

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 25-7171

**EMILIA KUENTZ and THOMAS CARPENTER,
individually and on behalf of all others similarly situated,**

Plaintiffs-Appellants,

v.

CACI INTERNATIONAL INC., et al.,

Defendants-Appellees.

On Appeal from the
United States District Court for the District of Columbia
Case No. 1:24-cv-02496-DLF
(The Honorable Friedrich, J., Presiding)

**CORRECTED COPY OF BRIEF OF *AMICUS CURIAE*
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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

- (A) **Parties and Amici.** All parties appearing before the District Court and in this Court are listed in the Appellants' Brief.
- (B) **Rulings Under Review.** References to the rulings at issue appear in the Appellants' Brief.
- (C) **Related Cases.** There are no related cases.

RULE 29(a)(4)(A) STATEMENT OF *AMICUS*

The Metropolitan Washington Employment Lawyers Association (“MWELA”) is an association. It does not have any corporate parents. It does not have any stock, and therefore no publicly held company owns 10% or more of the stock of this *Amicus Curiae*.¹

RULE 29(a)(4)(D) STATEMENT OF INTEREST OF *AMICUS*

MWELA is a local affiliate of the National Employment Lawyers Association, a national organization of attorneys, primarily employees' counsel, who specialize in employment law. MWELA has over 350 members who represent and protect the interests of employees under state and federal law. The purpose of MWELA is to bring into close association employee advocates and

¹ In accordance with Fed. R. App. P. 29(a)(4)(E), *Amicus* states that no party's counsel authored this brief in whole or in part; no party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than *Amicus* or its members—contributed money that was intended to fund preparing or submitting the brief.

attorneys to promote the efficiency of the legal system and fair and equal treatment under the law. MWELA has frequently participated as *Amicus Curiae* in cases of interest to its members, including the following wage and hour cases: *Steinke v. P5 Solutions, Inc.*, 282 A.3d 1076 (D.C. 2022); *Sivaraman v. Guizzetti & Associates*, 228 A.3d 1066 (D.C. 2020); *Peters v. Early Healthcare Giver, Inc.*, 439 Md. 646 (2014); *Marshall v. Safeway, Inc.*, 437 Md. 542 (2014); *Amaya v. DGS Constr., LLC*, 479 Md. 515 (2022); *Martinez v. Amazon.com Serv., LLC*, 491 Md. 38 (2025). MWELA has an interest in ensuring that the District of Columbia's wage laws are interpreted consistently with their remedial purpose.

Amicus Curiae files this brief with the consent of all parties.

SUMMARY OF ARGUMENT

The District Court’s conclusion that Plaintiffs-Appellants Emilia Kuentz and Thomas Carpenter (“the Workers”) cannot recover regular or overtime wages at the rates mandated by the McNamara-O’Hara Service Contract Act (“SCA”), 41 U.S.C. § 6701 *et seq.*, under either the District of Columbia Wage Payment and Collection Law (“DCWPCL”), D.C. Code § 32-1301 *et seq.*, or the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, improperly deprives District of Columbia workers of the statutory remedies afforded to them by both the D.C. Council and the U.S. Congress. The plain text of the DCWPCL permits the recovery of prevailing wages, and Congress evinced no intent to supersede it—or any other state wage laws—when it passed the SCA. Likewise, the FLSA requires the computation of overtime based on the “regular rate” at which workers are “lawfully employed,” not an unlawfully low rate that otherwise would violate the SCA or other prevailing wage statutes. The District Court’s holding leaves D.C. workers with a right to prevailing wages, but none of the private enforcement remedies that Congress or the D.C. Council intended, and this Court should not permit it to stand.

