No. 12-417

In the Supreme Court of the United States

CLIFTON SANDIFER, ET AL., PETITIONERS

v.

UNITED STATES STEEL CORPORATION

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT

M. PATRICIA SMITH
Solicitor of Labor
JENNIFER S. BRAND
Associate Solicitor
PAUL L. FRIEDEN
Counsel for Appellate Litigation
MARY E. MCDONALD
MELISSA A. MURPHY
Attorneys
Department of Labor
Washington, D.C. 20210

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
EDWIN S. KNEEDLER
Deputy Solicitor General
JEFFREY B. WALL
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether petitioners, who don and doff flame-retardant garments and other items at the beginning and end of each workday in a steel manufacturing plant, are "changing clothes" for purposes of 29 U.S.C. 203(*o*).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: Page

Cases: Page

Statutes and regulations:

Statutes and regulations—Continued: Page

Miscellaneous:

Miscellaneous—Continued: Page

In the Supreme Court of the United States

No. 12-417

CLIFTON SANDIFER, ET AL., PETITIONERS

v.

UNITED STATES STEEL CORPORATION

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT

INTEREST OF THE UNITED STATES

This case presents the question whether petitioners, who don and doff flame-retardant garments and other items at the beginning and end of the workday in a steel manufacturing plant, are "changing clothes" within the meaning of the Fair Labor Standards Act of 1938 (FLSA or Act), 29 U.S.C. 203(*o*). The United States has a significant interest in the resolution of that question. The Secretary of Labor is responsible for administering and enforcing the FLSA's minimum wage and overtime pay provisions. See 29 U.S.C. 204(a) and (b), 216(c), 217. The operation of those provisions depends on calculating employees' working time. The treatment of time spent donning and doffing work-related garments and other items is therefore important to the proper enforcement

of the FLSA's minimum wage and overtime pay requirements.

STATEMENT

1. In 1938, Congress enacted the FLSA to eliminate "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers." 29 U.S.C. 202(a). To address substandard working conditions, Congress required employers covered by the Act to pay their employees a minimum wage for all hours worked. 29 U.S.C. 206 (2006 & Supp. V 2011). The FLSA also requires covered employers to pay their employees at a rate of one and one-half times their regular rate of pay for time worked in excess of 40 hours in a workweek. 29 U.S.C. 207 (2006 & Supp. V 2011). Those minimum wage and overtime pay requirements thus require employers to determine the hours worked by their employees.

The FLSA provides that, in making that determination,

> there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

29 U.S.C. 203(*o*). The question in this case is whether steelworkers who don and doff specialized flame-retardant garments and other items at the beginning and end of the workday are "changing clothes" within the meaning of Section 203(*o*). If they are, then the time spent donning and doffing may be "excluded from meas-

ured working time * * * by the express terms of or by custom or practice under a bona fide collective-bargaining agreement." *Ibid.*

2. Petitioners are former and current nonmanagerial employees at a steel manufacturing plant in Gary, Indiana, operated by respondent United States Steel Corporation. Because of the dangerous environment in which they work, employees like petitioners wear specialized items to protect themselves from serious injury. Although the items worn by any particular employee depend on his or her job, employees commonly wear jackets, pants, and hoods (called snoods) manufactured from flame-retardant fabric. See Pet. App. 4a, 37a. Employees also commonly wear gloves, wristlets and leggings made of Kevlar fabric, metatarsal boots (usually containing steel to protect the toes and instep), safety glasses, ear plugs, and hard hats. See Pet. Br. 7-8. In addition, certain employees who work in particularly hazardous areas of the plant may wear other items like respirators or welding helmets. See *id.* at 6 n.5, 7.

All of those items are provided by respondent and may not be removed from the plant. See Pet. App. 36a-38a. As a result, employees arriving for work typically proceed to locker rooms where they don all or most of their protective attire (at least jackets, pants, hoods, wristlets, leggings, and boots). See *id.* at 37a; Pet. Br. 8-9. Employees then walk or ride to their assigned stations, and they may don remaining items (like gloves, safety glasses, ear plugs, and hard hats) while en route or before beginning their paid shifts. See Pet. App. 37a; Pet. Br. 9 & n.8. Less common items like respirators are generally stored and donned at employees' work sites. See Pet. App. 37a-38a. Employees' paid shifts begin and end when they arrive at and depart from their

assigned stations. See *id.* at 38a. At the end of their shifts, employees return to the locker rooms and take off their protective attire. Some employees shower before leaving the plant. See *id.* at 37a & n.2.

3. Since 1937, nonmanagerial employees like petitioners at the Gary plant have been represented by the United Steelworkers of America (USW).[1] Throughout that period, respondent and USW have negotiated national collective bargaining agreements that define the terms and conditions of employment. Beginning in 1947, and continuing through the five-year collective bargaining agreement in 2003, each of those agreements provided that respondent was not obligated "to compensate for any travel or walking time or time spent in preparatory and closing activities on the employer's premises * * * for which compensation is not paid under present practices." Resp. C.A. Br. A57; Pet. Br. 11. From 1947 to the present, respondent has not compensated employees for time spent doffing and donning protective items. See Pet. App. 52a, 59a.

In 2007, petitioners brought claims individually and as part of a collective action under 29 U.S.C. 216(b), alleging as relevant here that they were entitled to compensation for past time spent donning and doffing protective items. See Pet. App. 34a-35a, 37a-38a. Respondent moved for summary judgment on the ground that such claims were barred by 29 U.S.C. 203(*o*). Respondent argued that when employees donned and doffed protective attire and related items at the beginning and end of each workday, they were "changing clothes" for pur-

---

[1] Nonmanagerial employees at the Gary plant are members of one of two local unions (Local 1014 or 1066), depending on whether they are involved in the plant's steel production or steel finishing operations. See Pet. App. 35a-36a.

poses of Section 203(*o*). See Pet. App. 43a-45a. According to respondent, that donning and doffing time was not compensable under either the "express terms" of or the "custom or practice" under the governing collective bargaining agreement. 29 U.S.C. 203(*o*); see Pet. App. 52a-54a.

