

**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 17-3134

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Craig Lyons, Individually and on Behalf of Others Similarly Situated; Justin Anderson, Individually and on Behalf of Others Similarly Situated; Tommy Applegate, Individually and on Behalf of Others Similarly Situated; Brandon Etzkorn, Individually and on Behalf of Others Similarly Situated; Gerald Fisher, Jr., Individually and on Behalf of Others Similarly Situated; James Geary, Individually and on Behalf of Others Similarly Situated; William Mars, Individually and on Behalf of Others Similarly Situated; Edward White, Individually and on Behalf of Others Similarly Situated; Khanthalyxay La Rasavong, Individually and on Behalf of Others Similarly Situated; Pha Nanthalansy, Individually and on Behalf of Others Similarly Situated; Anong Nanthalansy, Individually and on Behalf of Others Similarly Situated; Richard Casey, Individually and on Behalf of Others Similarly Situated; Gary Mars, Individually and on Behalf of Others Similarly Situated; Larry Dodson, Individually and on Behalf of Others Similarly Situated; Wanda Thompson, Individually and on Behalf of Others Similarly Situated; Michael Hinman, Individually and on Behalf of Others Similarly Situated; Lisa Jones, Individually and on Behalf of Others Similarly Situated; Bobby Anderson, Individually and on Behalf of Others Similarly Situated; Alan Young, Individually and on Behalf of Others Similarly Situated; Mary Wewer, Individually and on Behalf of Others Similarly Situated; Bradley Mayfield, Individually and on Behalf of Others Similarly Situated; Amy Anderson, Individually and on Behalf of Others Similarly Situated; Brian Massey, Individually and on Behalf of Others Similarly Situated; Connie Carrington, Individually and on Behalf of Others Similarly Situated; Debra Carter, Individually and on Behalf of Others Similarly Situated; Shirley Cato, Individually and on Behalf of Others Similarly Situated; Leonard Coffman, Individually and on Behalf of Others Similarly Situated; Linda Coffman, Individually and on Behalf of Others Similarly Situated; Freddie Cogburn, Jr., Individually and on Behalf of Others Similarly Situated; Lynda Collins, Individually and on Behalf of Others Similarly Situated; Ezell Cotton, Individually and on Behalf of Others Similarly Situated; John Cowen, Individually and on Behalf of Others Similarly Situated; Sharon Curtis, Individually and on Behalf of

Others Similarly Situated; Charles Davis, Individually and on Behalf of Others Similarly Situated; Pam Evans, Individually and on Behalf of Others Similarly Situated; Cecil Foster, Jr., Individually and on Behalf of Others Similarly Situated; Sharon Freeman, Individually and on Behalf of Others Similarly Situated; Wilma Garrison, Individually and on Behalf of Others Similarly Situated; Patricia Hamilton, Individually and on Behalf of Others Similarly Situated; Tammy Hudson, Individually and on Behalf of Others Similarly Situated; Jeremy Jones, Individually and on Behalf of Others Similarly Situated; Marilyn Jones, Individually and on Behalf of Others Similarly Situated; Helen Landenberger, Individually and on Behalf of Others Similarly Situated; Mechelle Lovejoy, Individually and on Behalf of Others Similarly Situated; Onita Martin, Individually and on Behalf of Others Similarly Situated; Brenda Mathis, Individually and on Behalf of Others Similarly Situated; Sylvia McVay, Individually and on Behalf of Others Similarly Situated; Shannon Mixon, Individually and on Behalf of Others Similarly Situated; Jeffery Monteleone, Individually and on Behalf of Others Similarly Situated; Patricia Nelson, Individually and on Behalf of Others Similarly Situated; Cathy Parker, Individually and on Behalf of Others Similarly Situated; Angela Patrick, Individually and on Behalf of Others Similarly Situated; Paul Roderiguez, Individually and on Behalf of Others Similarly Situated; Margie Sexton, Individually and on Behalf of Others Similarly Situated; Genella Smith, Individually and on Behalf of Others Similarly Situated; Scot Smith, Individually and on Behalf of Others Similarly Situated; Nancy Sorenson, Individually and on Behalf of Others Similarly Situated; Angela Thompson; Kenneth Thompson, Individually and on Behalf of Others Similarly Situated; Dennis Weir, Individually and on Behalf of Others Similarly Situated; Doug Wheatley, Individually and on Behalf of Others Similarly Situated; Raymond Davis, Individually and on Behalf of Others Similarly Situated; Holly Johnson, Individually and on Behalf of Others Similarly Situated; Monica DeLeon, Individually and on Behalf of Others Similarly Situated; Steve Wilson, Individually and on Behalf of Others Similarly Situated; Paula Wilson, Individually and on Behalf of Others Similarly Situated; Ramiro Alonso, Individually and on Behalf of Others Similarly Situated; Julie Turley, Individually and on Behalf of Others Similarly Situated; Amanda Martin, Individually and on Behalf of Others Similarly Situated; Phyllis Lanoy, Individually and on Behalf of Others Similarly Situated; Sandra Kellybrew, Individually and on Behalf of Others Similarly Situated; Alicia Partida, Individually and on Behalf of Others Similarly Situated; Laura Washington,

