). *Id.* Neale is responsible for overseeing most operations at the restaurant, including managing personnel, customer service, the facilities, and maintenance. *Id*. at 2463. Although Neale is the highest-level individual working day-to-day at Cathedral Buffet, she relies heavily upon Defendant Angley for guidance and direction regarding restaurant-related matters. *Id*.

Buffet, including its name, management structure, location, equipment, and facilities, have remained constant for the past nineteen years despite this technical change in ownership in 2013. *Id.* at 2470-71. The district court thus concluded that Defendants are liable for all FLSA violations committed during the investigative period. *Id.* at 2488-91. Defendants have not appealed that determination.

2. *Reverend Angley's Role in Operating the Restaurant*: Defendant Ernest Angley is the president of Cathedral Buffet. *See* R.89, Decision, Page ID# 2464. Angley is heavily involved with and occupies an essential role in managing and operating the restaurant. *Id*. Neale, for example, frequently seeks Angley's advice on customer service and personnel matters, including whether to hire and/or fire certain individuals. *Id*. at 2463-64. Angley has personally hired, and directed Neale to hire, specific individuals to work at the restaurant. *Id*. at 2463. Angley is also consulted about changes to the restaurant's menu and he has final decisionmaking authority over such matters. *Id*. at 2465.

Angley had access to the restaurant's personnel records, checkbook, and checking account. *See* R.89, Decision, Page ID# 2464-65. Angley himself testified that Neale had never done anything contrary to his advice. *Id*. at 2464. As the district court observed, "Reverend Angley's significant role within the Buffet is apparent, given his concerns that 'we were spending so much money . . . to keep [the Buffet] open.'" *Id*. at 2465 (quoting R.75, Tr. Vol. 1, Page ID# 1698). Indeed, Cathedral Buffet's finance manager testified at trial that she had to consult with Angley regarding Church money that needed to be spent on the restaurant's operating expenses because Angley "would know what would need to be budgeted." R.85, Tr. Vol. 4, Page ID# 2367.

3. *Defendants' Use of Unpaid Labor at the Restaurant*: During the time period relevant to this case, Cathedral Buffet maintained two distinct classes of restaurant workers: individuals classified as "employees" who were paid an hourly wage and individuals classified as "volunteers" who received no wages at all. *See* R.89, Decision, Page ID# 2465.[3] Volunteers constituted the bulk of the workforce at Cathedral Buffet during the investigative period. Defendants maintained only approximately thirty-five paid full-time staff, *see* R.75, Tr. Vol. 1, Page ID# 1739, but utilized more than 230 volunteers. *See* R.89, Decision, Page ID# 2473-74; DVD Doc. #10, Sec'y Trial Exh. 10.

The paid staff was responsible for many restaurant tasks, including cooking food, serving customers, stocking the buffet line, cleaning tables, and working as cashiers. *See* R.89, Decision, Page ID# 2465. The so-called "volunteers" were tasked with the same or similar work duties, including cleaning the restaurant and bathrooms, preparing and serving food, operating the cash registers, bussing tables, and cleaning and stocking the beverage stations and the buffet line. *Id.* at 2465-66, 2469; *see* R.36, Joint Undisputed Fact Stipulations ("Joint Stipulations"), Page ID# 1146; R.75, Tr. Vol. 1, Page ID# 1608, 1649.

[3] The Secretary uses the term "volunteer" throughout this brief to refer to the Cathedral Buffet workers that Defendants classified as unpaid volunteers. To be clear, however, the Secretary maintains that such individuals were *not* bona fide volunteers and instead are properly viewed as "employees" under the FLSA.

As one former volunteer testified, volunteers performed "any and all the jobs" at Cathedral Buffet. R.75, Tr. Vol. 1, Page ID# 1649. Because the paid and unpaid staff performed the same work, there was no clear way for a customer to distinguish between such individuals. *See* R.89, Decision, Page ID# 2466. Indeed, Angela Oborne ("Oborne"), who worked at the restaurant for twenty years and was previously responsible for scheduling work shifts of both employees and volunteers, testified that the only department within the restaurant that was not staffed by volunteers was the position of manager. *Id.* Oborne further testified that she could not recall a single instance when the restaurant was staffed with only paid employees. *Id.*

The individuals classified by Cathedral Buffet as volunteers had no opportunity to make a profit and were even prohibited from keeping tips that they were given by customers. *See* R.89, Decision, Page ID# 2468-69. No special skills were required for the volunteers to accomplish the work that they were assigned, and none of the volunteers made any investments in equipment or materials. *Id.* at 2469. The volunteers who provided affidavits in support of Defendants had no expectation that they would receive compensation for their work at the restaurant and were not economically dependent on Defendants. *Id.*

Neale and Stacey McClintock ("McClintock") were responsible for ensuring that Cathedral Buffet had adequate staff on any given day and for managing and

supervising the work of the volunteers, and Neale was specifically responsible for training and assigning work to the volunteers. *See* R.89, Decision, Page ID# 2468. If the restaurant did not have enough volunteers at a particular time, the volunteers' work would instead be completed by the paid staff. *Id*.

By staffing the restaurant with unpaid workers, Defendants sought to save money. *See* R.89, Decision, Page ID# 2470. Angley admitted that he used unpaid labor because he wanted to keep the prices of the food at the restaurant down. *See* R.75, Tr. Vol. 1, Page ID# 1720. Indeed, in 2012, Angley was facing a decision as to whether to close Cathedral Buffet. *Id*. at 1696-1713. Angley decided to use volunteers because he realized the restaurant was "paying too much" in labor costs. *Id*. at 1713. Cathy Shupe ("Shupe"), Cathedral Buffet's Secretary and the Church finance manager, admitted that employees cost money and that fewer employees meant fewer costs. *See* R.85, Tr. Vol. 4, Page ID# 2370. Cathedral Buffet could thus afford to offer arguably low-cost meals because it did not compensate the majority of its workforce. *See* R.89, Decision, Page ID# 2470.

4. *Defendants' Use of Coercion to Procure Unpaid Labor*: Church members were routinely pressured or coerced into volunteering at Cathedral Buffet. *See* R.89, Decision, Page ID# 2467. Neale, the restaurant's manager, would inform Defendant Angley or his secretary when the restaurant needed additional help and Angley would then make announcements to his congregation

prior to his Church sermons in which he would solicit "volunteers" for the restaurant. *Id.* at 2466-67. In his announcements, Angley would "suggest that Church members had an obligation to provide their labor to the Buffet, in service to God, and that a failure to offer their labor to the Buffet – or to refuse to respond to phone calls from Stacey McClintock seeking volunteers – would be the same as failing God." *Id.* at 2467. A representative of Cathedral Buffet, such as Neale or McClintock, would then call members of the Church and schedule them to work specific shifts on particular days. *Id.* at 2767-68; R.36, Joint Stipulations, Page ID# 1146. Oborne testified that she was instructed by Neale to make it difficult for volunteers to refuse to serve their scheduled shifts. *See* R.89, Decision, Page ID# 2467-68. She stated that Neale instructed her to tell potential volunteers that Angley would know if they refused to volunteer at the restaurant when asked. *Id.* at 2768. Oborne testified that she understood that using Angley's name was an attempt to frighten potential volunteers into believing that Angley would be displeased if they failed to volunteer. *See* R.75, Tr. Vol. 1, Page ID# 1755-56.

Reverend Angley himself coerced Church members into providing unpaid labor at the restaurant. *See* R.89, Decision, Page ID# 2467. As one former volunteer testified, Angley used "scare tactics/bullying" to make people volunteer at Cathedral Buffet. R.76, Tr. Vol. 2, Page ID# 1855. Another former volunteer, Dr. Alishea Gay, similarly testified that Angley preached that he was a prophet of

God and that saying "no" to Angley was the equivalent of saying "no" directly to God. R.75, Tr. Vol. 1, Page ID# 1606-08. Angley further preached that repeatedly saying "no" to God or failing God ultimately leads to "blaspheming against the Holy Ghost," which means that the individual's connection to God has been irredeemably lost. *Id.*; R.89, Decision, Page ID# 2467.

Dr. Gay testified that, after attempting to ignore McClintock's calls and subsequently refusing to volunteer when McClintock's husband also called, Angley himself informed Dr. Gay that Cathedral Buffet needed her to work. *See* R.75, Tr. Vol. 1, Page ID# 1605. She ultimately agreed to volunteer at the restaurant because she "feared failing God." *Id.* As Dr. Gay testified, refusing to volunteer was simply unacceptable because "[s]aying no in this setting is not something that's taken well from Mr. Angley and those who work for him." *Id.* at 1606.

Former volunteer Ralph Gay, III similarly testified that he occasionally avoided McClintock's calls because he did not want to endure the emotional turmoil of feeling like he was failing God by saying no to a request to volunteer at the restaurant. *See* R.76, Tr. Vol. 2, Page ID# 1836-37. Ralph Gay testified, however, that when he would ignore such calls, Angley would announce from the pulpit during Church services that he had a list of people who had been avoiding working at the Buffet and, as a result, "God is not pleased." *Id.* at 1854-55.