ARGUMENT

I. THE PLAIN LANGUAGE OF THE DCWPCL PERMITS THE RECOVERY OF PREVAILING WAGES.

The plain text of the DCWPCL permits the recovery of SCA-mandated prevailing wages, and the legislative history of the 2013 amendments to the DCWPCL supports this plain language reading. The DCWPCL defines “wages” as “all monetary compensation after lawful deductions, owed by an employer . . . includ[ing] . . . [o]ther remuneration promised or owed . . . [p]ursuant to District or federal law.” D.C. Code § 32-1301(3). The SCA is a federal law requiring government contractors to pay service employees a “minimum wage . . . in accordance with the prevailing rates in the locality.” 41 U.S.C. § 6703(1). Wages promised or owed to service employees under the SCA are thus “wages” under the DCWPCL.

The DCWPCL further provides: “In enforcing the provisions of this chapter, the remuneration promised by an employer to an employee shall be presumed to be at least the amount required by federal law, *including federal law requiring the payment of prevailing wages*, or by District law.” D.C. Code § 32-1305(b) (emphasis added). Along with the Davis-Bacon Act (“DBA”), 40 U.S.C. § 3141 *et seq.*, the SCA is a quintessential federal law requiring the payment of prevailing wages. 41 U.S.C. § 6703(1) (SCA); 40 U.S.C. § 3142(b) (DBA); *cf. Rimaihi v. Avitecture, Inc.*, No. CV 20-0930 (CKK), 2022 WL 16948609, at *4 (D.D.C. Nov.

15, 2022) (“a plain reading of the DBA would seem to qualify it as ‘a federal law requiring the payment of prevailing wages’” (quoting D.C. Code § 32-1305(b))). The DCWPCL therefore expressly provides for the recovery of prevailing wages under the SCA.

Both the SCA and DBA also by their terms apply to contracts entered into by the District of Columbia. 41 U.S.C. § 6702(a)(1) (SCA applies to “any contract or bid specification for a contract . . . made by . . . the District of Columbia”); 40 U.S.C. § 3142(a) (DBA applies to contracts in excess of \$2,000 “to which . . . the District of Columbia is a party”). These provisions demonstrate that the D.C. Council had a particular interest in guaranteeing D.C. workers could recover prevailing wages under the DCWPCL.

The legislative history of the DCWPCL confirms this plain language reading. The DCWPCL was passed in 1956 and the definition of wages was amended for the first time in 2013. The 2013 amendments dramatically expanded the definition of “wages” under the DCWPCL specifically as related to “prevailing wages,” revealing the D.C. Council’s intention to permit recovery of prevailing wages under the DCWPCL.

Prior to 2013, the DCWPCL defined “wages” as “monetary compensation after lawful deductions, owed by an employer for labor or services rendered, whether the amount is determined on a time, task, piece, commission, or other

basis of calculation.” D.C. Code § 32-1301(3) (2012). The 2013 amendment’s expansion of the definition of “wages” to include “remuneration promised or owed . . . [p]ursuant to District or federal law” should be read broadly to include prevailing wages required by the SCA.

Similarly, prior to 2013, the DCWPCL contained no presumption that promised wages would be “at least the amount required by federal law.” *See* D.C. Code § 32-1305 (2012); *see Rimaihi*, 2022 WL 16948609, at *4 (declining to rely on cases predating 2013 amendment because “they construed an earlier version of the [DCWPCL] that did not include any language incorporating federal law as a basis for recovery”). The Council’s addition of subsection (b) to § 32-1305, creating a presumption that promised wages under the DCWPCL would be “at least the amount required by federal law, *including federal law requiring the payment of prevailing wages*,” underscored its intention to provide a remedy for D.C. workers who are entitled to SCA-mandated wages.

Multiple courts have already interpreted the DCWPCL to permit D.C. workers to recover prevailing wages under the DCWPCL. *See, e.g., Rimaihi*, 2022 WL 16948609 (D.D.C. Nov. 15, 2022) (holding workers can recover DBA-mandated wages under DCWPCL); *Garcia v. Skanska USA Bldg., Inc.*, 324 F. Supp. 3d 76 (D.D.C. 2018) (same); *Perez v. C.R. Calderon Constr., Inc.*, 221 F.

Supp. 3d 115 (D.D.C. 2016) (same). The District Court's holding to the contrary is wrong, and this Court should not permit it to stand.