Individually and on Behalf of Others Similarly Situated; David Glover,  
Individually and on Behalf of Others Similarly Situated; Chris Russell,  
Individually and on Behalf of Others Similarly Situated; Dora Perdido-Russell,  
Individually and on Behalf of Others Similarly Situated; Brian Tarkington,  
Individually and on Behalf of Others Similarly Situated; Diana Roesler,  
Individually and on Behalf of Others Similarly Situated; Michele Turner,  
Individually and on Behalf of Others Similarly Situated; Cathy Radcliff,  
Individually and on Behalf of Others Similarly Situated; Sirina Arias, Individually  
and on Behalf of Others Similarly Situated; Brent Duvall, Individually and on  
Behalf of Others Similarly Situated; Katie Hency, Individually and on Behalf of  
Others Similarly Situated; Jose Mejia; Darlene Melton; Oscar Armando Mena;  
Maria E. Menjivar; Jarman Moody; Jesus Morales; Jose A. Morales; Juan Carlos  
Morales; Maria Del Carmen Morales; Marlon Garcia Morales; Walter Morales;  
Domingo Moran; Tammy Morton; Elizabeth Moudy; Carrie Murchison; Ignacio  
Murillo; Cynthia Nelson; Priscilla J. Noblett; Betty Norris; Wayne O'Briant; Jose  
Luis Ochoa; Josefina Ochoa; Juan Ochoa; Raul Ochoa; Debra Oliver; Sharon  
Lynnette Oliver; Walter Danilo Orrellana; Magaly Orellano; Raul Rodriguez  
Orozco; Tommy Parks; Myrna G. Partida; Alfonso Paz; Juan Paz; Rodolfo Paz;  
Lila Dean Pease; Danny L. Pendergraft; Vicente Perez; Cindy Phalan; Edith  
Pledger; Josh Poirier; David Portillo; Teodoro Portillo; Mary L. Price; Renee  
Qualls; Manuel Ramirez; Ricardo Ramos; Eddie Renier; Carrie Reyes; Gerordo  
Reyes; David Rice; Edwin Rivas; Jael Rivera; Marlon Rivera; Mayra  
Rivera-Enriquez; Jimmy Roberbs; Leona Roberbs; Perry Roberson; Edward  
Robinson; Belinda Rodriguez; Blanca Rodriguez; Gregorio Rodriguez; Jorge Paz  
Rodriguez; Tammy Rogers; Ana Romero-Urquilla; Antonio Rosales; Francsico  
Rosales; Teresa Rosbia-Laws; Juana Salas; Maria Salas; Teodora Salas; Jose D.  
Sanchez; Sheila Sanchez; Karen Sanders; Xiomara Sandoval; Omar Jovan F.  
Scott; Jose Segovia; Mayra Sierra; Mary Smith; Zenas Smith, Sr.; Sammy Smith;  
Betty Soriano; Marvin M. Soriano; Kimberley Ann Stewart; Krystal Strandlund;  
Paul J. Strnad; Davida Elaine Summit; Judy Summit; Elizabeth Taylor; Linda  
Taylor; Rebecca Taylor-Garrigus; Sheila Ann Tenango; Leonard Norman  
Thompson; Luz Dary Torrellas; Hector Torres; Ronan F. Torres; Clem Tucker, III;  
Ida L. Tucker; Fabio Valladares; Mayra Vazquez; Angelica Velazquez; Jean  
Wagner; Cindy Wells; Charles White; Johnny D. Willcutt; Ashley Williams;  
Dessie Williams; Jennifer Williams; Lillia Williams; Michael Williams; Cheryl T.  
Windsor; Kelley Winkle; Lanny Wooten; Barbara Wright; James Wright; Joseph  
Wright; Valerie Yandell; James M. Youngman; Alex A. Bonilla; Tyler Brafford;

Paul Bragg; Christine Bristol; Anthony A. Brown; Earnest Lee Brown; Lenard Ray Brown; Connie Denise Bryant; Carolyn Burdine; Donald Byers; Ubilberto Caballero; Armando Cabello; Elder R. Cabrera; Linda Calvin; Mercedes E. Campos; Vicente Campos; Rodolfo Canales; Alberto Cargas; Mercedes Castro; Jorge Chica; Richard Choate; James M. Christen; William Clair; Randy Dewayne Clark; Debra Coonce; Don Condley; Jessie Cooper; Jenny L. Corona; Warren Cowen; Ernesto Antonio Crisostomo; Eric Criswell, Sr.; Nancy Cruz; Nelson A. Cruz; Samuel Avilacruz; Charlotte Cummings; Clifford Harold Davis; Eddie Neil Davis; Ellis Christopher Davis, Sr.; Claudiade Paz; Gail Debardelaben; Victor Delgado; Ruth Demmitt; Barbara Devore; Carlos Diaz; Donna Diggs; Barbara A. Dugger; Leonard Durham; India Duvall; Jodie Edwards; Doy England; Carla Escobar; Helen Farmer; Miguel Figueroa; Joanna Kay Ford; Roxanne Foster; Randy Freeman; Velma Freeman; Pamela Freitas; Joshua Tyler; Thomas Fryar; Kathy Fryar; Richard Fryar; Frederico Fuentes; Stephen Gadberry; Aurora Garcia; Elizabeth Garcia; Ignacio T. Garcia, Jr.; Patricia Morales Garcia; Charlie George; James Michael George; Violet Germany; Tim Gist; Debbie Glass; Delfino Gonzalez; Eloy Gonzalez, Jr.; Jose Gonzalez; Leticia Gonzalez; Luis Gonzales; Nestor Gonzalez; Oscar Gonzalez; Linda Griffin; Marsha Hackler; Carrie Haley; Nancy Ann Havenstrite; Victoria Mae Heaton; Nancy Hentschel; Alexander B. Hernandez; Jose Luis Hernandez; Maribel Hernandez; Rosa M. Herrera; Donald Hill; Randall Hillis; Connie Hollis; William Holmes; Donna L. Hudson; Natasha Hutcherson; Stephanie Jackson; Sunny James; Wayman James; Donna G. Johnson; Laura Johnson; Marianne Johnson; Joan Johnston; Artemio Juarez; Linda Julian; Rebecca Lacy; Celina Lama; Marta Lara; Sonya Sue Leavell; Dennis Lemarr; Irvin Lemarr; Carol Jean Lievsay; Donna S. Long; Abdon Lozano; Deborah Mahan; Jorge A. Marcia; Antonio Paz Mares; Alicia Martin; Adriana Martinez; Agustin Martinez; Carlos Martinez; Carlos D. Martinez; John Mason; Ben Maturino; Judy C. McClure; Tommy McClure; Cynthia Dianne McDaniel; Bonnie McNamara; Garland Freeman, Jr.; Rebekah Avery, As Administrator of the Estate of Samuel Aver, Deceased other Samuel Avery; Danny Burton, Individually and on Behalf of Others Similarly Situated; Grace Bryant, Individually and on Behalf of Others Similarly Situated; Kimberly Anderson, Individually and on Behalf of Others Similarly Situated; Alan Arrington, Individually and on Behalf of Others Similarly Situated; Dennis Berry, Individually and on Behalf of Others Similarly Situated; Josefina Arias, Individually and on Behalf of Others Similarly Situated; Kenneth Barnes, Individually and on Behalf of Others Similarly Situated; John Bewley,