Indeed, numerous witnesses testified that Angley instilled a fear in the volunteers that regularly refusing requests to volunteer at the restaurant would cause them permanent spiritual harm. *See, e.g.*, R.75, Tr. Vol. 1, Page ID# 1605-07, 1621, 1651; R. 76, Tr. Vol. 2, Page ID# 1814-17; R. 78, Tr. Vol. 3, Page ID# 2061. Even Zacharias Kostenko ("Kostenko"), a witness for Defendants, testified that he was threatened into volunteering at the restaurant by Angley because if a Church member did not do things as Angley expected "[y]ou would be shunned or you were deemed not fit for heaven." R.78, Tr. Vol. 3, Page ID# 2058-59.

Defendants have coercively procured and utilized the services of unpaid volunteers to staff the restaurant for many years. Consequently, and as detailed below, the Department's Wage and Hour Division ("WHD") has investigated Cathedral Buffet numerous times.

5. *The 1999 Investigation of Cathedral Buffet*: In 1999, WHD investigated Cathedral Buffet upon discovering that the restaurant was misclassifying workers as volunteers and not paying them the federal minimum wage in violation of the FLSA. *See* R.89, Decision, Page ID# 2471. In 1999, WHD also determined that Cathedral Buffet had violated the FLSA's child labor, recordkeeping, and overtime provisions. *Id.* Cathedral Buffet paid more than $37,000 in back wages and agreed to future compliance with the Act. *Id*. Reverend Angley understood that, through the 1999 investigation, WHD had taken the position that it was illegal to

use unpaid volunteer labor at the restaurant. *Id.* Neale was also aware of WHD's 1999 investigation of Cathedral Buffet. *Id*. During that investigation, Neale attended the meeting with the WHD investigator and provided documents and records to the investigator in her capacity as the restaurant's general manager. *Id.*

6. *The 2003 Investigation of Cathedral Buffet*: In 2003, WHD returned to Cathedral Buffet as part of its recidivism initiative. *See* R.89, Decision, Page ID# 2471. At that time, WHD detected no violations because Cathedral Buffet appeared to be paying proper wages to all of its workers. *Id*. at 2472. Indeed, several witnesses testified that, at some point in time prior to 2012, Cathedral Buffet did issue paychecks to individuals who were classified as volunteers. *Id*. Trial testimony suggests, however, that Defendants' apparent willingness to pay the volunteers during this time period was temporary, if not entirely illusory. *See, e.g.*, R.75, Tr. Vol. 1, Page ID# 1611-12, 1646-47, 1761-63; R.76, Tr. Vol. 2, Page ID# 1843-44; R.78, Tr. Vol. 3, Page ID# 1994, 2064. According to former volunteer Dr. Gay, Reverend Angley convened a meeting of volunteers and informed them that, due to financial hardships, the individuals would need to return the paychecks that they had been issued. *See* R.75, Tr. Vol. 1, Page ID# 1610-12.

Dr. Gay testified that, after that meeting, volunteers were expected to endorse their paychecks over to the Church in the presence of the Church

secretary, who would then take possession of the checks. *See* R.89, Decision, Page ID# 2472. Numerous witnesses testified that they were not allowed to keep their paychecks from the restaurant. *Id.* (citing R.75, Tr. Vol. 1, Page ID# 1611-12; R.76, Tr. Vol. 2, Page ID# 1844, 1847). Indeed, one of the volunteers who provided an affidavit in support of Defendants testified that he did not have the option of keeping those wages. *Id*. Notably, two former volunteers testified that, even though they were not allowed to retain their paychecks, they were still responsible for paying taxes on those sham "earnings." *Id*. at 2473. In 2012, however, Angley decided to simply resume using unpaid labor at the restaurant without the pretense of issuing paychecks.

7. *The 2014 Investigation of Cathedral Buffet*: On October 19, 2014, the Akron Beacon Journal published an article in which Reverend Angley explicitly admitted that Cathedral Buffet had resumed staffing the restaurant with unpaid labor. *See* R.89, Decision, Page ID# 2473; DVD Doc. #12, Sec'y Trial Exh. 12. As a result of that article, in November 2014, WHD opened its investigation relevant to this case. *See* R.89, Decision, Page ID# 2473. The investigative period for which WHD focused its review of Defendants' employment practices ran from November 5, 2012 through November 2, 2014. *Id*. WHD's investigation, led by Investigator Stephen Banig ("Banig"), revealed that Cathedral Buffet had indeed resumed unlawful employment practices that were discovered during the 1999

investigation, including its use of unpaid labor to staff the restaurant and its failure to maintain proper payroll records. *Id*. Based on the investigation, Banig calculated that Defendants owed $194,253.95 in back wages to more than 230 individuals who had been classified as volunteers. *Id.* at 2473-74; DVD Doc. #10, Sec'y Trial Exh. 10.

B. Procedural History

1. On August 10, 2015, the Secretary commenced this lawsuit by filing a complaint against Defendants. *See* R.1, Complaint. The Secretary's complaint alleged that Defendants had violated the FLSA and sought to recover back wages and an equal amount in liquidated damages, as well as a permanent injunction to enjoin Defendants from committing future violations of the Act. *Id*.; *see* 29 U.S.C. 216(c), 217.

2. The case ultimately proceeded to a bench trial on October 31, November 1, and November 21, 2016. *See* R.89, Decision, Page ID# 2461. The Secretary presented testimony from Cathedral Buffet volunteers and employees (Alishea Gay, Rebecca Roadman, Christopher Newby, and Ralph Gay, III); Cathedral Buffet manager Neale; Reverend Angley; Cathedral Buffet Secretary and Church finance manager Shupe; former Cathedral Buffet manager Oborne; and Investigator Banig. Defendants also presented testimony from Shupe. Eight of the volunteers who had provided affidavits supporting Defendants (Clay Ether, Leah

Barrows, Wanda Buckner, Lisa Poindexter, Xavier Smith, Zacharias Kostenko, Ellen Oborne, and Joshoua Bell) also testified during depositions conducted on November 10, 2016. *Id.* The parties submitted post-trial briefs on January 9, 2017. *See* R.87, Defendants' Post-Trial Brief; R.88, Secretary's Post-Trial Brief.

C. Decision of the District Court

1. On March 29, 2017, the district court issued Findings of Fact and Conclusions of Law, holding that the Cathedral Buffet "volunteers" qualified as Defendants' employees under the FLSA and that Defendants had failed to pay such individuals the minimum wage or maintain payroll records as required by law. *See* R.89, Decision, Page ID# 2461-96.

2. The district court first concluded that Defendant Cathedral Buffet was a covered employer under the FLSA. *See* R.89, Decision, Page ID# 2474-78. The court explained that Cathedral Buffet was a covered enterprise pursuant to 29 U.S.C. 203(s)(1)(A) and it rejected Defendants' suggestion that the Church's ownership of the restaurant somehow exempted it from the Act. The court stated that the Supreme Court has held that the FLSA "'contains no express or implied exception for commercial activities conducted by religious or other nonprofit organizations.'" *Id.* at 2475 (quoting *Alamo*, 471 U.S. at 296). It observed that Cathedral Buffet is a commercial, for-profit business that competes with many other commercial eateries in its immediate area. *Id.* at 2477. The district court

noted that Defendant Angley himself admitted that the restaurant used volunteers "as a cost-saving measure," *id.* at 2478, and that the restaurant thus impermissibly gained an unfair advantage over its competitors. *Id.* It further explained that Defendants had adduced no evidence that they were entitled to claim any exemptions from coverage under the FLSA. *Id*. The court recognized that the Department of Labor has issued guidance explaining that "[u]nder the FLSA, individuals may not volunteer services to private sector for profit employers." *Id.* at 2479 (internal quotation marks omitted).

3. Having concluded that Defendants were covered employers under the FLSA, the district court then determined that the "volunteers" at Cathedral Buffet qualified as employees under the Act. *See* R.89, Decision, Page ID# 2478-85. It explained that the Supreme Court has instructed that the question of whether an individual qualifies as an employee should be viewed in light of the "economic reality" of the situation and it cited numerous factors identified by this Court as relevant to that analysis. *Id.* at 2481-82.

The court, for example, observed that the volunteers' work was "clearly integral" to the restaurant's operations because the volunteers performed tasks that were "necessary" to the operation of a restaurant, such as operating cash registers, cleaning, and chopping vegetables. R.89, Decision, Page ID# 2484. It also concluded that Cathedral Buffet's management exerted a high level of control and

supervision over the volunteers. *Id.* Importantly, the court determined that Defendants had routinely solicited volunteers to work at the restaurant and that the volunteers felt unduly pressured and coerced into providing such services. *Id.* at 2484-85.

4. The district court rejected Defendants' argument that application of the FLSA in this case would violate the Free Exercise Clause of the First Amendment. *See* R.89, Decision, Page ID# 2477. The court explained that "[t]here is no language in the Act or its regulations that creates an exemption based on the workers' motivation – religious or otherwise." *Id.* Moreover, the court explained that its decision did not infringe upon congregants' ability to engage in "ordinary volunteerism." *Id.* at 2485 (internal quotation marks omitted).