II. THE SCA DOES NOT PRECLUDE RECOVERY OF PREVAILING WAGES UNDER THE DCWPCL.

The SCA does not preclude D.C. workers from recovering prevailing wages under the DCWPCL because the SCA does not preempt the DCWPCL and, in any event, permitting D.C. workers to avail themselves of the DCWPCL in this context would not constitute an impermissible “end-run around” the SCA.

A. The SCA Does Not Preempt the DCWPCL.

A straightforward preemption analysis reveals that the SCA does not preempt the DCWPCL. In preemption cases, courts begin with the presumption that “the historic police powers of the States,” including the power to legislate employment relations, are “not to be superseded by [federal law] unless that was the clear and manifest purpose of Congress.” *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (internal quotation marks omitted).

There is no evidence that Congress intended the SCA to supersede state wage laws. To the contrary: the text of the SCA expressly contemplates harmonization with, not supplantation of, state and local laws. For example, the SCA requires covered contracts to provide that fringe benefits “not otherwise required by Federal, State, or local law [will] be provided by the contractor or subcontractor.” 41 U.S.C. § 6703(2) . This requirement would make no sense if

the SCA simply replaced all otherwise-applicable federal, state, and local laws. *Menocal v. GEO Grp., Inc.*, 113 F. Supp. 3d 1125, 1134 (D. Colo. 2015) (noting § 6703(2) “manifestly assumes the application of [state and] local laws benefitting workers” and finding SCA does not preempt claim under Colorado wage order); *see also Int’l Ass’n of Machinists & Aerospace Workers, AFL-CIO v. Dyncorp, Aerospace Operations, Sheppard ENJJPT Div.*, 796 F. Supp. 976, 984 (N.D. Tex. 1991) (holding SCA “contains no pre-emptive language; nor does it reflect a congressional intent to occupy the entire field of labor law”) (internal quotation marks omitted); *cf. Rimaihi*, 2022 WL 16948609, at *4 (conducting preemption analysis and holding DBA does not preempt DCWPCL); *Garcia*, 324 F. Supp. 3d at 82 (holding that “[i]f Congress meant to revoke [the DCWPCL private right of action] in every DBA-covered contract, longstanding precedent required it to say so clearly”).

Additionally, “[t]here is a difference between the lack of a private right of action and a congressional intent to foreclose other, extant rights of action. Even assuming . . . the [SCA] lacks a private right of action on its own, it does not follow that Congress intended to shut down all other avenues of relief.” *Garcia*, 324 F. Supp. 3d at 81. This is especially true here, where Congress not only drafted the SCA but also approved the DCWPCL pursuant to the District of Columbia Home Rule Act. D.C. Code § 1-206.02(c) (describing Congressional

review process for D.C. Council bills); *Wilson v. Kelly*, 615 A.2d 229, 232 (D.C. 1992) (describing Congress’s “explicit imprimatur” on D.C. Council bill by virtue of Congressional review process); 61 D.C. Reg. 962 (February 7, 2014) (2013 amendments to DCWPCL submitted to Congress on September 20, 2013, and effective as of December 24, 2013). If Congress believed the DCWPCL intruded upon the enforcement scheme it laid out in the SCA, it could have disapproved of it through the normal Congressional review process. But it did not do so.

Indeed, courts must interpret statutes “as a symmetrical and coherent regulatory scheme” and “fit, if possible, all parts into an harmonious whole,” including where one statute may be affected by others and “particularly where Congress has spoken subsequently and more specifically to the topic at hand.” *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (internal citations omitted) (superseded on other grounds). This Court should treat the DCWPCL not as conflicting with the SCA, but as a more specific and entirely consistent component of the legal framework that applies to D.C. workers.