Individually and on Behalf of Others Similarly Situated; Francisco Bautista, Individually and on Behalf of Others Similarly Situated; Rosa Bonilla De Reyes, Individually and on Behalf of Others Similarly Situated; Marvin Alexander, Individually and on Behalf of Others Similarly Situated; Fulvia Aleman, Individually and on Behalf of Others Similarly Situated; Cesar Ayala, Individually and on Behalf of Others Similarly Situated; Linda Brown, Individually and on Behalf of Others Similarly Situated; Artemio Avalos, Individually and on Behalf of Others Similarly Situated; Nathan Balch, Individually and on Behalf of Others Similarly Situated; Keith Bell, Individually and on Behalf of Others Similarly Situated; Robert Bowden, Individually and on Behalf of Others Similarly Situated; Miguel Alvarado, Individually and on Behalf of Others Similarly Situated; Ros Acree, Individually and on Behalf of Others Similarly Situated; Tom Birge, Jr., Individually and on Behalf of Others Similarly Situated; Jose Arcia, Individually and on Behalf of Others Similarly Situated; Orlando Alcantar, Individually and on Behalf of Others Similarly Situated; Brenda Beech, Individually and on Behalf of Others Similarly Situated; Bertha Abrego, Individually and on Behalf of Others Similarly Situated; Clay Bryant, Individually and on Behalf of Others Similarly Situated; Myrna Calito, Individually and on Behalf of Others Similarly Situated; Martha Alvarez, Individually and on Behalf of Others Similarly Situated; Keith Byrum, Individually and on Behalf of Others Similarly Situated; David Alexander, Individually and on Behalf of Others Similarly Situated; Jerry Brown, Individually and on Behalf of Others Similarly Situated; Randall Boley, Individually and on Behalf of Others Similarly Situated; Zachary Anderson, Individually and on Behalf of Others Similarly Situated; Sabino Bahena, Individually and on Behalf of Others Similarly Situated; Mark Brashear, Individually and on Behalf of Others Similarly Situated; Alfredo Arias, Individually and on Behalf of Others Similarly Situated; Irma Avila, Individually and on Behalf of Others Similarly Situated; Victor Alvidrez, Individually and on Behalf of Others Similarly Situated; Marco Belmonte, Individually and on Behalf of Others Similarly Situated; Curtis Brunston, Individually and on Behalf of Others Similarly Situated; Maria Bonilla, Individually and on Behalf of Others Similarly Situated; Salvador Bonilla, Individually and on Behalf of Others Similarly Situated; Gary Brown, Individually and on Behalf of Others Similarly Situated; Franklin Beltran, Individually and on Behalf of Others Similarly Situated; Francine Byers, Individually and on Behalf of Others Similarly Situated; Callie Bartlett, Individually and on Behalf of Others Similarly Situated; Sarah Bohler, Individually and on Behalf of Others Similarly Situated; Lloyd Callan, Individually and on Behalf of Others Similarly Situated;

Israel A. Amaya, Individually and on Behalf of Others Similarly Situated; Douglas Beech, Individually and on Behalf of Others Similarly Situated; Lester Baugh, Individually and on Behalf of Others Similarly Situated; Jose Bonilla, Individually and on Behalf of Others Similarly Situated; Carol Barnett, Individually and on Behalf of Others Similarly Situated; Laura Baugh, Individually and on Behalf of Others Similarly Situated; Dina Ayala, Individually and on Behalf of Others Similarly Situated; Jacqueline Brooks, Individually and on Behalf of Others Similarly Situated; Juana Alvarado, Individually and on Behalf of Others Similarly Situated; Dora Brockman, Individually and on Behalf of Others Similarly Situated; Theodore Bruce, Jr., Individually and on Behalf of Others Similarly Situated; Esparanza Alcantar, Individually and on Behalf of Others Similarly Situated; Lori Brooks, Individually and on Behalf of Others Similarly Situated; Gary Canady, Individually and on Behalf of Others Similarly Situated; Gene Canady, Individually and on Behalf of Others Similarly Situated; Carlos Carrillo, Individually and on Behalf of Others Similarly Situated; Glendy Carrillo, Individually and on Behalf of Others Similarly Situated; Mike Carrillo, Individually and on Behalf of Others Similarly Situated; Sandra Carrillo, Individually and on Behalf of Others Similarly Situated; Rudy Castillo, Individually and on Behalf of Others Similarly Situated; Esmeralda Cavazos, Individually and on Behalf of Others Similarly Situated; Ashanti Chenault, Individually and on Behalf of Others Similarly Situated; Patricia Chenowith, Individually and on Behalf of Others Similarly Situated; Chris Childers, Individually and on Behalf of Others Similarly Situated; Cheryl Chronister, Individually and on Behalf of Others Similarly Situated; William Clark, Individually and on Behalf of Others Similarly Situated; Mary Coffman, Individually and on Behalf of Others Similarly Situated; Tellas Collier, Individually and on Behalf of Others Similarly Situated; Barbara Collins, Individually and on Behalf of Others Similarly Situated; Shannon Collins, Individually and on Behalf of Others Similarly Situated; David Conner, Individually and on Behalf of Others Similarly Situated; David Cook, Individually and on Behalf of Others Similarly Situated; Joyce Cook, Individually and on Behalf of Others Similarly Situated; Linda Cook, Individually and on Behalf of Others Similarly Situated; Felisha Cooper, Individually and on Behalf of Others Similarly Situated; Freda Cossey, Individually and on Behalf of Others Similarly Situated; Denise Crain, Individually and on Behalf of Others Similarly Situated; Carrie Crawford, Individually and on Behalf of Others Similarly Situated; Juan Crisostomo, Individually and on Behalf of Others Similarly Situated; Justin

Criswell, Individually and on Behalf of Others Similarly Situated; Ruth Criswell, Individually and on Behalf of Others Similarly Situated; Wanza Cross, Individually and on Behalf of Others Similarly Situated; Timothy Davidson, Individually and on Behalf of Others Similarly Situated; Ellis Davis, Jr., Individually and on Behalf of Others Similarly Situated; Keeton Davis, Individually and on Behalf of Others Similarly Situated; Kristina Davis, Individually and on Behalf of Others Similarly Situated; Robert Delavan, Individually and on Behalf of Others Similarly Situated; Helen Diaz, Individually and on Behalf of Others Similarly Situated; Jacinto Diaz, Individually and on Behalf of Others Similarly Situated; Julianna Ditton, Individually and on Behalf of Others Similarly Situated; Robert Ditton, Individually and on Behalf of Others Similarly Situated; Rosa Dixon, Individually and on Behalf of Others Similarly Situated; Heath Dollar, Individually and on Behalf of Others Similarly Situated; Mario Doratt, Individually and on Behalf of Others Similarly Situated; Alice Dorsett, Individually and on Behalf of Others Similarly Situated; Lee Dorsey, Individually and on Behalf of Others Similarly Situated; Carlos Duarte, Individually and on Behalf of Others Similarly Situated; Katherine Duvall, Individually and on Behalf of Others Similarly Situated; Jimmy Earls, Individually and on Behalf of Others Similarly Situated; Rachel Edlin, Individually and on Behalf of Others Similarly Situated; Bonita Embry, Individually and on Behalf of Others Similarly Situated; Deirdre Embry, Individually and on Behalf of Others Similarly Situated; Susan Emery, Individually and on Behalf of Others Similarly Situated; Christian Enriquez, Individually and on Behalf of Others Similarly Situated; Irlanda Espinoza, Individually and on Behalf of Others Similarly Situated; Johnny Floren, Individually and on Behalf of Others Similarly Situated; Karen Ford, Individually and on Behalf of Others Similarly Situated; Johnnie Foster, Individually and on Behalf of Others Similarly Situated; William Foster, Individually and on Behalf of Others Similarly Situated; Caryl Fowler, Individually and on Behalf of Others Similarly Situated; Randy Fowler, Individually and on Behalf of Others Similarly Situated; Debra Freeman, Individually and on Behalf of Others Similarly Situated; Jeffery Freeman, Individually and on Behalf of Others Similarly Situated; Lawrence Freeman, Individually and on Behalf of Others Similarly Situated; Michael Freeman, Individually and on Behalf of Others Similarly Situated; William Freeman, Individually and on Behalf of Others Similarly Situated; Yong Gabhart, Individually and on Behalf of Others Similarly Situated; Danny Gallaher, Individually and on Behalf of Others Similarly Situated; Kathy Garrigus,