5. The district court then determined that Defendants had violated FLSA section 6 by failing to pay the volunteers the minimum wage for their hours worked as well as section 11 of the Act by failing to maintain accurate records of hours worked. *See* R.89, Decision, Page ID# 2491-94. The court also concluded that Defendants were liable for liquidated damages because they failed to meet their burden of demonstrating that they had acted in good faith. *Id.* at 2493-94. In relevant part, the court explained that Defendants had indeed acted in bad faith because, despite having been informed by WHD in 1999 that their use of volunteer labor at the restaurant was illegal, they had knowingly made the decision to revert

to using such volunteers. *Id*. Finally, the court held that injunctive relief was appropriate in this case. *Id.* at 2494-96. It explained that such relief was warranted in light of Defendants' repeated violations of the FLSA and the Secretary's compelling need to vindicate the public rights granted by the Act. *Id.* The court therefore denied Defendants' motion for partial summary judgment, which had been merged into the bench trial, as well as Defendants' motion to dismiss and renewed summary judgment motion. *Id.* at 2496.

6. The court entered judgment in favor of the Secretary and ordered Defendants to pay $388,507.90, which represents back wages, liquidated damages, costs, and post-judgment interest. *See* R.90, Judgment Entry.

7. On April 12, 2017, the court also ordered injunctive relief. *See* R.92, Judgment and Order Regarding Injunction. The court permanently enjoined Defendants from violating the Act's minimum wage and recordkeeping requirements. *Id.* The injunction specifically prohibits Defendants from coercing any employee to return to Defendants any money for wages due or to become due under the FLSA. *Id.* at Page ID# 2545.

8. Defendants timely appealed the district court's decision on April 25, 2017. *See* R.93, Notice of Appeal.

SUMMARY OF ARGUMENT

1. More than thirty years ago, the Supreme Court definitively held that individuals working in commercial businesses operated by religious organizations are entitled to the minimum wage and overtime protections of the FLSA. *See Alamo*, 471 U.S. 290. In that case, the Court explained that an employer may not evade the FLSA's requirements by simply calling its workers "volunteers" or by virtue of the fact that such individuals considered themselves to be "volunteering." In the decades since the Supreme Court issued its decision in *Alamo*, Congress, the courts, and the Department of Labor have carved out only a few narrow situations in which an entity engaged in commercial activities may accept unpaid labor. None of these exceptions apply to this case.

2. Here, the court correctly determined that Defendants are covered employers under the Act. Despite their church affiliation and allegedly religious motivations, Defendants operated a commercial, for-profit restaurant that served the general public and competed with local eateries. In direct contravention of congressional intent in enacting the FLSA, Defendants achieved an unfair economic advantage over their law-abiding competitors by maintaining a largely unpaid workforce.

Moreover, the district court properly concluded that the restaurant workers classified by Defendants as volunteers are in fact employees under the FLSA. In

reaching this conclusion, the court correctly applied the economic reality test. As part of this analysis, the court determined that the volunteers' work was an integral part of the restaurant's operation, Defendants received an immediate and significant benefit from the volunteers' work, and Defendants exercised substantial control over the volunteers. Moreover, the court appropriately found that Defendants had engaged in a systemic coercive effort to procure the volunteers' unpaid labor by threatening them with irreparable spiritual harm if they did not toil at the restaurant.

Defendants' argument that the volunteers do not qualify as employees under the FLSA because they did not expect to receive compensation must be rejected. Defendants' argument would effectively allow employers such as themselves to evade the FLSA's requirements by forcing people to work without pay, thereby necessarily precluding such workers from expecting compensation or becoming economically dependent in the first place by virtue of such coercion. Such a result is clearly contrary to congressional intent, Supreme Court precedent, and fundamental notions of fairness and justice.

3. Finally, Defendants' argument that application of the FLSA to this case violates the First Amendment is meritless. The Supreme Court has made clear that the Free Exercise Clause does not require exemptions from neutral laws of general applicability, such as the FLSA. Moreover, Defendants have failed to articulate a

plausible claim that enforcement of the Act would burden or infringe upon their religious beliefs or those of the volunteers. Indeed, applying the FLSA to the Cathedral Buffet volunteers merely prevents Defendants from failing to pay the minimum wage to workers for their labor in furtherance of Defendants' for-profit, commercial activities, something that the Supreme Court did not countenance under the guise of the Free Exercise Clause. *See Alamo*, 471 U.S. at 303-05.

STANDARD OF REVIEW

This Court reviews a district court's factual findings made after a bench trial for clear error and its legal conclusions de novo. *See Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 642 F.3d 518, 522 (6th Cir. 2011). A district court's factual findings are clearly erroneous if, "based on the entire record," the reviewing court is "left with the definite and firm conviction that a mistake has been committed." *Shelby Cty. Health Care Corp. v. Majestic Star Casino*, 581 F.3d 355, 364-65 (6th Cir. 2009) (internal quotation marks omitted). The ultimate question of whether "a particular situation is an employment relationship is a question of law." *Fegley v. Higgins*, 19 F.3d 1126, 1132 (6th Cir. 1994). Finally, the scope of injunctive relief issued by a district court is reviewed for an abuse of discretion. *See Sec'y of Labor v. 3Re.com, Inc.*, 317 F.3d 534, 537 (6th Cir. 2003).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DETERMINED THAT DEFENDANTS WERE COVERED EMPLOYERS UNDER THE FLSA AND THAT, BASED UPON THE ECONOMIC REALITY OF THE WORKING RELATIONSHIP, THE RESTAURANT WORKERS CLASSIFIED AS VOLUNTEERS WERE IN FACT EMPLOYEES ENTITLED TO THE ACT'S PROTECTIONS

A. Background on the FLSA

1. The Fair Labor Standards Act is "remedial and humanitarian in purpose," and is meant to protect "the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others." *Tenn. Coal, Iron & R.R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 597 (1944). The Supreme Court has explained that the FLSA should be broadly interpreted and applied to effectuate its goals. *See Alamo*, 471 U.S. at 296. Courts have thus "'consistently construed the Act liberally to apply to the furthest reaches consistent with congressional direction.'" *Mendel v. City of Gibraltar*, 727 F.3d 565, 569 (6th Cir. 2013) (quoting *Alamo*, 471 U.S. at 296).

2. In enacting the FLSA, Congress was not only concerned about protecting employees from the abuses of substandard pay, excessive hours, and unequal bargaining relationships, but was also focused on protecting law-abiding employers from unfair methods of competition in the national economy. *See* 29 U.S.C. 202. To effectuate these broadly remedial public policies, the FLSA applies to a wide range of employment relationships. The Act defines the term

"employee" as "any individual employed by an employer." 29 U.S.C. 203(e)(1). The statute further defines the term "employ" as "to suffer or permit to work," 29 U.S.C. 203(g), and defines an "employer" as including "any person acting directly or indirectly in the interest of an employer in relation to an employee." 29 U.S.C. 203(d). Indeed, the Supreme Court has explained that "[a] broader or more comprehensive coverage of employees . . . would be difficult to frame." *United States v. Rosenwasser*, 323 U.S. 360, 362-63 (1945). It has observed that the "striking breadth" of the FLSA's definition of "employ" "stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles." *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326 (1992); *Walling v. Portland Terminal Co.*, 330 U.S. 148, 150 (1947) ("[I]n determining who are 'employees' under the Act, common law employee categories or employer-employee classifications under other statutes are not of controlling significance."); *Keller v. Miri Microsystems LLC*, 781 F.3d 799, 804 (6th Cir. 2015).

3. Once coverage of the Act has been established, the rights conferred by the FLSA may not be waived or abridged by private parties. As the Supreme Court and this Court have long recognized, an employee's rights to the minimum wage, overtime compensation, and liquidated damages may not be abridged or waived because these fundamental FLSA rights affect the public interest. *See, e.g.*,

Alamo, 471 U.S. at 302; *Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 740-41 (1981); *Boaz v. FedEx Customer Info. Servs., Inc.*, 725 F.3d 603, 604-06 (6th Cir. 2013). The Supreme Court has thus repeatedly affirmed the "nonwaivable nature" of these fundamental FLSA protections and explained that "FLSA rights cannot be abridged by contract or otherwise waived because this would nullify the purposes of the statute and thwart the legislative policies it was designed to effectuate." *Barrentine*, 450 U.S. at 740 (internal quotation marks omitted).

B. The District Court Correctly Determined that the FLSA Applies to Cathedral Buffet.[4]

1. The FLSA applies to "enterprise[s] engaged in commerce or in the production of goods for commerce," which means a business that has employees handling or selling goods that have been moved in commerce and that has an annual dollar volume of sales of at least $500,000. 29 U.S.C. 203(s)(1). The Act specifies that, in relevant part, the term "enterprise" means "the related activities performed . . . by any person or persons for a common business purpose." 29 U.S.C. 203(r)(1). Defendants do not dispute that employees at Cathedral Buffet

[4] Although Defendants have not appealed the district court's determination that they are covered employers, they continue to emphasize Cathedral Buffet's allegedly altruistic purpose and religious affiliation. *See, e.g.*, Opening Br. at 22-26. Defendants raise this argument in the context of challenging the court's determination that the volunteers are employees, *id.*, but such assertions are more properly viewed as an implicit challenge to the court's conclusion that the FLSA applies to Cathedral Buffet.

handle goods that have moved through commerce nor do they contest the fact that the restaurant is incorporated as a for-profit business that has an annual dollar volume of sales exceeding $500,000. Instead, Defendants essentially argue that because the restaurant is owned and subsidized by a church, does not actually make a profit, and is purportedly operated with the charitable intention of providing low-cost meals to the community, Cathedral Buffet should not be covered by the FLSA. Such arguments are clearly foreclosed by Supreme Court precedent.