In failing to perform a preemption analysis and relying instead on its (incorrect) conclusion that the Workers seek “an end-run around” the SCA, *see infra* II.B., the District Court fell into a now-familiar trap: the Second Circuit’s “end-run” theory, which “is really just an ‘end-run’ around well-established

preemption doctrine.” *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 584 (7th Cir. 2012), citing *Grochowski v. Phoenix Const.*, 318 F.3d 80 (2d Cir. 2003). In *Grochowski*, the Second Circuit held that workers could not pursue state-law claims for DBA-mandated wages because the DBA does not contain a private right of action, and that otherwise permitting workers to recover their DBA-mandated wages would constitute “an impermissible ‘end run’ around the DBA.” 318 F.3d at 86. But there is no such thing as “end-run” preemption and, in the years since it was decided, the *Grochowski* decision has “attracted strong criticism.” *Garcia*, 324 F. Supp. 3d at 83, 83 n.6 (citing *Wigod* and observing that district courts in the Second Circuit have following *Grochowski* “only begrudgingly”).

This Court should not perpetuate the Second Circuit’s distortion of the preemption doctrine by adopting that Circuit’s “end-run” theory and, in any event, permitting D.C. workers to recover SCA-mandated wages under the DCWPCL would not create an end-run around the SCA.

B. Permitting D.C. Workers to Recover Prevailing Wages Under the DCWPCL Would Not Create An Impermissible “End-Run Around” the SCA.

Contrary to the District Court’s conclusion, permitting D.C. workers to recover SCA-mandated wages under the DCWPCL in cases like this one would not constitute an impermissible “end-run around” the SCA because it would not require a court to interpret the SCA. In *C&E Servs., Inc. of Washington v. D.C.*

Water & Sewer Auth., 310 F.3d 197 (D.C. Cir. 2002), on which the District Court relied, an unsuccessful bidder sought a declaratory judgment that the D.C. Water and Sewer Authority’s (“WASA”) contracting requirement that bids offer DBA wage rates, rather than SCA wage rates, violated the SCA. *Id.* at 199. This would have required the Court to determine which SCA rates applied to the contract in the first instance. Relying on *Schilling v. Rogers*, 363 U.S. 666, 677 (1960), a Supreme Court case interpreting the Declaratory Judgments Act, 28 U.S.C. § 2201 *et seq.*, this Court concluded that a “judicial declaration telling WASA how to interpret the SCA would constitute an end-run around Congress’s clear intent that the Department of Labor interpret and enforce the SCA in the first instance.” 310 F.3d at 201.

Permitting D.C. workers to recover their SCA-mandated wages would not, however, require a court to interpret the SCA. The Workers merely allege they are entitled to SCA-mandated wages—whatever they may be. Am. Compl. ¶¶ 54-66. Unlike the plaintiff in *C&E Services*, the Workers here do not seek a finding about which job classification’s SCA wage rates apply to them, as their SCA job classifications were not disputed; they seek only a finding that they are entitled to the updated SCA-mandated rates that fit the classifications Appellees gave them. As such, a finding in their favor would not require the district court to interpret the SCA.

This Court's holding in *Danielsen v. Burnside-Ott Aviation Training Ctr., Inc.*, 941 F.2d 1220 (D.C. Cir. 1991), is not to the contrary. In *Danielson*, the plaintiffs had challenged their SCA classifications and wage rates before the U.S. Department of Labor ("DOL") prior to filing suit. Those challenges remained pending at the time their lawsuit was filed, and without a decision from DOL, this Court would have had to interpret the SCA to determine which classifications and wage rates applied. 941 F.2d at 1225-26. Other district courts thus readily recognized that *Danielson* did not apply where no interpretation of the SCA was required. *See Garcia*, 324 F. Supp. 3d at 85 (permitting workers to recover DBA-mandated wages under DCWPCL "would not present any *Danielson* problem because . . . there is no dispute over worker classifications or corresponding rates"); *Rimaihi*, 2022 WL 16948609 at *4 (in *Danielson*, "the D.C. Circuit confronted a vexing problem not present here: parallel proceedings were pending before the Department of Labor").

Here, the Workers merely seek a finding that they are entitled to SCA-mandated wages for the classifications that the Appellees gave them, not a judicial determination of their proper classifications under the SCA. Their claims therefore cannot be said to constitute an impermissible "end-run around" the SCA.