Individually and on Behalf of Others Similarly Situated; Samuel Genna,  
Individually and on Behalf of Others Similarly Situated; Heidi Gering,  
Individually and on Behalf of Others Similarly Situated; Irma Giran, Individually  
and on Behalf of Others Similarly Situated; Isidro Godoy, Individually and on  
Behalf of Others Similarly Situated; Rebeca Godoy, Individually and on Behalf of  
Others Similarly Situated; Ernest Goins, Individually and on Behalf of Others  
Similarly Situated; Celia Gonzalez, Individually and on Behalf of Others Similarly  
Situating; Edin Gonzalez, Individually and on Behalf of Others Similarly Situated;  
Jose H. Gonzalez, Individually and on Behalf of Others Similarly Situated; Maria  
Gonzalez, Individually and on Behalf of Others Similarly Situated; Linda Greer,  
Individually and on Behalf of Others Similarly Situated; Theresa Grigsby,  
Individually and on Behalf of Others Similarly Situated; Rosa Guiterrez,  
Individually and on Behalf of Others Similarly Situated; Kristy Hagan,  
Individually and on Behalf of Others Similarly Situated; David Hardin,  
Individually and on Behalf of Others Similarly Situated; Lonnie Harris,  
Individually and on Behalf of Others Similarly Situated; Travis Harvey,  
Individually and on Behalf of Others Similarly Situated; Cathy Heflin,  
Individually and on Behalf of Others Similarly Situated; Dyanna Hefner,  
Individually and on Behalf of Others Similarly Situated; Hermes Henriquez,  
Individually and on Behalf of Others Similarly Situated; Brenda Hernandez,  
Individually and on Behalf of Others Similarly Situated; Carmen Hernandez,  
Individually and on Behalf of Others Similarly Situated; Guadalupe Hernandez,  
Individually and on Behalf of Others Similarly Situated; Henry Hernandez,  
Individually and on Behalf of Others Similarly Situated; Juan Hernandez,  
Individually and on Behalf of Others Similarly Situated; Maria Hernandez,  
Individually and on Behalf of Others Similarly Situated; Mercedes Hernandez,  
Individually and on Behalf of Others Similarly Situated; Raul Hernandez,  
Individually and on Behalf of Others Similarly Situated; Rene Hernandez,  
Individually and on Behalf of Others Similarly Situated; Rosa Hernandez,  
Individually and on Behalf of Others Similarly Situated; Vickie Higgins,  
Individually and on Behalf of Others Similarly Situated; Eddie Hill, Individually  
and on Behalf of Others Similarly Situated; Guy Hill, Individually and on Behalf  
of Others Similarly Situated; Pamela Hill, Individually and on Behalf of Others  
Similarly Situated; Stephanie Hillis, Individually and on Behalf of Others  
Similarly Situated; Melvin Hirtler, Individually and on Behalf of Others Similarly  
Situating; Jerry Holland, Individually and on Behalf of Others Similarly Situated;  
Denise Hon, Individually and on Behalf of Others Similarly Situated; Jerry



Honaker, Sr., Individually and on Behalf of Others Similarly Situated; Tommy Honaker, Individually and on Behalf of Others Similarly Situated; Kimberly Hopson, Individually and on Behalf of Others Similarly Situated; Gennifer Horn, Individually and on Behalf of Others Similarly Situated; Bernice Howard, Individually and on Behalf of Others Similarly Situated; David Huaranga, Individually and on Behalf of Others Similarly Situated; Carol Huggins, Individually and on Behalf of Others Similarly Situated; Anna Hughes, Individually and on Behalf of Others Similarly Situated; Mary Hughes, Individually and on Behalf of Others Similarly Situated; Krystal Humphrey, Individually and on Behalf of Others Similarly Situated; Rebecca Irwin, Individually and on Behalf of Others Similarly Situated; Rosa Izaguirre, Individually and on Behalf of Others Similarly Situated; Frankie Jackson, Individually and on Behalf of Others Similarly Situated; Paul Jackson, Individually and on Behalf of Others Similarly Situated; Lori James, Individually and on Behalf of Others Similarly Situated; Jorge Jobel, Individually and on Behalf of Others Similarly Situated; Clinton Jones, Individually and on Behalf of Others Similarly Situated; Christy Jones, Individually and on Behalf of Others Similarly Situated; Bernabe Jovel, Individually and on Behalf of Others Similarly Situated; Cecil Keith, Individually and on Behalf of Others Similarly Situated; Daniel Kelley, Individually and on Behalf of Others Similarly Situated; Dustin Kemp, Individually and on Behalf of Others Similarly Situated; Lemuel Keys, Individually and on Behalf of Others Similarly Situated; Reba King, Individually and on Behalf of Others Similarly Situated; Shereacia Kinnon, Individually and on Behalf of Others Similarly Situated; Christina Kugler, Individually and on Behalf of Others Similarly Situated; Omar Lagos, Individually and on Behalf of Others Similarly Situated; Roxana Lagos, Individually and on Behalf of Others Similarly Situated; Charles Lane, Individually and on Behalf of Others Similarly Situated; Deann Laymon, Individually and on Behalf of Others Similarly Situated; Tony Laymon, Individually and on Behalf of Others Similarly Situated; Bobby Ledford, Jr., Individually and on Behalf of Others Similarly Situated; Kimberly Lee, Individually and on Behalf of Others Similarly Situated; William Lee, Individually and on Behalf of Others Similarly Situated; Debra Lenhart, Individually and on Behalf of Others Similarly Situated; Michael Level, Individually and on Behalf of Others Similarly Situated; Johnny Litsey, Individually and on Behalf of Others Similarly Situated; Jerrad Littrell, Individually and on Behalf of Others Similarly Situated; Jose Loaeza, Individually and on Behalf of Others Similarly Situated; Garry Lopez, Individually and on Behalf of Others Similarly Situated; Gloria