2. In *Alamo*, the Supreme Court considered whether commercial businesses operated by a non-profit religious organization (the "Foundation") were covered by the FLSA. *See* 471 U.S. at 295-99. In that case, the Foundation operated various commercial businesses, such as a motel and service stations, that were staffed by the Foundation's "associates," many of whom "were drug addicts, derelicts, or criminals before their conversion and rehabilitation by the Foundation." *Id.* at 292. The Foundation did not pay cash wages to the associates, but it did provide them with food, clothing, shelter, and other benefits. *Id.* The Supreme Court held that the FLSA applied to the Foundation's commercial activities because the Act "contains no express or implied exception for commercial activities conducted by religious or other nonprofit organizations." *Id.* at 296. The Court explained that the Department of Labor has also "consistently interpreted the statute to reach such

businesses." *Id.* at 297. Indeed, as the Court noted, the FLSA's regulations clearly state:

> "Activities of eleemosynary, religious, or educational organization[s] may be performed for a business purpose. Thus, where such organizations engage in ordinary commercial activities, such as operating a printing and publishing plant, the business activities will be treated under the Act the same as when they are performed by the ordinary business enterprise."

Id. (quoting 29 C.F.R. 779.214).

The Supreme Court further explained that the FLSA's legislative history strongly supports the conclusion that the commercial activities of religious organizations are subject to the Act. *See Alamo*, 471 U.S. at 297-98. As the Court observed, in 1961, Congress significantly broadened the scope of FLSA coverage by amending the Act to apply to "enterprises" in addition to individuals. *Id.* The legislative history of the 1961 amendments reflects that Congress recognized the possibility that non-profit and religious groups might fall within the Act's definition of "enterprise" and determined that the Act should in fact apply to the ordinary commercial activities of such organizations. *Id.* The Senate Committee Report accompanying these amendments, for example, explained that the activities of religious groups were excluded from coverage only insofar as they were not performed for a "business purpose." S. Rep. No. 86-1744, at 28 (1960).[5] The

[5] When Congress first considered the legislation extending FLSA coverage to enterprises in 1960, Senator Goldwater proposed an amendment that would have exempted section 501(c)(3) non-profit organizations from the FLSA's definition of

Supreme Court thus observed that there was "broad congressional consensus that ordinary commercial businesses should not be exempted from the Act simply because they happened to be owned by religious or other nonprofit organizations." *Alamo*, 471 U.S. at 298.

In *Alamo*, the Supreme Court also rejected the Foundation's arguments (nearly identical to the assertions raised by Defendants here) that the various commercial businesses that it operated should be exempt from FLSA coverage because they were "infused with a religious purpose." 471 U.S. at 298. The Court emphasized that the lower courts had found that (1) the Foundation's commercial businesses served the general public, (2) the businesses were in competition with ordinary commercial enterprises, and (3) the payment of substandard wages would give the businesses an unfair advantage over their competitors, which the Supreme Court noted was "exactly" the type of unfair business competition that the FLSA was created to prevent. *Id.* at 299. The Court thus rejected the relevance of the Foundation's allegedly charitable purposes for operating the commercial

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"employer." *See* 106 Cong. Rec. 16,703 (Aug. 18, 1960). The amendment was rejected, *id.* at 16,704, in part because the bill's floor manager, Senator Kennedy, objected that the amendment might have exempted a commercial business owned by a religious institution. *Id.* Senator Goldwater agreed that "a church which has a business operation on the side" should be subject to the FLSA, *id.* at 16,703, and explained that even under his proposed amendment, "a charitable or a religious group which owned a brewery, a library, or a winery . . . would not be exempt." *Id.*

businesses, concluding that "*the admixture of religious motivations does not alter a business's effect on commerce*." *Id.* (emphasis added).

3. In light of *Alamo*, Defendants' argument that Cathedral Buffet should not be subject to the FLSA because of its church affiliation and allegedly religious purpose is wholly meritless. It is undisputed that Cathedral Buffet is incorporated as a *for-profit* business and that it is engaged in commercial activities. *See* 29 C.F.R. 779.214 (explaining that activities of a religious organization are performed for a "business purpose" where such entities "engage in ordinary commercial activities").[6] Indeed, Cathedral Buffet solicited business from the general public by advertising on television, *see* R.85, Tr. Vol. 4, Page ID# 2368-69, and it charged customers for meals, *see* R.76, Tr. Vol. 2, Page ID# 1878. The fact that the restaurant may not have been *successful* at making a profit is irrelevant to whether FLSA coverage exists. Here, as in *Alamo*, Cathedral Buffet (1) served the general public, (2) competed with other "ordinary" restaurants, and (3) gained an unfair and impermissible business advantage over its competitors by operating with an unpaid workforce. 471 U.S. at 299.

[6] Defendants' assertion that the district court focused too heavily on the for-profit incorporation status of Cathedral Buffet is easily overcome given that the Supreme Court in *Alamo* held that even the commercial activities of a *non-profit* entity will generally be subject to the Act.

C. Congress and the Courts Have Carved Out Narrow Exclusions from FLSA Coverage but Defendants Have Not Demonstrated That Any Such Exclusions Apply to this Case.

As discussed above, the Supreme Court in 1985 made clear that individuals working in the commercial activities of religious organizations are subject to the FLSA. *See Alamo*, 471 U.S. at 290. Just a few months after the Supreme Court issued its decision, Congress amended the Act to provide that "[t]he term 'employee' does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency," provided that certain conditions are met. Fair Labor Standards Amendments of 1985, Pub. L. No. 99-150, § 4(a), 99 Stat. 787, 790 (1985) (codified at 29 U.S.C. 203(e)(4)(A)). Congress clearly could have excepted volunteers at for-profit businesses, but instead it expressly limited this FLSA exclusion to volunteers for "public agencies." Moreover, an individual can only qualify as an FLSA-exempt volunteer for a public agency if, inter alia, that individual offers his or her services "freely and *without pressure or coercion, direct or implied, from an employer*." 29 C.F.R. 553.101(c) (emphasis added).[7]

[7] *See* S. Rep. No. 99-159, at 14 (1985), *reprinted in* 1985 U.S.C.C.A.N. 651, 662 ("The Committee does not intend to discourage or impede volunteer activities undertaken for humanitarian purposes. At the same time, the Committee wishes to prevent any manipulation or abuse of minimum wage requirements through coercion or undue pressure upon employees to 'volunteer.'").

Defendants have not alleged, nor could they, that Cathedral Buffet qualifies as a "public agency" and thus the statutory exclusion is inapplicable to the instant case.[8] In any event, as noted, the FLSA regulations prohibit public agencies from using "direct or implied" coercion or pressure to procure volunteer services. 29 C.F.R. 553.101(c). The district court here determined that the Cathedral Buffet volunteers were coerced into providing unpaid labor; under such circumstances, even an individual providing services to a public agency would not be excluded from coverage.

D. Under Longstanding Department of Labor Policy, Individuals May Not Volunteer At For-Profit Businesses.

1. Because the FLSA must be broadly construed in favor of coverage in order to effectuate its public policies and the Act's statutory volunteerism exceptions are expressly limited to certain specific contexts involving public agencies and food banks, the Department "has for several decades read the Fair Labor Standards Act to prohibit for-profit, private-sector entities from using volunteer workers." *Rhea Lana, Inc. v. Dep't of Labor*, 824 F.3d 1023, 1025 (D.C. Cir. 2016). The Department has consistently issued guidance advising the regulated community that individuals generally may not volunteer their services to

[8] In 1998, Congress also excluded from FLSA coverage individuals who "volunteer their services solely for humanitarian purposes to private non-profit food banks and who receive from the food banks groceries." 29 U.S.C. 203(e)(5). Defendants cannot plausibly claim that Cathedral Buffet qualifies as a non-profit food bank.

such enterprises. *See, e.g.*, U.S. Dep't of Labor, WHD, Opinion Letter ("Op. Ltr."), 2002 WL 32406599 (Oct. 7, 2002); Op. Ltr., 1999 WL 1788160 (Sept. 30, 1999) (noting "longstanding policy of limiting volunteer status to those individuals performing charitable activities for not-for-profit organizations"); Op. Ltr., 1999 WL 1788145 (Aug. 19, 1999) ("Under the FLSA, individuals may not volunteer services to *private* sector for profit employers."); Op. Ltr., 1998 WL 1147729 (Sept. 28, 1998); Op. Ltr., 1996 WL 1031791 (July 18, 1996); Op. Ltr., 1995 WL 1032503 (Sept. 11, 1995).[9]

The Department's longstanding interpretation, as set forth in numerous opinion letters, that the FLSA generally prohibits the use of volunteer labor at for-profit businesses is, at the very minimum, entitled to *Skidmore* deference. *See Christensen v. Harris Cty.*, 529 U.S. 576, 587 (2000) (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). As discussed above, the Department's interpretation is entirely consistent with the FLSA's statutory text, legislative history, and Supreme Court precedent.