As part of the most recent five-year collective bargaining agreement in 2008, respondent and USW stated that

> starting in 1947, every national collective bargaining agreement [has provided that respondent] is not obligated to pay Employees for preparatory or closing activities * * * . Such activities include such things as donning and doffing of protective clothing (including such items as flame-retardant jacket and pants, metatarsal boots, hard hat, safety glasses, ear plugs, and a snood or hood), and washing up.

Resp. C.A. Br. A59. The parties modified their previous agreement in one respect: certain employees in the coke plant were to be compensated for 20 minutes of washing time. See *ibid.* The parties stated, however, that their "long-standing agreement" making "portal-to-portal activities non-compensable shall otherwise remain in effect." *Ibid.*

4. The district court granted respondent's motion for summary judgment in relevant part. See Pet. App. 34a-81a. The court reasoned that the term "clothes" in Section 203(*o*) "should be given its ordinary, contemporary, common meaning, that is, as 'covering for the human body or garments in general.'" *Id.* at 48a (quoting *Webster's Third New International Dictionary* 428 (1986)). After reviewing the items donned and doffed by petitioners, the court concluded that "the cloth jacket and pants, fabric snoods, hoods, leggings, and wristlets, and

boots here at issue easily fall within the ordinary definition of 'clothes.'" *Id.* at 49a. The court also rejected petitioners' argument that they were "changing" only if they substituted their work clothes for their street clothes. See *id.* at 50a. The court explained that placing work clothes on top of street clothes also constitutes "changing" because it modifies or alters what employees are wearing. *Id.* at 50a-51a. Finally, the court agreed with respondent that, under both the terms of the collective bargaining agreement and the parties' custom or practice, time spent changing clothes was not compensable. See *id.* at 52a-60a.[2]

5. The court of appeals affirmed in relevant part. See Pet. App. 1a-20a.[3] Reviewing the entire outfit worn

---

[2] The district court further held that, although the time spent donning and doffing was not itself compensable, petitioners might be entitled to compensation for travel time between locker rooms and their work sites because the act of changing clothes could be a "principal activity" that began and ended the workday under 29 U.S.C. 254(a). See Pet. App. 64a, 68a. The district court certified its order for interlocutory review under 28 U.S.C. 1292(b). See Pet. App. 21a-33a. The court of appeals permitted the appeal, see *id.* at 20a, and the government filed an amicus brief arguing that the act of changing clothes could be a principal activity that starts the continuous workday. The court of appeals disagreed and reversed the district court's travel-time holding. See *ibid.* Although petitioners sought review of the travel-time question, they correctly note that this Court granted review only on the donning-and-doffing-time question. See Pet. Br. 3 n.1. This case therefore does not present the question whether an activity that is not compensable under Section 203(*o*) may nonetheless begin and end the workday.

[3] In granting interlocutory review under 28 U.S.C. 1292(b), the court of appeals accepted jurisdiction of the district court's summary judgment order, which had addressed the compensability of both travel time and donning and doffing time. See, *e.g.*, *Yamaha Motor Corp., U.S.A.* v. *Calhoun*, 516 U.S. 199, 205 (1996) ("[A]ppellate juris-

by a typical employee, the court observed that "[safety] glasses and ear plugs are not clothing in the ordinary sense but the hard hat might be regarded as an article of clothing." *Id.* at 6a (emphasis omitted). In the court's view, however, donning and doffing those items "is a matter of seconds and hence not compensable, because *de minimis*." *Ibid.* The court concluded that the rest of an employee's outfit—jacket, pants, snood, gloves, and boots—"certainly seems to be clothing." *Ibid.* (emphasis omitted). The court reasoned that "[i]t would be absurd to exclude all work clothes that have a protective function from [S]ection 203(*o*)," because "[p]rotection * * * is a common function of clothing, and an especially common function of work clothes worn by factory workers." *Ibid.*

SUMMARY OF ARGUMENT

A. The term "clothes" in 29 U.S.C. 203(*o*) covers the flame-retardant items worn by petitioners. That term commonly refers to garments or apparel worn to cover the human body, which includes at least the hoods, jackets, gloves, wristlets, pants, leggings, and boots worn by petitioners. The history underlying Section 203(*o*)'s enactment confirms that the term "clothes" refers to articles of dress that employees are required to wear (by law, workplace rule, or the nature of the work) in order to perform their jobs. That interpretation achieves the purpose of Section 203(*o*) by allowing negotiation over

---

diction [under Section 1292(b)] applies to the order certified to the court of appeals, and * * * the appellate court may address any issue fairly included within the certified order.") (emphasis omitted). Respondent therefore correctly has not contested either the court of appeals' or this Court's jurisdiction to decide the donning-and-doffing-time question.

changing time in industries that require job-specific clothing.

B. Petitioners' various counterarguments lack merit. Setting aside that petitioners lack a clear test for determining whether items worn by workers are "clothes," they argue that items worn to protect employees against workplace hazards cannot be "clothes." But protection is a common function of clothing, especially work clothing. Petitioners' approach thus would exclude the types of work clothing worn in many professions that should lie at the core of Section 203(*o*). Although historical materials and modern case law indicate that some items of specialized equipment are so distinct in form and function that their donning and doffing does not constitute "changing clothes" under Section 203(*o*), that distinction does not aid petitioners because the items at issue here are clothes rather than equipment. Contrary to petitioners' other arguments, Section 203(*o*) is not an exemption that must be narrowly construed, and OSHA regulations do not indicate that the items worn by petitioners fail to qualify as "clothes."

C. Petitioners err in contending that they are "changing" into their work clothes only if they first remove their street clothes. The court of appeals did not consider that argument, and petitioners did not present the argument to this Court at the certiorari stage as a basis for reversing the judgment below. In any event, the ordinary meaning of the verb "change" in this context encompasses donning work clothes over street clothes, because the employee has made his attire different by modifying it. Petitioners' contrary interpretation would mean that employees drift in and out of FLSA coverage depending on the season and even the day, or whether employees change clothes in a single

place or in multiple places. The courts of appeals to consider the question have uniformly concluded that there is no logic to such a haphazard approach.