Lopez, Individually and on Behalf of Others Similarly Situated; Richard Love, Sr., Individually and on Behalf of Others Similarly Situated; Leslie Loveland, Individually and on Behalf of Others Similarly Situated; Abdon Lozano, Jr., Individually and on Behalf of Others Similarly Situated; Mario Lozano, Individually and on Behalf of Others Similarly Situated; Pamela Lute, Individually and on Behalf of Others Similarly Situated; Reina Marcos, Individually and on Behalf of Others Similarly Situated; Rosa Mares, Individually and on Behalf of Others Similarly Situated; Carolina Martinez, Individually and on Behalf of Others Similarly Situated; Felipe Martinez, Individually and on Behalf of Others Similarly Situated; Rosa Martinez, Individually and on Behalf of Others Similarly Situated; Santiago Martinez, Individually and on Behalf of Others Similarly Situated; Saul Martinez, Individually and on Behalf of Others Similarly Situated; Raquiel Masters, Individually and on Behalf of Others Similarly Situated; Sandra Mata, Individually and on Behalf of Others Similarly Situated; Barbara Matthews, Individually and on Behalf of Others Similarly Situated; Earl Matthews, Individually and on Behalf of Others Similarly Situated; Melvin Maxwell, Individually and on Behalf of Others Similarly Situated; Emerita May, Individually and on Behalf of Others Similarly Situated; Carla McAlister, Individually and on Behalf of Others Similarly Situated; Cheryl McGee, Individually and on Behalf of Others Similarly Situated; Angela McVey, Individually and on Behalf of Others Similarly Situated; Velma Meadows, Individually and on Behalf of Others Similarly Situated; Ineda Meimerstorf, Individually and on Behalf of Others Similarly Situated; Edwin Melgar, Individually and on Behalf of Others Similarly Situated; Joseph Melton, Individually and on Behalf of Others Similarly Situated; Joyce Metz, Individually and on Behalf of Others Similarly Situated; Diane Misener, Individually and on Behalf of Others Similarly Situated; Sandra Molloy, Individually and on Behalf of Others Similarly Situated; Teresa Monteleone, Individually and on Behalf of Others Similarly Situated; Lourdes Montesinos, Individually and on Behalf of Others Similarly Situated; Martha Montoya, Individually and on Behalf of Others Similarly Situated; Silvestre Montoya, Individually and on Behalf of Others Similarly Situated; Samuel Moore, Individually and on Behalf of Others Similarly Situated; Terry Moore, Individually and on Behalf of Others Similarly Situated; Gilbert Morales, Individually and on Behalf of Others Similarly Situated; Jason Morales, Individually and on Behalf of Others Similarly Situated; Jose Morales-Herrera, Individually and on Behalf of Others Similarly Situated; Sherry Morrell, Individually and on Behalf of Others Similarly Situated; Samuel Morgan,

Individually and on Behalf of Others Similarly Situated; Angela Moro, Individually and on Behalf of Others Similarly Situated; Rhonda Morris, Individually and on Behalf of Others Similarly Situated; Amanda Morse, Individually and on Behalf of Others Similarly Situated; Katie Moss, Individually and on Behalf of Others Similarly Situated; Mary Moten, Individually and on Behalf of Others Similarly Situated; Bill Moulder, Individually and on Behalf of Others Similarly Situated; Christopher Myers, Individually and on Behalf of Others Similarly Situated; Amanda Navarrete, Individually and on Behalf of Others Similarly Situated; Jose Navarrete, Individually and on Behalf of Others Similarly Situated; Sylvia Navarrete, Individually and on Behalf of Others Similarly Situated; Jose Navarro, Individually and on Behalf of Others Similarly Situated; Eric Neaterous, Individually and on Behalf of Others Similarly Situated; Janice Needham, Individually and on Behalf of Others Similarly Situated; Michael Neumeier, Individually and on Behalf of Others Similarly Situated; Alan Newby, Individually and on Behalf of Others Similarly Situated; Stan Nichols, Individually and on Behalf of Others Similarly Situated; Erica Nieto, Individually and on Behalf of Others Similarly Situated; Jimmy Noah, Individually and on Behalf of Others Similarly Situated; Karen Noble, Individually and on Behalf of Others Similarly Situated; Sabrina O'Briant, Individually and on Behalf of Others Similarly Situated; David O'Neal, Individually and on Behalf of Others Similarly Situated; Germanus Orndorff, III, Individually and on Behalf of Others Similarly Situated; Maria Oritz, Individually and on Behalf of Others Similarly Situated; Celia Osorio, Individually and on Behalf of Others Similarly Situated; Austin Padgett, Individually and on Behalf of Others Similarly Situated; Victor Padilla-Rivera, Individually and on Behalf of Others Similarly Situated; Zolaida Palacios, Individually and on Behalf of Others Similarly Situated; Betty Palmer, Individually and on Behalf of Others Similarly Situated; Juan Parada, Individually and on Behalf of Others Similarly Situated; Leslie Paredes, Individually and on Behalf of Others Similarly Situated; Carolyn Parrish, Individually and on Behalf of Others Similarly Situated; David Paz, Individually and on Behalf of Others Similarly Situated; Sherry Pearce, Individually and on Behalf of Others Similarly Situated; Bobby Pearson, Individually and on Behalf of Others Similarly Situated; Jimmy Pease, Individually and on Behalf of Others Similarly Situated; Rena Pendergraft, Individually and on Behalf of Others Similarly Situated; Ronnie Peoples, Individually and on Behalf of Others Similarly Situated; Sharon Phillips, Individually and on Behalf of Others Similarly Situated; Lynn Phipps, Individually and on Behalf of Others Similarly Situated; Jeremy Pierce,