[9] Unlike Defendants in this case, the regulated community broadly recognizes this general prohibition against individuals volunteering to provide unpaid labor at for-profit businesses. *See, e.g.*, *The Fair Labor Standards Act*, § 3.II.F (Ellen C. Kearns et al. eds., 2d ed. 2010) ("According to the DOL, individuals who are engaged in activities that are an integral part of a for-profit employer's business, even if performed for a charitable purpose, will ordinarily be deemed employees rather than volunteers."). Indeed, the fact that there have been relatively few FLSA "volunteer" cases outside of the public agency context reflects that employers generally understand that they may not staff their commercial businesses with unpaid volunteers.

2. Citing a handful of district court cases, Defendants summarily and incorrectly assert that the Department's longstanding policy prohibiting the use of unpaid volunteers at for-profit businesses has been "consistently rejected" by courts. Opening Br. at 26. While some courts, such as the district court here, have acknowledged the Department's policy and then proceeded to apply the economic realities test to confirm that the purported volunteers are in fact employees, such decisions hardly reflect a "rejection" of the Department's position. *See, e.g.*, *Okoro v. Pyramid 4 Aegis*, No. 11-C-267, 2012 WL 1410025 (E.D. Wis. Apr. 23, 2012).[10]

E. The District Court Properly Applied the Economic Reality Test to Determine That the Individuals Classified as Volunteers Were Actually Employees.

1. The district court's conclusion that the purported volunteers working at Cathedral Buffet qualify as "employees" is further supported by an analysis of the

[10] It is also true that the Department and courts have long recognized that for-profit businesses are not required to pay bona fide interns and trainees when certain specific circumstances are satisfied. *See, e.g.*, U.S. Dep't of Labor, WHD, Fact Sheet #71 (Apr. 2010), https://www.dol.gov/whd/regs/compliance/whdfs71.htm. Defendants have not alleged, nor could they, that the Cathedral Buffet volunteers qualify as trainees or interns. The Department has also maintained a longstanding (and similarly inapplicable here) policy that individuals may volunteer to minister directly to patients of for-profit hospitals, but only when the volunteers' services do not replicate those that are performed by the hospital's paid employees. *See* Op. Ltr., 1996 WL 1005210 (June 28, 1996). While it thus "might be too sweeping a statement . . . to say that one cannot *under any circumstances* volunteer for a for-profit entity," *Okoro*, 2012 WL 1410025, at *8 (emphasis added), it is entirely accurate to say that a for-profit business cannot utilize unpaid volunteers unless a recognized exception to the FLSA applies. None does in this case.

economic reality of the working relationship, which is the traditional test of employment under the FLSA. *See Alamo*, 471 U.S. at 301; *Mendel*, 727 F.3d at 569; *Ellington v. City of East Cleveland*, 689 F.3d 549, 555 (6th Cir. 2012). Courts must look beyond any label that the parties place on the relationship and examine the economic realities of the working relationship to determine whether the worker "follows the usual path of an employee." *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 729 (1947). The Supreme Court has cautioned that the economic reality test does not depend on any "isolated factors" but rather requires an examination of "circumstances of the whole activity." *Id.* at 730. Accordingly, this Court has consistently recognized that the economic reality test is not "susceptible to formulaic application." *Ellington*, 689 F.3d at 555.

2. Courts have identified a number of non-dispositive factors to be considered in evaluating whether an individual qualifies as an employee under the FLSA. As this Court has explained:

> Relevant factors to consider may include whether the plaintiff is an integral part of the operations of the putative employer; the extent of the plaintiff's economic dependence on the defendant; the defendant's substantial control of the terms and conditions of the work of the plaintiff; the defendant's authority to hire or fire the plaintiff; and whether the defendant maintains the plaintiff's employment records and establishes the rate and method of payment.

Ellington, 689 F.3d at 555 (internal quotation marks omitted). This Court has also examined factors such as the worker's opportunity for skill-based profit or loss, the

worker's investment in equipment or materials required for the work, the degree of skill required to render the services, and the permanency and duration of the working relationship. *See, e.g.*, *Keller*, 781 F.3d at 807.[11]

3. The district court here correctly concluded, based on overwhelming record evidence, that the economic realities of the working relationship between Defendants and the Cathedral Buffet volunteers reflect that such individuals are, in fact, employees under the FLSA. *See* R.89, Decision, Page ID# 2478-85.

a. *The Volunteers Are An Integral Part of the Restaurant's Operations*: The district court correctly found that the volunteers' work was "clearly integral" to the operations of Cathedral Buffet. R.89, Decision, Page ID# 2484. As it found, the volunteers performed work that was necessary to the operation of a restaurant, such as chopping vegetables, operating cash registers, cleaning bathrooms and dishes,

[11] As noted in *Alamo*, the Department has historically considered "a variety of facts" in evaluating whether individuals are bona fide volunteers, including "the receipt of any benefits from those for whom the services are performed, whether the activity is a less than full-time occupation, and whether the services are of the kind typically associated with volunteer work." 471 U.S. at 303 n.25. The Secretary acknowledges that much of the case law applying the economic reality test has arisen in the independent contractor context. Accordingly, some of the factors identified as relevant in such cases may be less applicable to the volunteerism context. *See* WHD, Field Operations Handbook ("FOH") § 10b05(a), http://www.dol.gov/whd/FOH/FOH_Ch10.pdf (recognizing that the analysis typically used to determine whether a worker is an employee or independent contractor may not be wholly applicable to situations involving purported volunteers). Here, the court explained that its ultimate inquiry was an assessment of the overall economic reality of the working relationship and did not give undue weight to any particular factor. *See* R.89, Decision, Page ID# 2481-82.

and bussing tables. *Id.* Indeed, the volunteers performed similar, if not identical, tasks to those performed by the paid staff and there was no way for a customer to tell the difference between an unpaid volunteer and a paid employee. *Id.*; *see* R.36, Joint Stipulations, Page ID# 1146; R.75, Tr. Vol. 1, Page ID# 1603, 1608, 1627, 1649; R.76, Tr. Vol. 2, Page ID# 1810-11, 1832-33. The record evidence reflects that if volunteers did not perform work at the restaurant, Defendants would have had to employ paid staff to do the work. *See* R.89, Decision, Page ID# 2484.[12] Indeed, the volunteers' work was so critical to the operations of Cathedral Buffet that Angley would solicit volunteers from his church pulpit when he was informed that the restaurant would be otherwise short-staffed. During the investigative period, the more than 230 individuals classified as volunteers composed the vast

[12] Defendants assert that the district court erred by relying on Neale's deposition transcript, rather than on her trial testimony, in concluding that if the volunteers did not perform their work, paid employees would need to do it. *See* Opening Br. at 29-30 (citing R.89, Decision, Page ID# 2484). Defendants use this single example as the basis for a footnote broadly stating that the court erred by deferring a decision on Defendants' summary judgment motion until after the trial and thereby considering unadmitted evidence in its decision. *Id.* at 29-30 n.7. Defendants' argument is meritless. Neale testified during her deposition that paid employees would need to perform work tasks if the volunteers did not complete them. At trial, when Neale attempted to answer otherwise, counsel for the Secretary sought to impeach her by reminding her of the deposition testimony. *See* R.75, Tr. Vol. 1, Page ID# 1628-32. When confronted with her deposition testimony to that effect, Neale admitted, "Okay." *Id.* at 1632. Even in the highly unlikely event that the court erred in considering Neale's deposition, Defendants were not prejudiced by such error. Indeed, Defendant Angley *himself* expressly agreed that "if the volunteers were doing that work, you would not need to pay other people to do that same work." *Id.* at 1700; *see* Opening Br. at 46 ("[I]t is obvious that any request for volunteer labor will come as an alternative to contracting for paid labor . . . .").

majority of the workforce at the restaurant, which only employed thirty-five full-time paid employees. *See* R.75, Tr. Vol. 1, Page ID# 1739. Notably, Defendant Angley testified that he decided to use unpaid volunteers at the restaurant as a cost-saving measure because "[w]e had to keep everything going." *Id.* at 1713. The use of such volunteer labor was thus critical to the restaurant's continued operation.[13]

b. *Defendants Obtained an Immediate Advantage from the Volunteers' Work*: Defendants derived an immediate, direct, and significant economic advantage from the work performed by the volunteers. Indeed, Defendant Angley *admitted* that his decision to use unpaid volunteers was a cost-saving measure. By failing to pay much of their workforce, Defendants thus obtained a clear and impermissible competitive advantage over neighboring restaurants.

