

REDO - REVISED FIRST STAGE OF THE CHATGPT-4 APPEAL EXPERIMENT: Briefs and Opinion Submitted and Detailed Summaries Generated

Ralph Losey, October 15, 2023

Here are the prompts used and responses received in chronological order in the redo of the original experiment performed on October 3, 2023. This should all speak for itself if you have read *Circuits in Session: Addendum to the Appellate Court Judge Experiment*, to which this is a kind of Appendix, and no further comments will be made. I am happy to try to respond to any questions. GPT put my picture in the record of all my prompts, plus I have added a short break line for clarity.



Please review and summarize the complete Statement of Facts section of this PDF, https://aiethicscom.files.wordpress.com/2023/10/mckay-v.-miami-dade-county_-2021-u.s.-11th-cir.-briefs-lexis-9523.pdf

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I have reviewed the "Statement of Facts" section of the PDF document titled "MCKAY v. MIAMI-DADE COUNTY" (2021 U.S. 11TH CIR. BRIEFS LEXIS 9523). Below is a concise summary:

Statement of Facts Summary:

Program Overview: The Forensic Imaging Bureau of the Miami-Dade County Medical Examiner Department administers an unpaid internship known as the Forensic Imaging Preceptorship Program (FIPP). The program aims to have at least two interns at all times and typically lasts for six months. Interns undergo four weeks of training and then work independently as autopsy photographers.

Role of Interns: Interns, including Brandi McKay, perform the same work as staff photographers, allowing the latter to focus on other duties. Interns also cover weekends, reducing the need for overtime pay for staff photographers. McKay was not motivated by any civic, charitable, or humanitarian purpose; her sole intent was to acquire specialized skills.

Training and Workload: McKay's training primarily occurred during the first four weeks. After that, she worked as a primary autopsy photographer, alternating weekends and weekdays with

another intern. She worked 508.75 hours, including 50.75 hours of overtime, without compensation.

Impact on Staff: The presence of interns like McKay allows staff photographers to focus on other tasks and minimizes the department's overtime costs. The department treats interns "much like temporary employees."

Legal Implications: The case questions whether McKay was a "volunteer" or an "employee" under the Fair Labor Standards Act (FLSA). The County benefited from her uncompensated work, raising questions about her legal status as an intern.

The facts delineate a symbiotic yet contentious relationship between the intern and the institution. While the intern gains specialized skills, the institution benefits from labor without financial remuneration, thereby creating a legal and ethical quagmire.

We finished processing the whole document with the PDF Search plugin. What else would you like to know?



Summarize the three points in the Summary of Argument section of the brief.

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Summary of Argument Points:

1. Definition of "Volunteer": The first point argues that the Fair Labor Standards Act (FLSA) does not define McKay as a "volunteer" because she did not perform her duties for civic, charitable, or humanitarian reasons. The district court's failure to apply the Department of Labor's regulatory definition of "volunteer" is considered an error.

2. Party-Presentation Principle: The second point contends that the district court erred by applying the "primary beneficiary test" to determine McKay's employment status, a theory that neither party advanced. This contravenes the party-presentation principle, as both parties had rejected this legal theory.

3. Primary Beneficiary Test: The third point argues that even if the primary beneficiary test were applicable, the County was the primary beneficiary of the relationship with McKay. She provided services that extended well beyond her learning period, and the County would have had to hire additional staff or pay overtime if not for her unpaid labor.

These points collectively challenge the district court's interpretation and application of the law, particularly concerning the definitions of "volunteer" and "employee" under the FLSA. They also question the ethical and legal implications of unpaid internships in public agencies.



Summarize the following two segments of the brief's argument sections I.A. and I.B. I.A. - Department of Labor Regulations Preclude the Finding that McKay Was a Volunteer Rather than an Employee. I.B. - The District Court Erred by Failing to Provide Chevron Deference to a Controlling Administrative Regulation

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Argument Sections I.A. and I.B. Summary:

I.A. Department of Labor Regulations Preclude the Finding that McKay Was a Volunteer Rather than an Employee

This section argues that the district court erred in its interpretation of McKay as a "volunteer" under the Fair Labor Standards Act (FLSA). The Department of Labor (DOL) has a regulatory definition for "volunteer" as someone who "performs hours of service for a public agency for civic, charitable, or humanitarian reasons" without the promise or expectation of compensation (29 C.F.R. § 553.101(a)). The brief contends that McKay did not fit this definition as her intent was not civic, charitable, or humanitarian but was instead to acquire specialized skills.

Therefore, she should be considered an "employee" entitled to minimum wage and overtime compensation.

I.B. The District Court Erred by Failing to Provide Chevron Deference to a Controlling Administrative Regulation

This section focuses on the concept of "Chevron deference," a legal principle that courts should defer to administrative agencies' interpretations of ambiguous statutes. The argument is that the district court failed to apply this deference to the DOL's regulatory definition of "volunteer." The regulation should be considered "controlling" unless it is "arbitrary, capricious, or manifestly contrary to the statute" (Chevron U.S.A., 467 U.S. at 844). The brief argues that the district court's failure to accord this deference was an error.

Both sections collectively assert that the district court's failure to adhere to established legal principles and administrative regulations led to an incorrect judgment, thereby necessitating a reversal and remand of the case.

Would you like to explore any other aspects of this case?