Individually and on Behalf of Others Similarly Situated; Elenilson Ponce, Individually and on Behalf of Others Similarly Situated; Grant Popliln, Individually and on Behalf of Others Similarly Situated; Vickey Powell, Individually and on Behalf of Others Similarly Situated; Jack Proctor, Individually and on Behalf of Others Similarly Situated; Lacey Qualls, Individually and on Behalf of Others Similarly Situated; Billy Ralls, Jr., Individually and on Behalf of Others Similarly Situated; Brenda Ramirez, Individually and on Behalf of Others Similarly Situated; Osmin Ramirez, Individually and on Behalf of Others Similarly Situated; Rafael Ramirez, Individually and on Behalf of Others Similarly Situated; Jeff Rappe, Individually and on Behalf of Others Similarly Situated; Teresa Rauda, Individually and on Behalf of Others Similarly Situated; Katharina Reed, Individually and on Behalf of Others Similarly Situated; Filemon Rendon, Individually and on Behalf of Others Similarly Situated; Maria Rendon, Individually and on Behalf of Others Similarly Situated; Elizabeth Reyes, Individually and on Behalf of Others Similarly Situated; Iris Reyes, Individually and on Behalf of Others Similarly Situated; Jose Reyes, Individually and on Behalf of Others Similarly Situated; Lorenzo Reyes, Individually and on Behalf of Others Similarly Situated; Luis Reyes, Individually and on Behalf of Others Similarly Situated; Maria Reyes, Individually and on Behalf of Others Similarly Situated; Maria C. Reyes, Individually and on Behalf of Others Similarly Situated; Francisco Reyna, Individually and on Behalf of Others Similarly Situated; William Richards, Individually and on Behalf of Others Similarly Situated; Rosalio Rivas, Individually and on Behalf of Others Similarly Situated; Francisco Rivera, Individually and on Behalf of Others Similarly Situated; Treva Roberds, Individually and on Behalf of Others Similarly Situated; William Roberds, Individually and on Behalf of Others Similarly Situated; Jeremy Robinson, Individually and on Behalf of Others Similarly Situated; Judy Robinson, Individually and on Behalf of Others Similarly Situated; Baldemar Robles, Individually and on Behalf of Others Similarly Situated; Katherine Rochell, Individually and on Behalf of Others Similarly Situated; Peggy Rodriguez, Individually and on Behalf of Others Similarly Situated; Jerome Roesler, Individually and on Behalf of Others Similarly Situated; Michael Rogers, Individually and on Behalf of Others Similarly Situated; Patricia Rogers, Individually and on Behalf of Others Similarly Situated; Pedro Rojas, Individually and on Behalf of Others Similarly Situated; Ricardo Rojas, Individually and on Behalf of Others Similarly Situated; Eva Romero, Individually and on Behalf of Others Similarly Situated; Idalia Romero, Individually and on Behalf of Others

Similarly Situated; Tomas Romero, Individually and on Behalf of Others Similarly Situated; Linda Romine, Individually and on Behalf of Others Similarly Situated; Shirley Romine, Individually and on Behalf of Others Similarly Situated; Mattie Romines, Individually and on Behalf of Others Similarly Situated; Jose Ruiz, Individually and on Behalf of Others Similarly Situated; Sergio Zamora, Individually and on Behalf of Others Similarly Situated; Juan Zavala, Individually and on Behalf of Others Similarly Situated; Balentin Zelaya, Individually and on Behalf of Others Similarly Situated; German Sanabria, Individually and on Behalf of Others Similarly Situated; Marina Sanabria, Individually and on Behalf of Others Similarly Situated; Holly Sanchez, Individually and on Behalf of Others Similarly Situated; Frank Sears, Individually and on Behalf of Others Similarly Situated; Kristy Sears, Individually and on Behalf of Others Similarly Situated; Rafael Segura, Individually and on Behalf of Others Similarly Situated; Gloria Shafer, Individually and on Behalf of Others Similarly Situated; Rickey Shaffer, Individually and on Behalf of Others Similarly Situated; William Shelton, Individually and on Behalf of Others Similarly Situated; Allen Siddall, Individually and on Behalf of Others Similarly Situated; Emily Simmons, Individually and on Behalf of Others Similarly Situated; Kenneth Simpson, Individually and on Behalf of Others Similarly Situated; Kathryn Sims, Individually and on Behalf of Others Similarly Situated; Mahogany Smith, Individually and on Behalf of Others Similarly Situated; Preston Smith, Individually and on Behalf of Others Similarly Situated; Rheba Smith, Individually and on Behalf of Others Similarly Situated; James Snow, Individually and on Behalf of Others Similarly Situated; Gloria Snyder, Individually and on Behalf of Others Similarly Situated; Rafael Sorto, Individually and on Behalf of Others Similarly Situated; Frank Sosa, Individually and on Behalf of Others Similarly Situated; Joseph South, Individually and on Behalf of Others Similarly Situated; Sandy Souvannakhot, Individually and on Behalf of Others Similarly Situated; Terry Staggs, Individually and on Behalf of Others Similarly Situated; James Standridge, Individually and on Behalf of Others Similarly Situated; Bruce Stanley, Individually and on Behalf of Others Similarly Situated; Rachelle Stanley, Individually and on Behalf of Others Similarly Situated; Joseph Stevens, Individually and on Behalf of Others Similarly Situated; Regina Stewart, Individually and on Behalf of Others Similarly Situated; Dennis Stroud, Individually and on Behalf of Others Similarly Situated; Gregorio Suarez, Individually and on Behalf of Others Similarly Situated; Jerry Swilley, Individually and on Behalf of Others Similarly Situated; Guadalupe Talamantes,

Individually and on Behalf of Others Similarly Situated; Linda Tanner, Individually and on Behalf of Others Similarly Situated; Tina Tanner, Individually and on Behalf of Others Similarly Situated; Barbara Taurone, Individually and on Behalf of Others Similarly Situated; Samantha Tavarez, Individually and on Behalf of Others Similarly Situated; Paul Taylor, Individually and on Behalf of Others Similarly Situated; Jaime Tejada, Individually and on Behalf of Others Similarly Situated; Robert Templin, Individually and on Behalf of Others Similarly Situated; Mary Tennison, Individually and on Behalf of Others Similarly Situated; Michael Tennison, Individually and on Behalf of Others Similarly Situated; Lori Terry, Individually and on Behalf of Others Similarly Situated; Phillip Thompson, Jr., Individually and on Behalf of Others Similarly Situated; Richard Tillery, Individually and on Behalf of Others Similarly Situated; Antonio Torres, Individually and on Behalf of Others Similarly Situated; Michelle Torres, Individually and on Behalf of Others Similarly Situated; Raul Tovar, Individually and on Behalf of Others Similarly Situated; Uriel Tovar, Individually and on Behalf of Others Similarly Situated; Jessica Triste, Individually and on Behalf of Others Similarly Situated; Rosemary Tullous, Individually and on Behalf of Others Similarly Situated; Zach Underwood, Individually and on Behalf of Others Similarly Situated; Phyllis Ushery, Individually and on Behalf of Others Similarly Situated; Christian Valladares, Individually and on Behalf of Others Similarly Situated; Manuel Valladares, Individually and on Behalf of Others Similarly Situated; Linda McPherson, Individually and on Behalf of Others Similarly Situated; Lou Ann Vasquez, Individually and on Behalf of Others Similarly Situated; Joshua Vaughan, Individually and on Behalf of Others Similarly Situated; Wanda Vaughan, Individually and on Behalf of Others Similarly Situated; Rachel Burton, Individually and on Behalf of Others Similarly Situated; Hipolita Velasquez, Individually and on Behalf of Others Similarly Situated; Barbara Arnold, Individually and on Behalf of Others Similarly Situated; Jorge Andrade, Individually and on Behalf of Others Similarly Situated; Maria Velasquez, Individually and on Behalf of Others Similarly Situated; Christopher Anderson, Individually and on Behalf of Others Similarly Situated; Morena Villacorta, Individually and on Behalf of Others Similarly Situated; Chong Bewley, Individually and on Behalf of Others Similarly Situated; Ruben Villacorta, Individually and on Behalf of Others Similarly Situated; Juan Alfaro, Individually and on Behalf of Others Similarly Situated; Melvin Vinson, Individually and on Behalf of Others Similarly Situated; William Akens, Individually and on Behalf of Others Similarly Situated; Khamphay Visathep,