ARGUMENT

A. Petitioners' Donning And Doffing Of Flame-Retardant Garments Constitutes "Changing Clothes" Under Section 203(*o*)

The FLSA requires covered employers to pay their employees a minimum wage for all hours worked, 29 U.S.C. 206 (2006 & Supp. V 2011), as well as overtime pay for time worked in excess of 40 hours in a workweek, 29 U.S.C. 207 (2006 & Supp. V 2011). In determining the hours worked by an employee, Section 203(*o*) of the Act provides that

> there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

Section 203(*o*) of the FLSA thus provides that time spent "changing clothes" may be excluded from an employee's compensable working time by a collective bargaining agreement. The court of appeals correctly held that petitioners' donning and doffing of specialized flame-retardant garments at the beginning and end of their workday constitutes "changing clothes" under Section 203(*o*).

1. The ordinary meaning of the term "clothes" covers petitioners' work garments

Dictionaries commonly define "clothes" or "clothing" as "covering for the human body or garments in general." *Webster's Third New International Dictionary* 428 (1993) (*Webster's Third*); see *The American Heritage Dictionary of the English Language* 350 (4th ed. 2006) (defining "clothes" as "[a]rticles of dress; wearing apparel; garments"); *The New Oxford American Dictionary* 322 (2d ed. 2005) (defining "clothes" as "items worn to cover the body") (*New Oxford*); *The Random House Dictionary of the English Language* 390 (2d ed. 1987) (defining "clothes" as "garments for the body; articles of dress; wearing apparel") (*Random House*). The ordinary meaning of the term "clothes" was the same in 1949 when Section 203(*o*) was enacted. See, *e.g.*, *Funk & Wagnall's New Standard Dictionary of the English Language* 505 (1946) (defining "clothes" as "[t]he various articles of raiment worn by human beings; garments collectively").

Applying that definition here, each petitioner wears a flame-retardant hood, jacket, gloves, wristlets, pants, and leggings to cover his head and neck, torso, and upper and lower limbs. See Pet. App. 37a. Those items are "covering for the human body or garments in general." *Webster's Third* 428. They constitute a steelworker's "articles of dress" or "wearing apparel." *Random House* 390. As the court of appeals explained, an ordinary English speaker would say that steelworkers in the Gary plant are wearing clothes, albeit a particular type of clothes designed to protect them from the unique dangers of their work environment. See Pet. App. 7a ("Almost any English speaker would say that the model in our photo is wearing work clothes."). Many occupa-

tions require apparel suited to a particular environment, and those specialized garments are different types of clothing.

Accordingly, five of the other six courts of appeals to consider the question (the Fourth, Fifth, Sixth, Tenth, and Eleventh Circuits) have held that the ordinary meaning of the term "clothes" extends to various types of industry-specific apparel. See, *e.g.*, *Salazar* v. *Butterball, LLC*, 644 F.3d 1130, 1139 (10th Cir. 2011) (poultry processing plant); *Franklin* v. *Kellogg Co.*, 619 F.3d 604, 614-616 (6th Cir. 2010) (food processing plant); *Sepulveda* v. *Allen Family Foods, Inc.*, 591 F.3d 209, 214-216 (4th Cir. 2009) (poultry processing plant), cert. denied, 131 S. Ct. 187 (2010); *Anderson* v. *Cagle's, Inc.*, 488 F.3d 945, 955-956 (11th Cir. 2007) (poultry processing plant), cert. denied, 553 U.S. 1093 (2008); *Bejil* v. *Ethicon, Inc.*, 269 F.3d 477, 480 n.3 (5th Cir. 2001) (per curiam) (surgical product manufacturing plant). Only the Ninth Circuit has held that "materials worn by an individual to provide a barrier against exposure to workplace hazards" are not "clothes" for purposes of Section 203(*o*). *Alvarez* v. *IBP, Inc.*, 339 F.3d 894, 905 (2003), aff'd on other grounds, 546 U.S. 21 (2005). As explained below, see Part B, *infra*, the Ninth Circuit's approach did not rest on Section 203(*o*)'s text, which extends to garments worn by workers in particular industries to safeguard them from workplace hazards.[4]

---

[4] Petitioners wear a few other items—safety glasses, ear plugs, and hard hats—that, in the court of appeals' view, are not clearly "clothes" for purposes of Section 203(*o*). See Pet. App. 6a ("The glasses and ear plugs are not clothing in the ordinary sense but the hard hat might be regarded as an article of clothing.") (emphasis omitted). Those items are not at issue before this Court. The district court found that the time spent putting on and taking off those items

2. The ordinary meaning of the term "clothes" is confirmed by the history underlying Section 203(o)'s enactment

In 1946, this Court held that "the statutory workweek" for FLSA purposes includes "all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace." *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680, 690-691 (1946). The Court therefore concluded that time spent "in walking to work on the employer's premises * * * must be included in the statutory workweek and compensated accordingly, regardless of contrary custom or contract." *Id.* at 691-692. The Court reached the same conclusion with respect to time spent by employees "pursu[ing] certain preliminary activities after arriving at their places of work, such as putting on aprons and overalls, removing shirts, taping or greasing arms, putting on finger cots, preparing the equipment for productive work, turning on switches for lights and machinery, opening windows and assembling and sharpening tools." *Id.* at 692-693.

Congress concluded that this Court's decision in *Anderson* disregarded "long-established customs, practices, and contracts between employers and employees,

---

is *de minimis* and therefore not compensable for that independent reason. See *id.* at 49a ("[E]ven if the court were to assume that hard hats, safety glasses, and ear plugs aren't 'clothes,' the time expended by each employee donning and doffing those items is minimal, or de minimis, and thus not compensable under the FLSA.") (internal citation omitted). The court of appeals agreed with that determination. See *id.* at 6a. Petitioners did not challenge that determination at the certiorari stage, nor do they challenge it in their opening brief. This Court therefore does not need to resolve whether putting on or taking off safety glasses, ear plugs, and hard hats is included within "changing clothes" for purposes of Section 203(*o*).

thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation." 29 U.S.C. 251(a). To address that situation, Congress enacted the Portal-to-Portal Act of 1947, ch. 52, 61 Stat. 84 (29 U.S.C. 251 *et seq.*), which provides that time spent by employees on two types of activities is not compensable under the FLSA:

> (1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and
>
> (2) activities which are preliminary to or postliminary to said principal activity or activities,
>
> which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

29 U.S.C. 254(a). Under Section 254(a), an employee's compensable workday for FLSA purposes begins when he commences his first principal activity and ends when he finishes his last principal activity. See *IBP, Inc.* v. *Alvarez*, 546 U.S. 21, 28-29 (2005); 29 C.F.R. 790.6(a) and (b).