III. THE WORKERS STATED A VIABLE FLSA CLAIM BY ALLEGING THAT APPELLEES PAID THEM OVERTIME WAGES AT 1.5 TIMES AN UNLAWFULLY LOW “STRAIGHT TIME” RATE, AND THE DISTRICT COURT ERRED IN CONCLUDING OTHERWISE.

In their First Amended Complaint, the Workers alleged that Appellees failed to pay them the minimum wage rates required by the SCA. The Workers also alleged that they regularly worked more than 40 hours per week, but Appellees paid them 1.5 times an unlawfully low rate rather than 1.5 times the lawful rate Appellees should have paid them. The Workers argued below that this violated the FLSA’s overtime provisions, which require that overtime hours be compensated at 1.5 times the employee’s “regular rate.” 29 U.S.C. § 207(a)(1). The trial court disagreed, concluding that the Workers could not sue under the FLSA to recover overtime wages using the SCA rates the Workers alleged applied to them, and that the Workers’ exclusive remedy was a DOL administrative action.

The Workers are correct that the FLSA bars employers from paying less than 1.5 times the lawful regular rate for a worker’s overtime hours, and the District Court erred in concluding otherwise. The “regular rate” used to determine an employee’s overtime rate must be lawful. The overwhelming weight of authority—including longstanding DOL regulations and case law—supports this conclusion. Accordingly, this Court should reverse the District Court’s dismissal of the Workers’ FLSA claim.

A. The FLSA’s “Regular Rate” Must Be Lawful.

The SCA itself does not require payment of overtime. Rather, it expressly recognizes that employees covered by the SCA may be entitled to overtime pay under the FLSA. 41 U.S.C. § 6707(e); *see also* 29 C.F.R. § 4.180 (explaining that although the SCA “does not provide for compensation of covered employees at premium rates for overtime hours of work,” the SCA “recognizes, however, that other Federal laws may require such compensation to be paid to employees working on or in connection with contracts subject to the [SCA]”); 29 C.F.R. § 4.181(a) (“[C]ontractors and subcontractors performing contracts subject to the [SCA] may be required to compensate their employees working on or in connection with such contracts for overtime work pursuant to the overtime pay standards of the [FLSA].”).

The FLSA’s overtime provision requires that employees be paid for their hours worked over 40 per workweek “at a rate not less than one and one-half times the regular rate at which [the employee] is employed.” 29 U.S.C. § 207(a)(1) . The statute itself defines “regular rate” broadly to include “all remuneration for employment,” subject to enumerated exclusions such as gifts and holiday pay. *Id.* § 207(e)

Longstanding DOL interpretations of the statute make explicit what the FLSA’s text and purpose already imply: while the “regular rate” is often the rate

actually paid, it cannot be anchored to an unlawfully low rate when another applicable law sets a higher minimum-wage floor. For that reason, the Department's overtime interpretations provide that the "regular rate" cannot be lower than an applicable higher minimum wage and "must be construed to mean the regular rate at which [the employee] is lawfully employed." 29 C.F.R. § 778.5; *see also* ("Where a higher minimum wage than that set in the [FLSA] is applicable to an employee by virtue of such other legislation, the regular rate of the employee, as the term is used in the [FLSA], cannot be lower than such applicable minimum[.]"); DOL Wage and Hour Division Field Operations Handbook,² 32j00 ("In those cases where different wage rates are applicable under the FLSA, [Walsh-Healey Public Contracts Act ('PCA')], and McNamara-O'Hara Service Contract Act (SCA), . . . for the purpose of computing overtime payments under the FLSA and PCA, the regular rate of pay under the FLSA, or the basic hourly rate under the PCA cannot be lower than the highest minimum wage rate applicable.").