Individually and on Behalf of Others Similarly Situated; Roberto Alvarado, Individually and on Behalf of Others Similarly Situated; Phouvieng Visathep, Individually and on Behalf of Others Similarly Situated; Jorge Alonzo, Individually and on Behalf of Others Similarly Situated; Kenneth Volz, Individually and on Behalf of Others Similarly Situated; Maria S. Alvarenga, Individually and on Behalf of Others Similarly Situated; Gerald Vongprachanh, Individually and on Behalf of Others Similarly Situated; Chrissie Bishop, Individually and on Behalf of Others Similarly Situated; Richard Walker, Individually and on Behalf of Others Similarly Situated; Anita Watson, Individually and on Behalf of Others Similarly Situated; Medardo Calero, Individually and on Behalf of Others Similarly Situated; Ronnie Watts, Individually and on Behalf of Others Similarly Situated; Daniel Apanavicius, Individually and on Behalf of Others Similarly Situated; Larry Wiley; Jacquelyn Willcutt, Individually and on Behalf of Others Similarly Situated; Emerson Dominguez-Osorio, Individually and on Behalf of Others Similarly Situated; Charles Williams, Individually and on Behalf of Others Similarly Situated; Miao-Hua Lin; Jerry Williams, Individually and on Behalf of Others Similarly Situated; Nicole Williams, Individually and on Behalf of Others Similarly Situated; Vicky Williams, Individually and on Behalf of Others Similarly Situated; Eric Wilson, Individually and on Behalf of Others Similarly Situated; Diane Winton, Individually and on Behalf of Others Similarly Situated; Matthew Wolfe, Individually and on Behalf of Others Similarly Situated; Matt Wood, Individually and on Behalf of Others Similarly Situated; Sherry Wood, Individually and on Behalf of Others Similarly Situated; Rhonda Woody, Individually and on Behalf of Others Similarly Situated; Steven Xayadeth, Individually and on Behalf of Others Similarly Situated; Mariano Yanes, Individually and on Behalf of Others Similarly Situated; Floyd Freeman; Dario Abarca; Susana Mejia; Adrianna Mena

*Plaintiffs - Appellants*

v.

Conagra Foods Packaged Foods LLC, doing business as ConAgra Foods

*Defendant - Appellee*

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Appeal from United States District Court  
for the Eastern District of Arkansas - Little Rock

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Submitted: April 10, 2018  
Filed: August 9, 2018

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Before SMITH, Chief Judge, WOLLMAN and LOKEN, Circuit Judges.

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WOLLMAN, Circuit Judge.

Employees of Conagra Foods Packaged Foods, LLC, (ConAgra) appeal the dismissal of their claims under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, and the Arkansas Minimum Wage Act, Ark. Code § 11-4-201, *et seq.*, arguing that factual disputes preclude summary judgment and that the district court<sup>1</sup> erred in its application of Arkansas law. We affirm.

### I. Background

ConAgra produces prepared foods and food products in plants across the country. Employees at ConAgra's Russellville, Arkansas, plant (employees) must don and doff company-provided personal protective equipment (protective equipment) outside the plant's production areas. Because the majority of employees use time clocks within production areas, they are not compensated for their time

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<sup>1</sup>The Honorable James M. Moody, Jr., United States District Judge for the Eastern District of Arkansas.



donning and doffing their protective equipment and walking to and from the time clocks.<sup>2</sup>

In March 2012, the employees' union and ConAgra entered into negotiations to revise the 2008 Collective Bargaining Agreement. The union submitted a proposal that sought "a 10 minute paid dress out period" for employees. The parties dispute what occurred during negotiations, but the employees have presented evidence that ConAgra agreed to move its time clocks from production areas to changing areas so that the employees could be compensated for time spent donning and doffing protective equipment. In return, the union agreed to withdraw its proposal. Ultimately, both parties entered into the 2012 Collective Bargaining Agreement, which did not state that employees would be compensated for donning and doffing protective equipment. Nor did it address whether ConAgra would move the time clocks from production areas to changing areas.

ConAgra thereafter made no changes to its compensation practices for donning and doffing protective equipment and did not move its time clocks to changing areas. Neither the union nor any employee filed a grievance under the 2012 Collective Bargaining Agreement demanding compensation for time spent donning and doffing protective equipment.

## II. Discussion

We review the district court's grant of summary judgment *de novo*, and we will affirm if the evidence, viewed in the light most favorable to the non-moving party, shows that no dispute of material fact exists and that the moving party is entitled to

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<sup>2</sup>The fry bake department employees are not involved in this litigation. They use a time clock outside of a production area and may don and doff their protective equipment while being paid.

judgment as a matter of law. Davidson & Schaaff, Inc. v. Liberty Nat'l Fire Ins. Co., 69 F.3d 868, 870 (8th Cir. 1995). We also review *de novo* the district court's interpretation of state law. Macheca Transp. Co. v. Phila. Indem. Ins. Co., 737 F.3d 1188, 1196 (8th Cir. 2013).

#### A. Fair Labor Standards Act Claims

Employers must pay their employees a minimum wage for hours worked, but may exclude “any time spent in changing clothes or washing at the beginning or end of each workday” if the time is excluded “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 parties agree that the 2012 Collective Bargaining Agreement does not state that employees will be paid for their time spent donning and doffing protective equipment. Thus, the issue before us is whether it was the “custom or practice” under the 2012 Collective Bargaining Agreement for employees not to be compensated for donning and doffing their protective equipment.

The employees argue that ConAgra cannot unilaterally create a custom or practice by refusing to compensate them for time spent donning and doffing, but this argument overlooks the parties' previous interactions. Prior to 2012, “[t]he Parties had a long-standing practice of non-payment for donning and doffing for most (but not all) employees at the Russellville Plant[.]” Appellants' Br. 28. Because this practice continued after the 2012 Collective Bargaining Agreement took effect, we do not view ConAgra as unilaterally imposing a custom or practice, but rather as continuing a custom or practice that was in effect under the 2008 Collective Bargaining Agreement. Moreover, the union and its employees have not objected—under the agreement—to this practice. See Jackson v. Old EPT, LLC, 834 F.3d 872, 875 (8th Cir. 2016) (“The union accepted the offer by continuing to work without striking and taking further actions relating to the bargaining relationship:

Union members filed 182 grievances alleging contractual violations since the last, best, and final offer terms were implemented.”)