Section 254(a) does not address, however, whether time spent changing clothes must be "preliminary" and "postliminary" to an employee's principal activity or in some circumstances can be part of engaging in that principal activity. The Department of Labor took the latter view in a 1947 interpretive bulletin. See 12 Fed. Reg. 7655 (Nov. 18, 1947) (29 C.F.R. Pt. 790). The Department explained that changing clothes "may in certain situations be so directly related to the specific work the employee is employed to perform that it would be

regarded as an integral part of the employee's 'principal activity.'" *Id.* at 7659 n.49. This Court subsequently agreed in *Steiner* v. *Mitchell*, 350 U.S. 247 (1956), holding that "activities performed either before or after the regular work shift * * * are compensable under the portal-to-portal provisions of the [FLSA] if those activities are an integral and indispensable part of the principal activities for which covered workmen are employed." *Id.* at 256. In *Steiner* itself, this Court concluded that changing into and out of "old but clean work clothes" on the employer's premises was integral and indispensable to the battery plant workers' principal activities and thus compensable. *Id.* at 251, 254-256.

The Department's interpretive bulletin caused concern among many employers. During hearings in the late 1940s, for example, trade associations urged Congress that activities like changing clothes, even when integral to an employee's performance of his duties, should not be compensable under the FLSA if that was not the prevailing custom or practice in the relevant industry. See *Fair Labor Standards Act Amendments of 1949: Hearings on S. 653 Before Subcomm. of the S. Comm. on Labor and Public Welfare*, 81st Cong., 1st Sess. 394 (1949) (statement of the National Association of Manufacturers); *Minimum Wage Standards and Other Parts of the Fair Labor Standards Act of 1938: Hearings Before Subcomm. No. 4 of the H. Comm. on Education and Labor*, 80th Cong., 1st Sess. 2845 (1947) (statement of Joseph M. Creed, Counsel, American Bakers Association, and William A. Quinlan, General Counsel, Associated Retail Bakers of America) (*1947 FLSA Hearings*). The trade associations contended that "[m]anagement and labor" should not be "prevented from settling by collective bargaining the question of

what is properly to be included in measured working time." *Ibid.*

To accomplish that end, Representative Christian Herter introduced an amendment to the FLSA that would have allowed employers and unions to bargain over the compensability of any work activity. See 95 Cong. Rec. 11,210 (1949). Representative Herter specifically addressed how his proposed amendment would affect time spent changing clothes:

> In the bakery industry, for instance, which is 75 percent organized, there are collective-bargaining agreements with various unions in different sections of the country which define exactly what is to constitute a working day and what is not to constitute a working day. In some of those collective-bargaining agreements the time taken to change clothes and to take off clothes at the end of the day is considered a part of the working day. In other collective-bargaining agreements it is not so considered. But, in either case the matter has been carefully threshed out between the employer and the employee and apparently both are completely satisfied with respect to their bargaining agreements.

Ibid. Representative Herter's amendment was subsequently narrowed by the Conference Committee to apply only to time spent changing clothes or washing one's person, and in that form it was enacted as the current Section 203(*o*). See Fair Labor Standards Amendments of 1949, ch. 736, 63 Stat. 911.

As the history of Section 203(*o*) demonstrates, the term "clothes" was not meant to capture any particular type of work apparel depending on its function (whether sanitation, protection, or something else). That term covers the garments worn by bakers; the potterymakers

in *Anderson*, who were "putting on aprons and overalls, removing shirts, taping or greasing their arms, [and] putting on finger cots," 328 U.S. at 683; and workers in other industries who put on and take off apparel to perform their duties. The term "clothes" in Section 203(*o*) refers to articles of dress that workers are required to wear (by law, workplace rule, or the nature of the work) in order to perform their jobs. And the phrase "changing clothes" in Section 203(*o*) refers to employees' putting on and taking off those articles of dress at their workplaces in preparation to perform their jobs.

3. The purpose of Section 203(o) is to allow negotiation over changing time in industries that require job-specific clothing

Section 203(*o*) permits employers and employees with collective bargaining agreements to negotiate over the compensability of time spent changing into and out of work clothes at the beginning and end of the workday. See, *e.g.*, *Sepulveda*, 591 F.3d at 218 ("Section 203(*o*) reflects Congress's intention to give private parties greater discretion to define the outer limits of the workday."). Neither Section 203(*o*)'s text nor its purpose suggests that its application should depend on the material out of which specialized clothing is made or the function such clothing serves (whether sanitation, protection, identification, decoration, or something else). Accordingly, there is no apparent reason to differentiate between steelworking and other industries in which workers change into and out of work clothes. See Pet. App. 6a-7a. Negotiation under Section 203(*o*) should not be limited to only a subset of unionized industries in which employees wear job-specific clothing to perform their duties.

The facts of this case bear out that point. Since 1947, respondent has negotiated national collective bargaining agreements with petitioners' union, the United Steelworkers of America. Each of those agreements provided that respondent was not obligated "to compensate for any travel or walking time or time spent in preparatory and closing activities on the employer's premises * * * for which compensation is not paid under present practices." Resp. C.A. Br. A57; Pet. Br. 11. From 1947 to the present, respondent has not compensated employees for donning-and-doffing time. See Pet. App. 52a, 59a. As part of the most recent five-year collective bargaining agreement in 2008, USW agreed with respondent that the provision for "time spent in preparatory or closing activities" covers "such things as donning and doffing of protective clothing (including such items as flame-retardant jacket and pants, metatarsal boots, hard hat, safety glasses, ear plugs, and a snood or hood)." Resp. C.A. Br. A59. In light of that evidence, the district court found that "the issue of non-compensation has been addressed and agreed to between the company and the union since 1947." Pet. App. 59a.