In short, under the FLSA, the "regular rate" multiplied by 1.5 to determine the required overtime rate is either (1) the rate required by law or (2) if higher than

² The Field Operations Handbook "is an operations manual that provides Wage and Hour Division (WHD) investigators and staff with interpretations of statutory provisions, procedures for conducting investigations, and general administrative guidance." *See* <https://www.dol.gov/agencies/whd/field-operations-handbook>. Chapter 32 is available at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch32.pdf.

the rate required by law, the rate actually paid. The regular rate cannot be lower than any minimum wage the law mandates an employer to pay any applicable federal, state, or local law, including the SCA. A lower rate would be an unlawful rate, not “the regular rate at which [the employee] is lawfully employed.” 29 C.F.R. § 778.5.

This interpretation makes good sense. If it were otherwise, an employer paying less than SCA-required rates would, perversely, owe less money for hours worked over 40 per workweek than an employer abiding by the SCA. That absurd result would reward lawbreaking employers, deprive employees of their FLSA-mandated overtime wages, and exacerbate the harm to workers from the employer’s violation of the SCA. It would also impede Congress’s purposes in passing the FLSA. *See* 29 U.S.C. § 202(b) (setting out the FLSA’s purpose “to correct and as rapidly as practicable to eliminate” labor conditions harmful to workers); 29 U.S.C. § 218(a) (“No provision of [the FLSA] shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under [the FLSA].”).

B. The Overwhelming Weight of Authority Supports the Conclusion that the Rate Used to Calculate the FLSA Overtime Rate Must Reflect the Lawful Required Wage—including the Wage Required by Federal Prevailing-Wage Statutes Such as the SCA and DBA—and Not an Unlawfully Low Rate Actually Paid.

As described above, the DOL has long taken the position that the FLSA requires overtime rates to be paid at 1.5 times the rate actually paid or—if a law requires payment of a higher rate—1.5 times the lawful rate. The only federal Court of Appeals to squarely address the issue in the context of the SCA is *Perez v. Owl, Inc.*, 110 F.4th 1296 (11th Cir. 2024). That court agreed.

In *Perez*, the Eleventh Circuit reviewed a district court’s grant of a motion *in limine* preventing the plaintiff workers from introducing evidence at trial attesting that the employer paid them less than the SCA minimum wage. *Id.* at 1299. The workers—employees of a company that contracted with the Department of Veterans Affairs to transport veterans to and from medical appointments—argued that the company paid them at the SCA’s lower “taxi driver” rate despite the fact that they were “shuttle bus drivers” entitled to the SCA’s higher rate for that job classification. *Id.* at 1300.

A unanimous panel of the Eleventh Circuit “agree[d] with the drivers that the ‘regular rate’ under the FLSA is the rate required by federal law, not the actual rate an employer paid its employees if that rate violates federal law.” *Id.* at 1307. The court first looked to the language of the FLSA, which “envisions that it will be

applied along with other wage and hour legislation.” *Id.* (citing 29 U.S.C. § 218(a) for the proposition that “the FLSA’s minimum wage requirement does not excuse noncompliance with ‘any’ federal law that mandates a higher wage”).

The court then looked to the Supreme Court’s decision in *Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419 (1945). *Walling* contains the oft-quoted line that the FLSA’s “regular rate refers to the hourly rate actually paid the employee for the normal, non-overtime workweek for which he is employed.” *Id.* at 424. But that language does not mean that an unlawfully low rate may be used to calculate a FLSA-compliant overtime rate. *Walling* concerned an employer’s use of an “artificial” 35-cent-per-hour rate to calculate overtime compensation for lumber stackers. *Id.* at 425. The Court concluded that this rate violated the FLSA because it was lower than “the hourly rate actually paid” to workers during non-overtime workweeks. *Id.* at 426. Thus, *Walling* stands for the unremarkable proposition that an employer cannot reduce the “regular rate” by requiring workers to exclude compensation from it; it does not stand for the proposition that an employer can escape FLSA liability for overtime wages at rates mandated by another federal law. *See Perez*, 110 F.4th at 1307 (explaining *Walling*’s interpretation of the FLSA that the regular rate may exceed that required by law if it is the rate “actually paid” but may not fall below the rate required by law).