### B. Arkansas Minimum Wage Act

In 2016, the Arkansas Supreme Court held that the Arkansas Minimum Wage Act required employers to pay employees for time spent donning and doffing protective equipment, regardless of the “custom and practice under the collective-bargaining agreement.” Gerber Prods. Co. v. Hewitt, 492 S.W.3d 856, 864 (Ark. 2016). A year later, the Arkansas legislature passed Act 914, which sought to legislatively overrule Gerber. Part of Act 914 amended Arkansas Code § 11-4-205 to include the underlined language:

Nothing in this subchapter, including the provisions of § 11-4-218(b), shall be deemed to interfere with, impede, or in any way diminish the right of employers and employees to bargain collectively through representatives of their own choosing in order to establish wages or other conditions of work.

This amendment attempted to clarify that the parties’ agreement controlled employee compensation, regardless of Arkansas Code § 11-4-218(b)’s directive that “[a]ny agreement between the employee and employer to work for less than minimum wages shall be no defense to the action.”

Because it arises under Arkansas law, we will apply that law to appellants’ claim. Witzman v. Gross, 148 F.3d 988, 990 (8th Cir. 1998) (citing United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966); Mangold v. Cal. Pub. Util. Comm’n, 67 F.3d 1470, 1478 (9th Cir. 1995)). The issue before us is whether the district court was entitled to consider Act 914 when predicting how the Arkansas Supreme Court would construe Arkansas law.

The employees argue that the district court erred by finding “that the Arkansas Supreme Court would abandon its decision in Gerber” and would follow Act 914. The employees assert that the district court was bound by Gerber—not Act 914—because no Arkansas Supreme Court opinion has questioned its legal underpinnings. The United States Supreme Court has explained, however, that “[w]henver [the] law is authoritatively declared by a State, whether its voice be the legislature or its highest court, such law ought to govern in litigation founded on that law, whether the forum of application is a State or a federal court[.]” Guar. Tr. Co. of N.Y. v. York, 326 U.S. 99, 112 (1945). When a state’s law is ambiguous or uncertain, “we look to ‘relevant state precedent, analogous decisions, considered dicta, and any other reliable data’ to determine how the Supreme Court of [Arkansas] would construe [Arkansas] law.” Ashley Cty., Ark. v. Pfizer, Inc., 552 F.3d 659, 665 (8th Cir. 2009) (quoting United Bank of Iowa v. Indep. Inputs (In re W. Iowa Limestone, Inc.), 538 F.3d 858, 866 (8th Cir. 2008)); see Roginsky v. Richardson-Merrell, Inc., 378 F.2d 832, 851 (2d Cir. 1967) (“[W]hen a federal court must determine state law, it should not slavishly follow lower or even upper court decisions but ought to consider all the data the highest court of the state would use.” (citing Corbin, The Laws of the Several States, 50 Yale L.J. 762 (1941))).

The employees argue that this all-encompassing approach is inconsistent with our precedent, in particular J-McDaniel Construction Co., Inc. v. Mid-Continent Casualty Co., 761 F.3d 916, 919 (8th Cir. 2014), which explained that “we are not at liberty to disregard the binding law of the state, nor may we substitute our judgment for that of the Arkansas Supreme Court.” J-McDaniel is distinguishable, however, because the plaintiff in that case sought retroactive application of a statute that created a new substantive right. Id. at 918-19. Unlike the statute in J-McDaniel, Act 914 did not create a new substantive right under § 11-4-205, but merely clarified the statute’s meaning that “[n]othing in this subchapter” applied to § 11-4-218(b), a different statute within the subchapter. Such a change in text cannot be considered the creation of a substantive right.

The employees also argue that Act 914 can be applied only prospectively, because the Act limits itself “to conduct occurring on or after the effective date of this act.” This quoted language does not apply to § 11-4-205, because it appears in a section of Act 914 that created Arkansas Code § 11-4-221. This was made clear when the statute was codified. Although Act 914 states that § 11-4-221(e) should read, “This act applies only to conduct occurring on or after the effective date of this act,” the codified version of the statute states, “This *section* applies only to conduct occurring on or after April 5, 2017.” (emphasis added). We thus follow the statute as codified.

After reviewing Gerber, Act 914, and the codified text of the Act, we predict that if this issue were before the Arkansas Supreme Court today, it would not follow Gerber but would instead apply the terms of the parties’ 2012 Collective Bargaining Agreement.

### III. Tool Time Compensation

The employees also seek compensation for their time spent checking-out and checking-in tools that are necessary to do their work. The employees state that it takes “two to five minutes” to check out tools and “no more than a few minutes” to check them in. Response to Defendant’s Statement of Facts in Support of Its Motion for Summary Judgment 9-10, 12. The employees argue that ConAgra could track time spent checking-out and checking-in tools if ConAgra recorded the check-out and check-in times and compared them with time-clock records. The question is whether the time required to perform these activities is more than *de minimis*.

Employers are not required to pay employees for “insubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes[.]” 29 C.F.R.

§ 785.47. This legal concept, known as “[t]he *de minimis* doctrine allows employers to disregard otherwise compensable work when only a few seconds or minutes of work beyond the scheduled working hours are in dispute.” Kellar v. Summit Seating Inc., 664 F.3d 169, 176 (7th Cir. 2011) (citing Singh v. City of New York, 524 F.3d 361, 370 (2d Cir. 2008)). Courts consider the following factors when determining whether the work performed by the employee is *de minimis*: “[1] the amount of time spent on the extra work, [2] the practical administrative difficulties of recording additional time, [3] the regularity with which the additional work is performed, and [4] the aggregate amount of compensable time.” Id. (citing Lindow v. United States, 738 F.2d 1057, 1062-63 (9th Cir. 1984); 29 C.F.R. § 785.47). Although “the amount of daily time spent on the additional work” is “[a]n important factor in determining whether a claim is *de minimis*,” no precisely calculated, rigid durational period applies, but “[m]ost courts have found daily periods of approximately 10 minutes *de minimis* even though otherwise compensable.” Lindow, 738 F.2d at 1062 (citations omitted).

The employees argue that the district court erred by concluding that the time spent checking-out and checking-in tools was *de minimis*. We disagree. Under the facts before us, we conclude that such time is *de minimis* in light of the short duration of that process and the additional administrative burden necessary to compensate employees for that time.

#### IV. Conclusion

We conclude that ConAgra is not required to compensate employees for the time spent donning and doffing their protective equipment under either the Fair Labor Standards Act or the Arkansas Minimum Wage Act. Likewise, ConAgra is not required to compensate employees for the *de minimis* time spent checking-out and checking-in tools.

The judgment is affirmed.