Respondent and USW thus have long shared the understanding that steelworking should not be treated differently from other industries covered by Section 203(*o*)—*i.e.*, that when steelworkers don and doff flame-retardant garments and other items at the beginning and end of each workday, they are "changing clothes." See 95 Cong. Rec. at 11,210 ("[T]he matter has been carefully threshed out between the employer and the employee and apparently both are completely satisfied with respect to their bargaining agreements."). Because respondent and USW have shared that understanding, respondent's employees presumably have received some

other benefit in return for the lack of compensation for donning-and-doffing time. As the court of appeals explained, "[t]he steelworkers would not have given up their statutory entitlement to time and a half for overtime, when changing clothes or traveling to and from their work stations, without receiving something in return" like a higher hourly wage or other concessions. Pet. App. 8a. Petitioners do not point to any reason to remove that subject for negotiation from the collective bargaining process and thereby disrupt long-settled industry custom and practice.

B. Petitioners' Counterarguments Lack Merit

Petitioners advance various arguments why all of the items they wear at work—including their hoods, jackets, gloves, wristlets, pants, and leggings—are not "clothes" under Section 203(*o*). Those arguments do not withstand scrutiny.

1. Petitioners lack a clear test for determining whether items worn by workers are "clothes" for purposes of Section 203(o)

As an initial matter, petitioners do not clearly state their proposed test for determining whether items worn on the human body are "clothes." Indeed, they say that the term "defies precise definition" and that "[i]t would be quite impossible to devise a single formulation that depicts the diverse ways in which people use the term 'clothes.'" Br. 19. According to petitioners, that term's meaning turns on "[s]everal different factors," including the amount of space that an item occupies on the body, *ibid.*; whether the item is worn on the extremities, *ibid.*; whether the item is made of cloth or some other substance, Br. 20; and whether the item's "primary purpose[]" is "modesty" or "comfort," *ibid.* In addition, pe-

titioners contend that "[w]hether a particular speaker would describe a particular item as 'clothes'" may depend on the speaker's age or level of sophistication, the place where the speaker lives, or evolving cultural customs. Br. 20-21.

That array of factors does not provide reasonable certainty for employers and employees. It also does not supply a judicially administrable test, and petitioners do not explain how jurists could apply their approach with any consistency. In any event, petitioners' list of factors is irrelevant to the meaning of the term "clothes" in Section 203(*o*). For example, socks are worn on the extremities and thus cover a comparatively small area of the human body, but they are no less "clothes" because they cover the feet rather than the head and torso. If someone added a pair of socks to an existing outfit, it might be uncommon to say in casual conversation that the person had put on clothes, because the act would typically be described with greater precision as putting on socks. But when socks are included as part of the person's outfit, they would readily be regarded as part of his "clothes." And when a person changes his outfit, putting on or taking off socks in the course of doing so would readily be regarded as part of his "changing clothes." Nor does it matter whether the apparel is made of fabric. Coats made of leather or fur, for instance, are commonly regarded as clothes.

Petitioners also err in looking to the wearer's motive for covering his body. Petitioners correctly note (Br. 21-22) that a previous edition of *Webster's Third* defined clothes as "[c]overing for the human body; dress; vestments; vesture;—a general term for whatever covering is worn, or is made to be worn, for decency or comfort." *Webster's New International Dictionary of the English*

Language 507 (2d ed. 1957) (*Webster's Second*). The Ninth Circuit relied on that definition in *Alvarez*. See 339 F.3d at 905. But many coverings are not worn for "decency or comfort," if that phrase is interpreted narrowly—formal attire and costumes, for instance—that are normally thought of as clothing. And if comfort is defined broadly as "freedom from pain, or trouble," *Webster's Second* 536, or "an appurtenance or condition ministering to mental or physical ease," *ibid.*, then coverings worn for virtually any reason—including protection—are clothing. Either way, the phrase "decency or comfort" should not be treated as a substantive restriction on the types of coverings worn on the body that may qualify as "clothes" for purposes of Section 203(*o*). Petitioners themselves recognize as much (Br. 33 n.30), noting that many items not worn for decency or comfort are nonetheless clothes.

2. Protection is a common function of clothes, especially clothes worn in a particular type of workplace

a. Although petitioners do not present any generally applicable definition for the term "clothes" in Section 203(*o*), they argue that the term "should be interpreted to exclude items that * * * are used to protect employees against workplace hazards and were designed to provide such protection." Br. 43. According to petitioners, an item is not "clothes" if it was "specifically designed to have a protective function." Br. 60. But that is incorrect for the reason given by the court of appeals: "Protection—against sun, cold, wind, blisters, stains, insect bites, and being spotted by animals that one is hunting—is a common function of clothing." Pet. App. 6a; see *Sepulveda*, 591 F.3d at 215 ("Clothes commonly protect the people who wear them, either from weather conditions or physical hazards, and the fact they are

worn for that very purpose does not mean that they cease to be clothes."). A cloth jumpsuit remains an item of clothing when it is worn by a car mechanic as protection against oil and grease, see *Kassa* v. *Kerry, Inc.*, 487 F. Supp. 2d 1063, 1067 (D. Minn. 2007), just as a heavy parka remains an item of clothing when it is worn by a worker in a cold storage freezer as protection against cold and frostbite.[5]

As the court of appeals further observed, protection is "an especially common function of work clothes worn by factory workers." Pet. App. 6a. Indeed, that is often the very reason for requiring employees to change into and out of particular clothes: to protect them from hazards unique to a given work environment. Donning and doffing such specialized protective clothing therefore constitutes "changing clothes" under Section 203(*o*). Petitioners' contrary approach would exclude the types of work clothing worn in many industrial professions that should lie at the core of Section 203(*o*). See *ibid.* ("It would be absurd to exclude all work clothes that have a protective function from [S]ection 203(*o*), and thus limit the exclusion largely to actors' costumes and waiters' and doormen's uniforms."). Moreover, Section 203(*o*)

---

[5] Petitioners argue (Br. 48-50) that "clothing" can be protective but "clothes" cannot. There is no relevant distinction between those terms, see *Anderson*, 488 F.3d at 955 (noting that *Webster's Third* defines 'clothes' as 'clothing'"), and accordingly the courts of appeals have used the terms interchangeably, see *Sepulveda*, 591 F.3d at 215. Petitioners cite (Br. 50) the definition of the term "blue collar" in *Webster's Third*, but there work clothes are being contrasted with dress clothes. In that context, it makes sense to refer to "work clothes or protective clothing" to cover both laborers who wear nondress clothes generally (like farmers and warehouse workers) and laborers who change into a particular kind of protective clothing at work (like mechanics or miners).

covers "not only clothes-changing time but also washing-up time," *ibid.*, and washing-up time is generally necessary in industries in which work clothes serve a protective rather than an ornamental or sanitary purpose. See *id.* at 6a-7a.