Perez also relied on another key Supreme Court case, *Powell v. U.S. Cartridge Co.*, 339 U.S. 497 (1950). “[I]n *Powell*, the Court concluded that the Walsh-Healey Act, which set prevailing minimum wages for certain employees, was ‘mutually supplementary’ with the FLSA.” *Perez*, 110 F.4th at 1307 (citing *Powell*, 339 U.S. at 520). Like the SCA, the Walsh-Healey Act (“WHA”) required certain government contractors to pay their employees “not less than the minimum wages determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work in the locality.” *Powell*, 339 U.S. at 515. Like the SCA, the WHA provided administrative remedies but made no provision for a private right of action. Yet, as *Perez* explained, the Supreme Court in *Powell* instructed “that the FLSA should be read in conjunction with other federal laws that set minimum wage requirements.” *Perez*, 110 F.4th at 1307 (citing *Powell*, 339 U.S. at 516-20). In other words, the FLSA and other laws that set minimum wage rates are “not mutually exclusive”; rather, they are “mutually supplementary.” *Powell*, 339 U.S. at 519-20.

Perez next examined the DOL position set out above, and found the DOL to be “persuasive.” *Perez*, 110 F.4th at 1307. The court specifically cited the standard set out by the U.S. Supreme Court in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), in reaching this conclusion. The court looked to other federal appellate case law from the DBA context, finding that it harmonized

with this view. The court explained that “this reading of the statute is supported by common sense”:

It would be exceedingly odd, for example, if an employer could avoid paying overtime wages because it wrongfully paid nothing to its employees for their regular working hours. It would be just as odd if, as is the case here, a government agency determined that federal law required a business to have paid its employees a higher hourly wage, but the employees’ overtime rate would remain set at one-and-a-half times a lower and unlawful hourly wage.

Perez, 110 F.4th at 1308.

The Eleventh Circuit correctly rejected the company’s argument that “the absence of a private right of action in the SCA means that employees cannot use that wage in an FLSA overtime suit,” explaining that the two statutes can easily be applied together “without a conflict”:

The drivers may bring their FLSA overtime claim because Congress decided it was appropriate to permit that statutory remedy. Just like the minimum wage provision in the FLSA itself, the SCA is relevant to an FLSA overtime claim only insofar as it helps define the ‘regular rate’ on which the drivers’ overtime damages are based. Although Congress made different choices about how the SCA and the FLSA would be enforced, those choices do not put the statutes in conflict with each other.

Id. at 1308-9. To the extent that the determination of the correct SCA rate required a DOL determination, the SCA “creates an administrative framework” for such determinations, and “district courts can simply wait until the end of any DOL administrative proceedings under the SCA before moving forward on an FLSA overtime claim that relies on an SCA rate.” *Id.* at 1309.

In *Amaya v. Power Design*, 833 F.3d 440 (4th Cir. 2016), a unanimous Fourth Circuit panel reached the same conclusion in the context of the DBA, another federal prevailing-wage statute that courts have held does not itself provide a private right of action. *Amaya* held that the DBA and the FLSA can apply “concurrently.” *Id.* at 449. Relying heavily on the Supreme Court’s decision in *Powell*, *Amaya* recognized that the FLSA overlaps with other federal wage statutes and that employers can comply by applying the higher applicable floor. *Id.* at 444-49; *see also id.* at 445 (“Congress intended the FLSA to apply broadly notwithstanding any overlap with other labor statutes.”).

Amaya explained that when computing FLSA overtime for DBA-covered work, the “regular rate” should be supplanted by the applicable DBA prevailing-wage rate, pointing to DOL’s DBA overtime regulation that “in no event can the regular or basic rate upon which premium pay for overtime is calculated . . . be less than” the applicable DBA prevailing wage rate. *Id.* at 447 (quoting 29 C.F.R. § 5.32).³

³ Of note, DOL’s regulations applying the DBA also provide a clear mechanism for parties to inquire as to DOL’s view of the appropriate prevailing-wage rate applicable to particular workers. *See* 29 C.F.R. § 5.13 (providing that “[r]equests for such rulings and interpretations should be submitted via email to dgceinquiries@dol.gov; by mail to Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210; or through other means directed by the Administrator”).