Defendants do not dispute that Cathedral Buffet benefits from the work of the volunteers. Instead, Defendants assert that the district court erroneously

[13] According to its website, Cathedral Buffet closed to the public on April 18, 2017. *See* http://cathedralbuffet.com/ (last visited on Aug. 21, 2017). Several local newspapers reported that unnamed Cathedral Buffet staff informed them that the restaurant could no longer function as a public restaurant without the use of volunteers. *See* Cleveland Plain Dealer, *Televangelist Ernest Angley closes the Cathedral Buffet* (Apr. 19, 2017), http://www.cleveland.com/metro/index.ssf/2017/04/televangelist_ernest_angley_ha.html; Akron Beacon Journal, *Cathedral Buffet closes to public following federal order to pay $388,000 to employees* (Apr. 19, 2017), http://www.ohio.com/business/cathedral-buffet-closes-to-public-following-federal-order-to-pay-388-000-to-employees-1.761339.

applied a "modified" version of the "primary beneficiary" test whereby it concluded that a volunteer is an employee if the volunteer's work benefits the putative employer in any way. *See* Opening Br. at 33-35. Contrary to Defendants' assertions, the court did not apply a "primary beneficiary" test and in no way suggested that a volunteer automatically qualifies as an employee if the employer derives *any* benefit from the volunteer's work. Indeed, although it noted that the Supreme Court had considered whether the employer had received an "immediate advantage" from the work performed by railroad trainees in evaluating whether the trainees were employees in *Portland Terminal*, the court accurately noted that the Supreme Court did not focus on that particular inquiry in its subsequent decision in *Alamo*. *See* R.89, Decision, Page ID# 2480-81. The district court thus carefully examined the economic reality of the working relationship and viewed the immediate and significant economic advantage that Defendants received from the volunteers' work as one relevant but not dispositive factor in that analysis. *Id*. at 2478-85. Similarly, and contrary to Defendants' assertions, the court did not engage in a comparative weighing of the parties' benefits and did not question that some of the volunteers may in fact have derived some pleasure or intangible benefits from their work at Cathedral Buffet.

c. *Defendants Exerted Substantial Control Over the Volunteers' Work*: As the district court correctly determined, the substantial control exerted by

Defendants in procuring the unpaid labor of the volunteers and in overseeing their work at the restaurant strongly supports a conclusion that the volunteers were in fact employees under the FLSA. As discussed below, Defendants coerced many of the volunteers to provide unpaid labor to the restaurant. Cathedral Buffet managers Neale and McClintock called church members and scheduled them for volunteer shifts on specific days and times at the Buffet. *See* R.36, Joint Stipulations, Page ID# 1146; R.75, Tr. Vol. 1, Page ID# 1604, 1626, 1655-56; R.76, Tr. Vol. 2, Page ID# 1813, 1822, 1834-35; R.78, Tr. Vol. 3, Page ID# 2001, 2061, 2088. Oborne, who was formerly responsible for recruiting volunteers, was instructed by Neale to make it hard for volunteers to "call off" from their scheduled shifts. R.75, Tr. Vol. 1, Page ID# 1776, 1782-83. When volunteers showed up to work at the restaurant, Neale and McClintock controlled and managed their work. *See* R.89, Decision, Page ID# 2468; R.36, Joint Stipulations, Page ID# 1147; R.75, Tr. Vol. 1, Page ID# 1627. Indeed, trial testimony reflects that volunteers were not even allowed to leave the restaurant at the end of their shift without the approval of a Cathedral Buffet supervisor. *See* R.75, Tr. Vol. 1, Page ID# 1602.[14]

[14] A number of other aspects of the working relationship further reflect that the volunteers in this case are employees. For example, the district court found that the volunteers had no opportunity to make a profit from their work. *See* R.89, Decision, Page ID# 2468; *see* R.36, Joint Stipulations, Page ID# 1147. Indeed, a former employee and volunteer testified that Defendants did not even permit him

F. The District Court Properly Determined Based on Substantial Record Evidence That Defendants Had Coerced Individuals to Volunteer at Cathedral Buffet, But the Court Correctly Did Not Use Such a Finding to the Exclusion of the Economic Reality Test.

Contrary to Defendants' repeated suggestions, *see, e.g.*, Opening Br. at 17, 38-43, it is important to note that the district court did not use its findings with respect to coercion as a "proxy" or "substitute" for an examination of the economic realities of Defendants' working relationship with the volunteers. Instead, it appropriately viewed Defendants' coercive methods of obtaining unpaid labor as a relevant aspect of the working relationship in this case. *See* R.89, Decision, Page ID# 2478-85.

1. Defendants challenge the district court's findings regarding the coercive ways in which they procured unpaid labor from the volunteers at Cathedral Buffet. *See, e.g.*, Opening Br. at 38-43.[15] Defendants repeatedly assert, for example, that

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to keep the tips that he received from customers despite his desire to do so. *See* R.89, Decision, Page ID# 2469; *see* R.76, Tr. Vol. 2, Page ID# 1804. The court also found that the volunteers did not need to possess any special skills to perform their work. *See* R.89, Decision, Page ID# 2469; R.36, Joint Stipulations, Page ID# 1148. It further noted that the volunteers did not invest in any equipment or materials for their work. *See* R.89, Decision, Page ID# 2469; R.75, Tr. Vol. 1, Page ID# 1604; R.76, Tr. Vol. 2, Page ID# 1833-34.

[15] Defendants suggest that, if the evidence supports a finding of coercion, the FLSA claims must be dismissed because the Trafficking Victims Protection Act ("TVPA") provides the exclusive vehicle for recovering back wages in a case involving forced labor. *See* Opening Br. at 42-43. This argument is not properly before this Court because Defendants did not raise it below. In any event, the argument is easily dispelled. *See, e.g., Carazani v. Zegarra*, 972 F. Supp. 2d 1

none of the Secretary's witnesses "testified that their free will had been overborne, causing them to volunteer at the Buffet." Opening Br. at 11-12, 17. While none of the witnesses used the precise words "my will was overborne," *every single one* of the volunteers called by the Secretary, as well as one of Defendants' witnesses, testified in great detail that he or she was unduly pressured, intimidated, and coerced into working at the restaurant. *See, e.g.*, R.75, Tr. Vol. 1, Page ID# 1605-08, 1615-16, 1621 (testimony of Dr. Gay); *id.* at 1656-57, 1689 (Roadman); R.76, Tr. Vol. 2, Page ID# 1814-17 (Newby); *id.* at 1836-40, 1855 (Ralph Gay); R.78, Tr. Vol. 3, Page ID# 2058-59 (Kostenko).

As the court properly found, the record evidence overwhelmingly supports that Defendants consistently exerted undue pressure and influence upon the volunteers by essentially threatening them with irreparable spiritual harm if they did not work at the restaurant. As discussed above, in announcements to his congregation prior to his Church sermons, Angley would insinuate that Church members had an obligation to volunteer at the restaurant and that a failure to do so would be "the same as failing God." R.89, Decision, Page ID# 2467. Indeed, as one former volunteer testified, Angley would announce from the pulpit during Church services that he had a list of people who had been avoiding working at the Buffet and, as a result, "God is not pleased." R.76, Tr. Vol. 2, Page ID# 1854-55.

(D.D.C. 2013) (court awarded back wages, liquidated damages under the FLSA, and emotional distress and punitive damages under the TVPA).

As a former volunteer who was called by Defendants even admitted, he felt that Angley had threatened him into volunteering at the restaurant because if a Church member did not act as Angley expected, "[y]ou would be shunned or you were deemed not fit for heaven." R.78, Tr. Vol. 3, Page ID# 2058-59.[16]

2. Defendants repeatedly assert in their opening brief that the district court erred by failing to give sufficient weight to 134 "uncontroverted" and "unrebutted" volunteer affidavits in which the individuals attested that they (1) volunteered at Cathedral Buffet for their own pleasure or purpose and without coercion, (2) did not expect to receive compensation or future employment, and (3) did not believe their work was integral to the restaurant's operation. *See, e.g.*, Opening Br. at 8, 13-14, 17, 34-37, 39, 42.

Contrary to Defendants' assertions, the district court indeed considered such affidavits, as well as the testimony of eight of those affiants, and correctly deemed the affidavits to be of limited value and/or dubious credibility. *See* R.89, Decision, Page ID# 2469, 2482. The court's credibility determinations are entitled to deference from this Court. *See, e.g., U.S. Dep't of Labor v. Cole Enters., Inc.*, 62

[16] Defendants suggest that some of the Secretary's witness testimony should be rejected because the witnesses testified about time periods outside of the investigative period or in which they were classified as paid staff. *See, e.g.*, Opening Br. at 12-13. Defendants did not object to the relevance of this testimony at trial. In any event, the court expressly found that many aspects of the Cathedral Buffet restaurant have been unchanged for the past nineteen years, *see* R.89, Decision, Page ID# 2470, and the individuals classified as paid staff performed the same tasks as the volunteers.

F.3d 775, 778 (6th Cir. 1995). Notably, all eight of the affiants who testified at the proceedings on November 10, 2016 stated that they had never discussed their experience of volunteering at Cathedral Buffet with Defendants' counsel and had never even seen the affidavits they signed until the day on which they signed them. *See* R.78, Tr. Vol. 3, Page ID# 1991-92, 2006, 2021, 2035, 2052, 2062, 2081-82, 2095-96.