Petitioners' contrary approach also would be inconsistent with the background against which Section 203(*o*) was enacted. In the floor colloquy for the Portal-to-Portal Act that this Court relied upon and reproduced in *Steiner*, 350 U.S. at 256-259, a sponsor of the Act, Senator Cooper, confirmed that the hazards of working in a chemical plant might require "special clothing" and that changing into such clothing would be a principal activity constituting part of the workday. See *id.* at 258 (quoting 93 Cong. Rec. 2298 (1949)). The Department of Labor in turn issued authoritative guidance on the Portal-to-Portal Act and relied upon that reference in the floor colloquy to explain that "changing clothes" in a chemical plant must be compensated. See 29 C.F.R. 790.8(c); 12 Fed. Reg. at 7660. The Department's regulation formed part of the backdrop against which Section 203(*o*) was enacted, see *Steiner*, 350 U.S. at 255 n.9; *1947 FLSA Hearings* 2764, and it remains in effect today, see 29 C.F.R. 790.8(c) (2013).

b. Petitioners argue that modern-day work apparel is far different from "[t]he clothes that Congress would have had in mind when it enacted" Section 203(*o*). Br. 44 (emphasis omitted). That is not correct: steelworkers in the 1940s also wore similar protective clothing, but the clothing generally was made of asbestos. See, *e.g.*, *The Battle for Safety*, Popular Mechanics, Mar. 1942, at 66, 68-69 (observing that workers in many industries, including steelworking, were equipped "with masks, respirators, goggles and face shields, head

guards, Neoprene clothing, rubber aprons, metal capped shoes and asbestos outfits"); *ibid.* ("Bethlehem Steel protects open hearth men with asbestos clothing."). Technological advances have resulted in substantial improvements in the types of available protective clothing, but the items worn by steelworkers today are not different in kind from those worn by their twentieth-century predecessors (including when respondent and USW began negotiating over changing-clothes time in 1947). And even assuming Congress did not have in mind the types of work clothes that presently exist, Section 203(*o*) is not limited to the category of clothes that existed at the time of its enactment.

c. Petitioners also argue that, at the time Section 203(*o*) was enacted, "personal safety equipment * * * was regarded as quite distinct from clothes." Br. 47. It is correct that not everything worn on, or attached to, one's body qualifies as clothing. As explained above, the term "clothes" refers to apparel, garments, or articles of dress that employees are required to wear in order to perform their work duties. The term "clothes," however, does not include equipment, *i.e.*, apparatuses, devices, implements, or tools that are distinct from attire and that are used or worn in addition to attire for a particular work-related purpose. Welding helmets, respirators, and scuba tanks, for instance, are all worn on the body but are not commonly regarded in themselves as "clothes." Those types of items are regarded instead as equipment used or worn in addition to attire for a particular reason.

A distinction between clothes and equipment is reflected in materials roughly contemporaneous with the enactment of Section 203(*o*). For example, in *In re Big Four Meat Packing Cos.*, 21 War Labor Rep. 652 (1945),

the War Labor Board ordered the major meatpacking companies to compensate workers for the time spent changing clothes and apparel, noting that federal meat inspection regulations required "aprons, frocks and other outer clothing" to be clean and washable. *Id.* at 655. It also ordered the companies to supply the employees with "(a) all special purpose outer working garments *and equipment* peculiar to the industry which, because of the nature of the work or the requirements of the meat inspection regulations, it is necessary for the employees *to wear* while performing their work; and (b) all safety and protective devices and all tools and equipment necessary for the work." *Ibid.* (emphasis added).

The War Labor Board described "work clothing" as including "smocks, overalls, frocks, uniforms, boots, rubbers, leather aprons, raincoats, and gloves." 21 War Labor Rep. at 673. The Board distinguished those items from "knives, steels, whetstones, *metal guards*, and *other protective and safety equipment*." *Id.* at 673 (emphasis added); see *id.* at 672 (noting that companies furnished "certain protective equipment such as metal guards and certain apparel such as raincoats and rubber boots"). Other decisions of the War Labor Board from that era reflect a distinction between clothes and equipment. See *In re Continental Baking Co.*, 18 War Labor Rep. 470 (1945); *In re Swift & Co., Armour & Co.*, 21 War Labor Rep. 709, 710-711, 718-719 (1945); *In re Swift & Co.*, 21 War Labor Rep. 724, 725, 730 (1945); *In re John Morrell & Co.*, 21 War Labor Rep. 730, 733 (1945).

Similarly, a 1952 study of collective bargaining agreements in the meatpacking industry discussed provisions for "clothes-changing time" and provisions for furnishing "tools, equipment, and safety devices." U.S. Dep't of Labor, Bureau of Labor Statistics, Bulletin

No. 1063, *Collective Bargaining in the Meat-Packing Industry*, H.R. Doc. No. 391, 82d Cong., 2d Sess. 21 (1952). The study quoted one agreement stating that the company would furnish "safety equipment and, in addition, * * * mesh gloves, wrist guards, knife guards, leather aprons, hook pouches, knife pouches, knife boxes, needle pouches, helmets and goggles. All of the equipment referred to [herein] is to remain the property of the Company." *Id.* at 22; see Pet. Br. at 5, 8, *Steiner*, *supra* (describing the respirators and gloves worn by its plant workers as "special equipment").[6]

Similarly, this Court in *IBP, Inc.* explained that workers in the meat industry must wear "a variety of *protective equipment* for their hands, arms, torsos, and legs" and that "this gear includes chain link metal aprons, vests, plexiglass armguards, and special gloves." 546 U.S. at 30 (emphasis added); see also *Butterball, LLC*, 644 F.3d at 1137 (observing that "specialized apparel and equipment is often worn" in the industrial context); *Franklin*, 619 F.3d at 620 (observing that plant workers were required to "wear[] the uniform and equipment"). Lower courts likewise have indicated that some types of items worn on the body are so distinctive in form and function that they are properly classified as equipment rather than clothes. See, *e.g.*, *Butterball, LLC*, 644 F.3d at 1140 (explaining that the items worn by turkey processing workers were "not so cumbersome,