Thus, the Eleventh Circuit in *Perez* and the Fourth Circuit in *Amaya* reached the same central conclusion: applicable prevailing-wage rates supply a lawful floor for the FLSA “regular rate” even though federal prevailing wage statutes have been interpreted not to provide their own a private right of action. Accordingly, FLSA overtime must be computed from that lawful floor—not from an unlawfully low rate.

In the District Court, Appellees relied upon the Second Circuit’s 2003 decision in *Grochowski*, 318 F.3d at 80, but it is distinguishable. In *Grochowski*—which failed even to cite the Supreme Court’s *Powell* decision—a divided panel held that “the district court properly limited the plaintiffs’ claims under the FLSA for unpaid overtime compensation to one-and-a-half times the hourly rates actually paid.” *Id.* at 87. There, though, the district court decision that the Second Circuit affirmed had found there was no basis in the record to support the conclusion that the workers were in fact entitled to DBA prevailing-wage rates. *Grochowski v. Ajet Constr. Corp.*, No. 97-CIV-6269(NRB), 2000 WL 1159640, at *6 (S.D.N.Y. Aug. 16, 2000). The district court explained that “if plaintiffs were indeed entitled to earn pay in accord with the prevailing wage standard,” then the ‘regular rate’ used in computing overtime pay must reflect that statutory requirement[.]” *Id.* This is a key fact rendering *Grochowski* distinguishable; here, the workers have alleged they are entitled to SCA rates. In any event, as described above, *see supra* II.A.,

Grochowski has been widely criticized. To the extent it conflicts with *Perez* and *Amaya*, this Court should reject it.

This Court’s decision in *Danielsen* considered a fundamentally different issue—whether violations of the SCA could serve as predicate acts under the Racketeer Influenced and Corrupt Organizations Act (“RICO”)—and concluded that they could not. 941 F.2d at 1220. *Danielsen*’s reasoning turned on RICO’s closed list of predicate offenses and Congress’s decision not to include SCA violations, drawing its conclusion in part from a desire to avoid “RICOiz[ing] broad areas of labor law[.]” *Id.* at 1232 (citation omitted). *Danielsen* pointed to the SCA’s administrative scheme as further reason not to enforce it via RICO. *Id.* at 1229. As *Perez* explained, DOL administrative proceedings involving the SCA are, if anything, an aid to courts in determining the appropriate SCA rate—not a hindrance to FLSA overtime enforcement at the required regular rate. Following *Perez* and *Amaya* would not disturb *Danielsen*’s holding that RICO cannot be used to obtain civil remedies for SCA violations.

C. The District Court Erred in Concluding that the Workers Failed to State a Claim Under the FLSA.

The District Court dismissed the Workers’ FLSA claim. That claim was rooted in the Workers’ allegation that contract revisions resulted in higher SCA rates, which Appellees failed to pay. Thus, the Workers alleged their lower-than-required regular hourly rate resulted in an unlawfully low overtime rate.

At the motion to dismiss stage, these allegations are more than sufficient to state a claim. Appellees may later argue that, in fact, they were not required to pay the higher rates that the Workers claim were owed. But that issue is not appropriate for resolution at this stage. Because the Workers plausibly alleged both that the required “regular rate” was higher than the rate Appellees paid and that they regularly worked overtime, the Workers stated a claim under the FLSA. The District Court’s conclusion otherwise should be reversed.

CONCLUSION

This Court should reverse the holding of the District Court and restore D.C. workers’ ability to recover prevailing wages, and overtime computed based on those wages, under the DCWPCL and the FLSA.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) in that, according to the word-count function of the word-processing system used to generate the brief (Microsoft Word), the brief contains 5,071 words, exclusive of the portions exempted by Rule 32(f).

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CERTIFICATE OF SERVICE

I certify that on this date, March 31, 2026, the foregoing Corrected Copy of *Amicus Curiae* Brief has been served upon counsel of record via the Court's CM/ECF system.

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