As the court observed, five of the affiants testified that they did not even know what it meant for their work to be integral to the restaurant's business, despite their affidavit statements. *See, e.g.*, R.78, Tr. Vol. 3, Page ID# 1993-94, 2007-08, 2022, 2036, 2090, 2097-98. Affiant Kostenko testified that he had been pressured into signing his affidavit and that he had not actually wanted to sign the document. *Id.* at 2063 (explaining that he believed that if he did not sign the affidavit, Angley would find out, and Kostenko would be "kicked out of [Angley's] church or mistreated or shunned"). Moreover, even if the affiants had understood and agreed with the documents that they were signing, their characterization of their relationship with Cathedral Buffet is not controlling. *See Boaz*, 725 F.3d at 607-08.[17]

[17] To the extent that Defendants suggest that the district court erred by awarding back wages to the non-testifying affiants, the court correctly determined that such back wages could be awarded based on representative testimony and the calculations performed by the WHD investigator. *See* R.89, Decision, Page ID# 2491-93. Where, as here, an employer has failed to maintain proper records of

G. The District Court Correctly Determined That the Cathedral Buffet Volunteers Need Not Have Expected Compensation In Order to Qualify as Employees Under the FLSA.

The district court properly rejected Defendants' assertion, *see* Opening Br. at 19-22, 36-43, that a "threshold economic remuneration" requirement must be satisfied in order for a religiously motivated volunteer to qualify as an employee under the FLSA. Defendants' argument that the Cathedral Buffet volunteers are not entitled to the minimum wage *because they did not expect to be paid the minimum wage* is wholly meritless.

1. In *Alamo*, the Supreme Court held that the "associates" working at the Foundation's commercial businesses qualified as employees rather than volunteers under the FLSA. 471 U.S. at 299-303. The Supreme Court noted that many of the associates claimed that they did not expect to be paid for their work and they viewed their services as part of their ministry to the community. *Id.* at 300-01. While acknowledging the associates' "sincere" protestations against being considered employees, the Court explained that such objections "cannot be

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hours worked as required by the FLSA, employees need only produce "sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference." *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946). Courts have consistently held that employees can meet their burden of proof under *Mt. Clemens* through the use of testimony from representative employees; it is not necessary for all affected employees to testify at trial in order to prove violations or to recover back wages. *See, e.g., Cole Enters.*, 62 F.3d at 781.

dispositive" of coverage because the "test of employment under the Act is one of 'economic reality.'" *Id.* at 301.[18]

The Supreme Court determined that, although the associates had not been paid cash wages for their work at the Foundation's commercial businesses, they had in fact anticipated receiving compensation in the form of food, lodging, and other benefits. *Alamo*, 471 U.S. at 293, 301. Despite the fact that the associates "vehemently" protested coverage under the Act, the Supreme Court expressly concluded that the "the purposes of the Act require that it be applied *even to those who would decline its protections*." *Id.* at 302 (emphasis added). The Court further explained that "[i]f an exception to the Act were carved out for employees willing to testify that they performed work 'voluntarily,' employers might be able

[18] In *Alamo*, 471 U.S. at 301, the Supreme Court explained that the facts of the case were "a far cry" from those present in *Portland Terminal*, 330 U.S. 148. In *Portland Terminal*, the Court considered whether individuals completing an approximately one-week training program to become certified as railroad brakemen were employees under the Act. *Id*. The Court observed that such individuals would be covered by the FLSA if they were actually employed to work. *Id*. at 150-51. On the other hand, the Court noted, the Act's coverage is not so broad that it would extend to individuals who "without any express or implied compensation agreement, might work *for their own advantage* on the premises of another." *Id.* at 152 (emphasis added). The Court further observed that the Act was not intended to make an individual "*whose work serves only his own interest* an employee of another person who gives him aid and instruction." *Id.* (emphasis added). Accordingly, the Court considered several factors, including that "the railroads receive[d] no 'immediate advantage' from any work done by the trainees" and that the training resembled that which would be offered in a vocational school, in holding that the trainees were not employees. *Id.* at 153.

to use superior bargaining power to coerce employees to make such assertions, or to waive their protections under the Act." *Id.* The Court observed that allowing the associates to opt out of the FLSA's protections "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." *Id.*

The Supreme Court then sought to minimize the Foundation's concerns that such an interpretation would threaten or chill "ordinary" volunteerism. *Alamo*, 471 U.S. at 302-03. As the Court explained, "The 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 (emphasis added).

2. Relying on isolated statements in *Alamo*, Defendants assert that, in the context of religiously motivated volunteerism, an individual simply cannot qualify as an employee under the FLSA if that individual does not expect to be paid for his or her work. *See* Opening Br. at 19-22, 36-43. The district court correctly rejected this argument. *See* R.89, Decision, Page ID# 2481, 2485.

Defendants have not cited to a single FLSA case in which the lack of an expectation of compensation was viewed as singularly determinative of a lack of

an employment relationship.[19] As the district court here recognized, elevating a worker's lack of an expectation of compensation to be the critical question in evaluating whether that person qualifies as an employee would essentially allow private parties to opt out of the Act (i.e., an individual could decline to receive payment for her work and thus would not be deemed an employee) – a result clearly contrary to congressional intent in enacting the FLSA. *See* R.89, Decision, Page ID# 2485.

Even assuming arguendo that the Supreme Court in *Alamo* had enunciated a threshold economic remuneration standard for evaluating whether a religiously motivated individual qualifies as a volunteer, such a standard would be clearly inapplicable to a case such as this involving coercion. Because of Defendants' coercive methods of soliciting their labor, the volunteers did not work at Cathedral Buffet in anticipation of compensation; rather, they worked in an attempt to avoid the irreparable spiritual harm threatened by Defendant Angley. In such

[19] In support of their argument that an economic remuneration threshold standard should apply under the FLSA, Defendants cite numerous Title VII cases, including this Court's decision in *Marie v. Am. Red Cross*, 771 F.3d 344 (6th Cir. 2014). *See* Opening Br. at 20-22, 27, 32. As explained above, Title VII case law is generally not relevant in determining whether an individual qualifies as an employee under the FLSA. *See, e.g.*, *Darden*, 503 U.S. at 326; *Portland Terminal*, 330 U.S. at 150-51; *Keller*, 781 F.3d at 804. In any event, as Defendants concede, this Court in *Marie* explicitly rejected the argument that remuneration is an independent antecedent inquiry in determining whether a volunteer is an employee under Title VII. *See* 771 F.3d at 353; *Bryson v. Middlefield Volunteer Fire Dep't, Inc.*, 656 F.3d 348, 353-54 (6th Cir. 2011).

circumstances, requiring an individual to expect to receive compensation in order to qualify as an employee would be wholly perverse and fundamentally unjust; the coercion necessarily nullifies any expectation one might have in the normal course. Indeed, such a standard would effectively allow Defendants, and many other employers, to exempt themselves from the FLSA's requirements by simply *forcing* people to work without pay.

Similarly, Defendants' insistence that an individual must be economically dependent upon a putative employer in order to qualify as an employee rather than a volunteer under the FLSA, *see* Opening Br. at 32, must be rejected in this case.[20] The volunteers here were not, and could not have been, economically dependent on Defendants *because Defendants did not pay them*; in other words, by failing to pay the individuals working at the restaurant, Defendants effectively precluded them from entering into a state of economic dependence in the first place. Allowing that fact to dictate employee status in this case would reward Defendants for their

[20] An individual's economic dependence on a putative employer is a particularly relevant factor in distinguishing between an employee and an independent contractor. *See, e.g.*, *Keller*, 781 F.3d at 807. While the *Alamo* Court noted in dicta that the employees were dependent upon the Foundation, *see* 471 U.S. at 301, it did not hold that such dependence was dispositive in evaluating the FLSA coverage of volunteers. Nor would such a holding make sense; the FLSA was intended to broadly reach all employees, including those who are not necessarily financially dependent on their employers either because they work on a part-time or short-term basis or because they independently possess other financial assets.

coercive efforts to obtain unpaid labor and would incentivize other employers to similarly exploit their workforces.