---

[6] The references in contemporaneous sources to clothes (or apparel) and equipment were not necessarily precise. For instance, leather aprons and gloves were sometimes referred to as clothes and sometimes as equipment. But the point is that, in the years surrounding the enactment of Section 203(*o*), agencies, employers, and employees recognized that some items worn on the body qualified as devices, equipment, or tools rather than work clothes.

heavy, complicated, or otherwise different in kind from traditional clothing that they should not be considered 'clothes'"); *Franklin*, 619 F.3d at 614-615 ("[T]here may be some heavier protective equipment than what is at issue here that is not clothing within the meaning of [Section] 203(*o*)."); *Kassa*, 487 F. Supp. 2d at 1067 ("[T]his Court would not likely find that an 'environmental spacesuit' (or an actual spacesuit, for that matter) is 'clothes.'").

In short, although contemporaneous sources and lower court decisions have not always agreed on what might constitute equipment rather than clothing, some items that may be worn or carried by workers on their person are properly treated as equipment such that their donning and doffing does not constitute "changing clothes" under Section 203(*o*). That distinction does not aid petitioners, however, because this case does not involve devices, equipment, or implements that are worn in addition to attire for a particular reason.[7] Rather, as explained above, the items at issue here fall within the ordinary meaning of the term "clothes."[8]

---

[7] The district court found that respirators, welding helmets, and aluminized and chemical suits are donned and doffed at employees' workstations and thus that employees are already compensated for such time. See Pet. App. 37a-38a.

[8] The distinction between protective equipment and clothing appears in 2010 guidance provided by the Department of Labor, the most recent in a line of guidance documents principally concerning items worn in the meatpacking industry. See U.S. Dep't of Labor, Administrator's Interpretation No. 2010-2, at 1 (June 16, 2010) (stating that "'clothes' refer[s] to apparel, not to protective safety equipment which is generally worn over such apparel and may be cumbersome in nature") (internal quotation marks omitted). As the Department noted in that guidance, it has not taken a consistent position on the meaning of the term "clothes" in Section 203(*o*). Prior to 1997,

Petitioners argue (Br. 31-32 & n.29) that by defining the term "clothes" to include what they wear at work, the lower courts swept within Section 203(*o*) all things worn on, or in any way attached to, the body. As an initial matter, that has not proven to be a concern in practice. The vast majority of items listed by petitioners (Br. 31 n.29) are not items that must be worn by workers in any particular industry. As a result, the question of whether such items constitute "clothes" for purposes of Section 203(*o*) has not arisen with any frequency in litigation. Petitioners do not point to a single case dealing with anything "from back braces, barrettes and bandoliers to wigs and wristwatches." Br. 31. In any event, as explained above, petitioners err in assuming that anything worn on or attached to the body must qualify as "clothes" under Section 203(*o*). Items like "brass knuckles," "nicotine patches," and "pocket protectors" are

---

the Department had not issued a written interpretation or implemented an administrative practice or enforcement policy regarding the meaning of the phrase "changing clothes" in Section 203(*o*). See U.S. Dep't of Labor, Wage and Hour Division, Opinion Letter, 2001 WL 58864 (Jan. 15, 2001); see also U.S. Dep't of Labor, Wage and Hour Division, Opinion Letter (June 6, 2002). In 1997, 1998, and 2001, the Department issued opinion letters taking the position that items described as protective equipment were not "clothes." In 2002 and 2007, it took the contrary position in two opinion letters, and in 2002 the Department filed a brief in the Ninth Circuit in *Alvarez* stating that items worn by meatpackers are "clothes"—a position the Ninth Circuit rejected. See 339 F.3d at 905 n.9. (The Department did not address the changing-clothes issue in its amicus brief in the Seventh Circuit in this case, instead addressing only whether walking time was compensable.) The Department's 2010 guidance rescinded portions of the 2002 and 2007 opinion letters and returned to the view set forth in its earlier opinion letters. See Pet. App. 18a. The government does not urge deference to the 2010 Administrator's Interpretation in the context of this case.

commonly thought of not as clothing but as devices, equipment, or tools that are worn in addition to one's attire for a particular reason. Br. 31 n.29.

3. Section 203(o) is not an exemption from the FLSA that must be narrowly construed

Petitioners argue (Br. 51-56) that Section 203(*o*) is an exemption that must be narrowly construed against respondent as an employer. The Ninth Circuit assumed as much without analysis in *Alvarez*, see 339 F.3d at 905, but the courts of appeals to consider the question subsequently have recognized that Section 203(*o*) is not an exemption. See *Butterball, LLC*, 644 F.3d at 1138; *Franklin*, 619 F.3d at 612; *Allen* v. *McWane, Inc.*, 593 F.3d 449, 458 (5th Cir.), cert. denied, 131 S. Ct. 73 (2010); *Anderson*, 488 F.3d at 957; cf. *Adams* v. *United States*, 471 F.3d 1321, 1325-1326 (Fed. Cir. 2006), cert. denied, 552 U.S. 1096 (2008). The provision at issue here appears in Section 203, which is entitled "Definitions," and it does not exempt any classes of employees—or even any classes of activities—from the FLSA altogether. Cf. *Christopher* v. *SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2172 n.21 (2012) (noting that rule requiring narrow construction of exemptions is inapplicable to FLSA's definition of "sale" in Section 203(k)). Rather, Section 203(*o*) "gives employers and employees the *option* of removing [clothes-changing and washing-up] activities from FLSA coverage through collective bargaining." *Butterball, LLC*, 644 F.3d at 1138.

Petitioners argue (Br. 52-54) that even if Section 203(*o*) is an exclusion, it should be narrowly construed as if it were an exemption. Petitioners contend that this Court should not recognize "a distinction between exemptions and exclusions." Br. 53. There is no need to resolve that question, however, because Section 203(*o*)

does not function like a typical exclusion: it does not place changing-clothes and washing-up time outside the Act as a categorical matter. It merely provides that, where there is a collective bargaining agreement, the employer and the union may negotiate over the compensability of such time through the collective bargaining process. Petitioners do not cite any authority for the proposition that when the FLSA leaves the compensability of certain activities to negotiation between employers and unions on behalf of covered employees, the scope of those affected activities must be construed narrowly against negotiation.

