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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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LONG ISLAND CARE AT HOME, LTD., ET AL. *v.* COKE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 06–593. Argued April 16, 2007—Decided June 11, 2007

The Fair Labor Standards Amendments of 1974 exempted from the minimum wage and maximum hours rules of the Fair Labor Standards Act of 1938 (FLSA) persons "employed in domestic service employment to provide companionship services for individuals . . . unable to care for themselves." 29 U. S. C. §213(a)(15). Under a Labor Department (DOL) regulation labeled an "Interpretatio[n]" (hereinafter third-party regulation), the exemption includes those "companionship" workers "employed by an . . . agency other than the family or household using their services." 29 CFR §552.109(a). However, DOL's "General Regulations" also define the statutory term "domestic service employment" as "services of a household nature performed by an employee in or about a private home . . . *of the person by whom he or she is employed*." §552.3 (emphasis added). Respondent, a "companionship services" provider to the elderly and infirm, sued petitioners, her former employer Long Island Care and its owner, seeking minimum and overtime wages they allegedly owed her. The parties assume the FLSA requires the payments only if its "companionship services" exemption does not apply to workers paid by third-party agencies such as Long Island Care. The District Court dismissed the suit, finding the third-party regulation valid and controlling. The Second Circuit found the regulation unenforceable and set the judgment aside.

Held: The third-party regulation is valid and binding. Pp. 4–16.

(a) An agency's power to administer a congressionally created program necessarily requires the making of rules to fill any " 'gap' " left, implicitly or explicitly, by Congress. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843. When an agency fills such a gap reasonably, and in accordance with other applicable

(*e.g.*, procedural) requirements, that result is legally binding. *Id.*, at 843–844. On its face, the third-party regulation seems to fill a statutory gap. Pp. 4–5.

(b) The regulation does not exceed DOL's delegated rulemaking authority. The FLSA explicitly leaves gaps as to the scope and definition of its "domestic service employment" and "companionship services" terms, 29 U. S. C. §213(a)(15), and empowers the DOL to fill these gaps through regulations, 1974 Amendments, §29(b). Whether to include workers paid by third parties is one of the details left to the DOL to work out. Although the pre-1974 FLSA already covered *some* third-party-paid companionship workers, *e.g.*, those employed by large private enterprises, it did not then cover others, *e.g.,* those employed directly by the aged person's family or by many smaller private agencies. Thus, whether, or how, the statutory definition should apply to such workers raises a set of complex questions, *e.g.,* should the FLSA cover *all* of them, *some* of them, or *none* of them? How should the need for a simple, uniform application of the exemption be weighed against the fact that some (but not all) of the workers were previously covered? Given the DOL's expertise, satisfactory answers to the foregoing questions may well turn upon its thorough knowledge of the area and ability to consult at length with affected parties. It is therefore reasonable to infer that Congress intended its broad grant of definitional authority to the DOL to include the authority to answer such questions. Respondent's reliance on the Social Security statute, whose text expressly answers a "third party" coverage question, and on conflicting statements in the 1974 Amendments' legislative history, is unavailing. Pp. 5–8.

(c) Although the literal language of the third-party regulation and the "General Regulation," §552.3, conflicts as to whether third-party-paid workers are included within the statutory exemption, several reasons compel the Court to agree with the DOL's position, set forth in an "Advisory Memorandum" explaining (and defending) the third-party regulation, that that regulation governs here. First, a decision that §552.3 controls would create serious problems as to the coverage of particular domestic service employees by the statutory exemption or by the FLSA as a whole. Second, given that the third-party regulation's *sole purpose* is to explain how the companionship services exemption applies to persons employed by third-party entities, whereas §552.3's primary purpose is to describe the *kind of work* that must be performed to qualify someone as a "domestic service" employee, the third-party regulation is the more specific with respect to the question at issue and therefore governs, see, *e.g.*, *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 384–385. Third, that the DOL may have interpreted the two regulations differently at different times in their

history is not a ground for disregarding the present interpretation, which the DOL reached after proposing a different interpretation through notice-and-comment rulemaking, making any unfair surprise unlikely, cf. *Bowen* v. *Georgetown Univ. Hospital*, 488 U. S. 204, 212. Fourth, while the Advisory Memorandum was issued only to DOL personnel and written in response to this litigation, this Court has accepted such an interpretation where, as here, an agency's course of action indicates that its interpretation of its own regulation reflects its considered views on the matter in question and there is no reason to suspect that its interpretation is merely a *post hoc* rationalization. Pp. 8–11.

(d) Several factors compel the Court to reject respondent's argument that the third-party regulation is an "interpretation" not meant to fill a statutory "gap," but simply to describe the DOL's view of what the FLSA means, and thus is not entitled to *Chevron* deference, cf. *United States* v. *Mead Corp.*, 533 U. S. 218, 232. For one thing, the regulation directly governs the conduct of members of the public, " 'affecting individual rights and obligations.' " *Chrysler Corp.* v. *Brown*, 441 U. S. 281, 302. When promulgating the regulation and when considering amending it, the DOL has always employed full public notice-and-comment procedures, which under the Administrative Procedure Act (APA) need not be used when producing an "interpretive" rule, 5 U. S. C. §553(b)(A). And for the past 30 years, according to the Advisory Memorandum (and not disputed by respondent), the DOL has treated the regulation as a legally binding exercise of its rulemaking authority. For another thing, the DOL may have placed the third-party regulation in Subpart B of Part 552, entitled "Interpretations," rather than in Subpart A, "General Regulations," because Subpart B contains matters of detail, interpreting and applying Subpart A's more general definitions. Indeed, Subpart B's other regulations—involving, *e.g.,* employer "credit[s]" against minimum wages for provision of "food," "lodging," and "drycleaning"—strongly indicate that such details, not a direct interpretation of the statute's language, are at issue. Finally, the Court assumes *Congress* meant and expected courts to treat a regulation as within a delegation of "gap-filling" authority where, as here, the rule sets forth important individual rights and duties, the agency focuses fully and directly upon the issue and uses full notice-and-comment procedures, and the resulting rule falls within the statutory grant of authority and is reasonable. *Mead*, *supra*, at 229–233. Pp. 11–14.

(e) The Court disagrees with respondent's claim that the DOL's 1974 notice-and-comment proceedings were legally "defective" because the DOL's notice and explanation were inadequate. Fair notice is the object of the APA requirement that a notice of proposed rule-

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making contain "either the terms or substance of the proposed rule or a description of the subjects and issues involved," 5 U. S. C. §553(b)(3). The Circuits have generally interpreted this to mean that the final rule must be a logical outgrowth of the rule proposed. Initially, the DOL's proposed regulation would have placed outside the §213(a)(15) exemption (and hence left subject to FLSA wage and hour rules) individuals employed by the large enterprise third-party employers covered before 1974. Since that was simply a proposal, however, its presence meant that the DOL was *considering* the matter and might later choose to keep the proposal or to withdraw it. The DOL finally withdrew it, resulting in a determination exempting *all* third-party-employed companionship workers from the FLSA, and that possibility was reasonably foreseeable. There is also no significant legal problem with the DOL's explanation that its final interpretation is more consistent with FLSA language. No one seems to have objected to this explanation at the time, and it still remains a reasonable, albeit brief, explanation. Pp. 14–16.

462 F. 3d 48, reversed and remanded.

BREYER, J., delivered the opinion for a unanimous Court.