II. THE DISTRICT COURT PROPERLY CONCLUDED THAT APPLICATION OF THE FLSA IN THIS CASE DOES NOT VIOLATE THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT

In their opening brief, Defendants assert that the district court's application of the FLSA to the volunteers in this case violates the Free Exercise Clause of the First Amendment by (1) infringing upon the Church members' ability to share their "anointings" with the community by working at the Cathedral Buffet restaurant, and (2) burdening Defendant Angley's ability to encourage volunteerism and financial donations for the Church during his sermons. Opening Br. at 43-49. As the district court correctly concluded, and for the reasons explained below, Defendants have failed to articulate a plausible claim that application of the FLSA in this case violates the First Amendment.[21]

1. The First Amendment provides that "Congress shall make no law . . . prohibiting the free exercise" of religion. U.S. Const. amend. I. The Supreme Court, however, has "held that the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general

[21] Defendants devote a significant portion of the First Amendment section of their brief to relitigating the reasons why they do not believe Cathedral Buffet should be a covered entity under the FLSA. *See, e.g.*, Opening Br. at 43-45, 47-48. The Secretary has already explained why such arguments are foreclosed by Supreme Court precedent. *See supra* at pp. 24-30.

applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." *Emp't Div., Dep't of Human Res. v. Smith*, 494 U.S. 872, 879 (1990) (internal quotation marks omitted). In so holding, the Court has made clear that the Free Exercise Clause does not require exemptions from neutral laws of general applicability "even if the law has the incidental effect of burdening a particular religious practice." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). Because the FLSA is a neutral law of general applicability, *see, e.g., Reich v. Great Lakes Indian Fish & Wildlife Comm'n*, 4 F.3d 490, 499 (7th Cir. 1993), enforcement of the Act in this case does not violate the Free Exercise Clause even if it incidentally burdens the free exercise of the religious beliefs of the volunteers or Defendants.

In any event, Defendants have failed to demonstrate that application of the FLSA in this case burdens their religious beliefs or those of the volunteers in any way. As the Supreme Court has explained, "It 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." *Alamo*, 471 U.S. at 303 (emphasis added). In analyzing a free-exercise claim, the "relevant inquiry is not the impact of the statute upon the institution, but the impact of the statute upon the institution's

exercise of its sincerely held religious beliefs." *EEOC v. Fremont Christian Sch.*, 781 F.2d 1362, 1369 (9th Cir. 1986) (internal quotation marks omitted).

2. Application of the FLSA to the Church members volunteering at Cathedral Buffet does not burden the free exercise of their religious beliefs. Defendants assert that working at the restaurant is critically important to the Church members because it allows them to share their blessings with the community and the concept of sharing one's "anointings" is a "textually-supported" religious belief that is sincerely held by the volunteers. Opening Br. at 43-45. To be clear, neither the district court nor the Secretary has questioned the sincerity of the volunteers' religious beliefs. Requiring Defendants to pay the minimum wage to the volunteers, however, does not affect the volunteers' ability to share their anointings. The volunteers may continue to serve their community through acts of "[o]rdinary volunteerism." *Alamo*, 471 U.S. at 303. As the district court correctly noted, the volunteers may continue to serve the Church by engaging in a wide range of unpaid volunteer efforts, for example, by "driving the elderly to church, helping to remodel a church home for the needy, or engaging in other charitable acts." R.89, Decision, Page ID# 2485.[22] Indeed, Defendants' opening brief identifies many instances of volunteer activity at the Church (e.g., mission

[22] *See also Alamo*, 471 U.S. at 303 n.25; WHD, FOH § 10b03(c) (providing examples of many volunteer activities that may be performed without pay for religious organizations); Op. Ltr., 2002 WL 32406599 (Oct. 7, 2002).

trips, participating in the choir, serving as an usher, maintaining Church grounds), *see* Opening Br. at 6, and the application of the FLSA to this case would not affect such volunteerism in any way. Moreover, application of the FLSA in this case *does not even prohibit the volunteers from working at Cathedral Buffet*; it only prohibits Defendants from *failing to pay the minimum wage* to such individuals for their hours worked at the restaurant.

Notably, Defendants have not articulated that the Church members volunteering at the restaurant have a specific religious objection to receiving wages. In any event, as the Supreme Court expressly noted in *Alamo*, even "if the associates' beliefs precluded them from accepting the statutory amount, there is nothing in the Act to prevent the associates from returning the amounts to the Foundation, *provided that they do so voluntarily*." 471 U.S. at 304 (emphasis added). Accordingly, the Supreme Court concluded that "[w]e therefore fail to perceive how application of the Act would interfere with the associates' right to freely exercise their religious beliefs." *Id.* at 304-05. Such a conclusion applies with equal force in this case. If the volunteers, *acting freely and without any coercion or undue pressure from Defendants*, choose to donate their earnings from the restaurant to Grace Cathedral, nothing in the FLSA or the district court's decision prevents them from doing so.

To the extent that Defendants further allege that, in such a circumstance, the religious beliefs of the volunteers and Defendants would still be infringed upon because the volunteers would have to pay income taxes on such earnings (and presumably Defendants would incur payroll expenses), *see* Opening Br. at 48-49, the Secretary notes that alleged economic injury should not be conflated with an infringement of religious freedom. *See McGowan v. Maryland*, 366 U.S. 420, 429-30 (1961) (denying standing to plead free exercise claim when alleged damages were economic and not religious); *Dole v. Shenandoah Baptist Church*, 899 F.2d 1389, 1397-98 (4th Cir. 1990) (explaining that the FLSA's wage requirements may have created an economic burden upon the church but did not violate the First Amendment because such requirements "do not cut to the heart of [the church's] beliefs" and noting that "increased payroll expenses to conform to FLSA requirements is not the sort of burden that is determinative in a free exercise claim").

3. Defendants' argument that application of the FLSA in this case violates the First Amendment by preventing Defendant Angley from encouraging volunteerism and soliciting funds for Grace Cathedral is similarly meritless. Contrary to Defendants' assertions, the court's decision does not "forbid[] solicitation of volunteer services through means of religious appeal." Opening Br. at 47. To the contrary, as explained above, Defendant Angley may continue to

encourage his congregants to share their anointings with the Church and community by engaging in acts of "ordinary volunteerism." *See, e.g.*, WHD, FOH § 10b03(c).

Angley may also continue to fundraise for the Church. In light of the significant record evidence that Defendants have routinely intimidated and pressured individuals into working without pay at Cathedral Buffet, the district court's injunction is appropriately intended to prohibit Defendants from engaging in a kickback scheme whereby they "*solicit or coerce*" such individuals to return the "*wages*" to which they are entitled under the FLSA to Defendants. R.92, Judgment and Order Regarding Injunction, Page ID# 2545 (emphases added).[23] The injunction is narrowly tailored to accomplish this permissible and important purpose; it does not, however, affect Defendant Angley's ability to encourage charitable contributions from his Church members.

In sum, as the district court aptly noted, the application of the FLSA does not infringe upon the religious beliefs of the volunteers or Defendants; rather, it merely "prevent[s] the Buffet from exploiting free labor from individuals in furtherance of its commercial, for-profit activities." R.89, Decision, Page ID# 2485.

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[23] The injunction is particularly necessary given that, during the time period prior to 2012 in which Defendants technically issued paychecks to the volunteers, Defendants coerced such individuals to return those checks. *See supra* at pp. 12-13.

CONCLUSION

The Secretary thus respectfully requests that this Court affirm the district court's decision.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B), and Local Rule 32(b), because it contains 12,988 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in proportionally spaced typeface, using Microsoft Word 2010 utilizing Times New Roman, in 14-point font in text and 14-point font in footnotes.

/s/ Mary E. McDonald
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CERTIFICATE OF SERVICE

I certify that the Response Brief for the Secretary of Labor was served electronically through this Court's CM/ECF filing system to all counsel of record on this 22nd day of August, 2017. I certify that all participants in the case are registered CM/ECF users and that service of the foregoing will be accomplished to all participants by the appellate CM/ECF system.

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ADDENDUM

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS
PURSUANT TO LOCAL RULES 28(b)(1)(A)(i) and 30(g)(1)

R.1, Complaint, Page ID# 1-5 (August 10, 2015)

R.36, Joint Undisputed Fact Stipulations, Page ID# 1143-49 (September 27, 2016)

R.75, Trial Transcript, Volume 1 (October 31, 2016 Proceedings),
Page ID# 1541-1796 (November 9, 2016)

R.76, Trial Transcript, Volume 2 (November 1, 2016 Proceedings),
Page ID# 1797-1980 (November 9, 2016)

R. 78, Trial Transcript, Volume 3 (Nov. 10, 2016 Proceedings),
Page ID# 1982-2102 (November 15, 2016)

R.82, Amended Complaint, Page ID# 2190-95 (November 22, 2016)

R.85, Trial Transcript, Volume 4 (Nov. 21, 2016 Proceedings),
Page ID# 2242-2378 (December 9, 2016)

R.87, Defendants' Post-Trial Brief, Page ID# 2380-2413 (January 9, 2017)

R.88, Secretary's Post-Trial Brief, Page ID# 2414-53 (January 9, 2017)

R.89, Findings of Fact and Conclusions of Law,
Page ID# 2461-96 (March 29, 2017)

R.90, Judgment Entry, Page ID# 2497-98 (March 29, 2017)

R.92, Judgment and Order Regarding Injunction,
Page ID# 2543-86 (April 12, 2017)

R.93, Notice of Appeal, Page ID# 2587-88 (April 25, 2017)

DVD Digital Copy Doc. #10, Secretary's Trial Exhibit 10 (Final Amended WH-56
Form, DOL Summary of Unpaid Wages), Plaintiff's 10-001 to 10-040

DVD Digital Copy Doc. #12, Secretary's Trial Exhibit 12 (October 19, 2014
Akron Beacon Journal Article), Plaintiff's 12-001 to 12-003