4. OSHA regulations confirm that petitioners change into and out of a type of work clothes

Petitioners rely (Br. 57-60) on regulations under the Occupational Safety and Health Act of 1970 (OSHA), 29 U.S.C. 651 *et seq.*, that require employers to supply workers with personal protective equipment but not ordinary or everyday clothing. The Ninth Circuit relied on one of those regulations, 29 C.F.R. 1910.1030(b), in *Alvarez*. See 339 F.3d at 905. But that regulation defines "personal protective equipment" as "specialized *clothing or equipment* worn by an employee for protection against a hazard." 29 C.F.R. 1910.1030(b) (emphasis added). The regulation thus recognizes that at least some of what it calls personal protective equipment is a specialized form of, and falls within the larger category of, clothing. See *Sepulveda*, 591 F.3d at 215. As explained above, see pp. 10-11, *supra*, that is consistent with the ordinary meaning of "clothes," which includes both general types of clothing worn by large segments of the working population and specialized types of clothing worn only by workers in particular fields or industries.

Moreover, Section 1910.1030(b) contrasts personal protective equipment with "[g]eneral work clothes" like "uniforms, pants, shirts or blouses." OSHA has elsewhere explained that employers do not have to pay for furnishing "[e]veryday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots," or "[o]rdinary clothing * * * used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, [and] ordinary sunglasses." 29 C.F.R. 1910.132(h)(4)(ii) and (iii). OSHA regulations therefore treat the types of items worn by petitioners here—jackets, pants, gloves, hoods, and boots—as clothing. The question under the OSHA regulations is simply whether those clothes are meant to protect petitioners from employment-related hazards (and therefore whether respondent must supply the clothes at its expense). Nothing in the OSHA regulations indicates that the items at issue here are not "clothes" for purposes of Section 203(*o*).

C. Petitioners Are "Changing" Into Their Work Clothes Regardless Of Whether They First Remove Their Street Clothes

Petitioners argue (Br. 22-28) that the term "changing" in Section 203(*o*) refers only to the substitution of work clothes for street clothes, not the layering of work clothes on top of street clothes. Petitioners presented that argument to the court of appeals, see Pet. C.A. Br. 32-34, but that court did not address it and petitioners did not present the argument to this Court at the certiorari stage as a basis for reversing the judgment below. See, *e.g.*, *Chaidez* v. *United States*, 133 S. Ct. 1103, 1113 n.16 (2013) (declining to consider arguments in part because "[petitioner] did not include those issues in her petition for certiorari"). In any event, the courts of ap-

peals to consider the question correctly have held that an employee is "changing" when he puts on and takes off work clothes, regardless of whether he first removes his street clothes.

The ordinary meaning of "change" is "to make different"—that is, "to make different in some particular way but short of conversion into something else." *Webster's Third* 373; see *Webster's Ninth New Collegiate Dictionary* 225 (1989) (defining "change" as "to make different in some particular"). The term's ordinary meaning therefore encompasses an employee's donning work clothes over street clothes, because that employee has made his attire different or modified it in some way. See, *e.g.*, *Sepulveda*, 591 F.3d at 216 ("[O]ne can also change something by modifying it. Accordingly, the employees' act of donning and doffing their equipment fits comfortably within the meaning of 'changing.'"); *Anderson*, 488 F.3d at 956 ("Nothing in the statute's language suggests that its application turns on whether one must fully disrobe or exchange one shirt, for example, for another.").[9]

Petitioners are correct (Br. 23) that in some contexts, like diapers or tires, "changing" refers to substitution because the items are not meant to be layered. But in the context of dressing oneself, "changing" commonly refers to removing certain clothes and putting on others

---

[9] Petitioners rely (Br. 23) on a single district court decision, *Fox* v. *Tyson Foods, Inc.*, No. CV-99-BE-1612, 2002 WL 32987224 (N.D. Ala. Feb. 4, 2002). That decision was subsequently reversed as inconsistent with the Eleventh Circuit's intervening decision in *Anderson*. See *Fox* v. *Tyson Foods, Inc.*, No. 4:9-CV-1612, 2007 WL 6477624, at *1 (N.D. Ala. Aug. 31, 2007) ("The plaintiffs concede that *Anderson* reverses the court's conclusion that [Section] 203(*o*) does not apply to their pre-and post-shift clothes changing activities.").

or to placing new clothes on top of one's existing outfit. This is true, for example, when a Member of this Court puts on a robe before taking the bench. By placing new apparel over old, one's set of clothes has changed. As petitioners observe (Br. 25 & n.18), when one changes clothes for a particular event or occasion, that typically implies removal of one outfit and substitution of another, more appropriate one. But petitioners mistake the typical fact pattern for an exclusive one.

Nor would it make sense to interpret Section 203(*o*) as imposing a requirement that an employee replace his street clothes with work clothes. Employees could drift in and out of FLSA coverage depending on the season and even the day, or the dressing habits of particular employees. See *Sepulveda*, 591 F.3d at 216 ("[C]ompensation for putting on a company-issued shirt might turn on some thing as trivial as whether the employee did or did not take off the t-shirt he wore into work that day."). Indeed, on petitioners' view, FLSA coverage would depend on whether employees changed clothes in a single place or in multiple places. See, *e.g.*, *Anderson*, 328 U.S. at 682-683 (noting that employees exchanged their street clothes for some of their work clothes in locker rooms and then donned other clothing at their work sites). The courts of appeals have correctly concluded that there is "no logic" to such a haphazard approach. *Anderson*, 488 F.3d at 956.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

M. PATRICIA SMITH
Solicitor of Labor
JENNIFER S. BRAND
Associate Solicitor
PAUL L. FRIEDEN
Counsel for Appellate Litigation
MARY E. MCDONALD
MELISSA A. MURPHY
Attorneys
Department of Labor

DONALD B. VERRILLI, JR.
Solicitor General
EDWIN S. KNEEDLER
Deputy Solicitor General
JEFFREY B. WALL
Assistant to the Solicitor General

JULY 2013