Summarize the following two segments of the brief's argument sections I.C. and I.D., I.C. - The District Court Misinterpreted DOL Regulations Defining the Term "Volunteer" I.D. The Todaro Decision Does Not Support the Court's Conclusion

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I.C. - The District Court Misinterpreted DOL Regulations Defining the Term "Volunteer"

The argument section I.C. contends that the District Court erred in its interpretation of the Department of Labor (DOL) regulations defining the term "volunteer." The brief argues that the court's interpretation was inconsistent with the text of the regulations. Specifically, the court assumed that 29 C.F.R. § 553.101 "deals with the definition of volunteers generally," while 29 C.F.R. § 553.104 "deals with private individuals who volunteer to serve public agencies." The brief asserts that this reading is incorrect and that both regulations are part of the same subpart, which aims to define the circumstances under which individuals may serve as volunteers for public agencies. The court's misinterpretation, therefore, undermines the regulatory framework set by the DOL.

"The court instead explained that it was unconvinced that the regulation 'deals squarely with the issues presented in this case.' (Doc. 43: 5) The court's doubt arose from its assumption that 29 C.F.R. § 553.101 'deals with the definition of volunteers generally' while 29 C.F.R. § 553.104 'deals with private individuals who volunteer to serve public agencies.'" (Pages: 8)

I.D. - The Todaro Decision Does Not Support the Court's Conclusion

In section I.D., the brief argues that the District Court improperly relied on the Todaro decision to support its conclusion. It points out that the Todaro court did not apply Chevron deference to the DOL's definition of "volunteer" and expressed its own "common sense" belief about what constitutes a volunteer. The brief argues that the Todaro court's views are not aligned with the DOL's definition and should not have been relied upon. Moreover, the Todaro decision did not play a role in its ultimate holding, making it an inappropriate basis for the District Court's judgment.

"Unlike the Todaro court, the district court in McKay's case did not and could not conclude that McKay volunteered her services for a civic purpose. The uncontroverted evidence is to the contrary. (Doc. 30: PP 7-8) Accordingly, the ultimate holding of Todaro does not support the court's summary judgment." (Pages: 10)

These summaries are based on the text excerpts from the brief and should be reviewed for accuracy and context.



Summarize the following two segments of the brief's argument sections I.E. and I.F., I. E. The DOL's Definition of "Volunteer" Is Rational I. F. The Summary Judgment Should Be Reversed

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Argument Sections I.E. and I.F. Summary:

I.E. The DOL's Definition of "Volunteer" Is Rational

This section argues that the Department of Labor's (DOL) definition of "volunteer" is rational and serves the purpose of the Fair Labor Standards Act (FLSA). The definition is designed to minimize the potential for abuse or manipulation of the FLSA's minimum wage and overtime requirements. It aims to protect workers from coercion or undue pressure to 'volunteer' their services. The brief contends that the DOL's definition is not "arbitrary, capricious, or manifestly contrary to the statute," and thus should be given deference.

"The administrative rule also advances the purpose of the FLSA by 'minimizing potential for abuse or manipulation of the FLSA's minimum wage and overtime requirements through coercion or undue pressure on individuals to 'volunteer' their services.'" (Pages: 11)

I.F. The Summary Judgment Should Be Reversed

This section argues that the summary judgment should be reversed because the DOL's definition of "volunteer" is neither arbitrary nor capricious and is consistent with the statute it implements. The district court erred by giving the definition no deference at all, thereby failing to apply Chevron deference.

"Since the Department's definition of 'volunteer' is not arbitrary or capricious and since it is consistent with the statute it implements, it is entitled to Chevron deference. The district court erred by giving the definition no deference at all." (Pages: 11)

These sections collectively assert that the district court's failure to adhere to established legal principles and administrative regulations led to an incorrect judgment, thereby necessitating a reversal and remand of the case.

These summaries are based on the text excerpts from the brief and should be reviewed for accuracy and context. Would you like to explore any other aspects of this case?



Summarize the following segment of the brief's argument section II., The District Court Erred by Basing Summary Judgment on a Defense that the County Disavowed

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Argument Section II. Summary:

The District Court Erred by Basing Summary Judgment on a Defense that the County Disavowed
This section argues that the District Court violated the "party-presentation principle" by basing its decision on a theory that the County itself disavowed. Specifically, the court applied the "primary beneficiary test" to determine McKay's employment status, even though the County explicitly stated that this test should not apply to government employers like itself. In its motion

for summary judgment, the County argued that "McKay's participation in the Miami-Dade County Medical Examiner Department Forensic Imaging Preceptorship Program is not subject to the primary beneficiary test applicable to internships with for-profit employers." McKay also argued that the case hinged on 29 C.F.R. § 553.101(a) and that the Department of Labor had not incorporated the private sector primary beneficiary test into its definition of a public service volunteer.

"In light [*32] of the County's decision not to rely on the primary beneficiary test, as well as its concession that the primary beneficiary test does not apply to government employers, it was error for the district court to rest its decision on the primary beneficiary test. The court's decision contravenes the party-participation principle by basing a ruling in a party's favor on a theory that the party did not advance." (Pages: 12,13)

The brief argues that this violation of the party-presentation principle warrants the reversal of the summary judgment.

This summary is based on the text excerpts from the brief and should be reviewed for accuracy and context. Would you like to explore any other aspects of this case?



Summarize the following segment III.A. of the brief's argument, III. The District Court Erred by Applying the Primary Beneficiary Test to a Public Agency and by Deciding that McKay Was the Primary Beneficiary of an Internship that Gave Her Four Weeks of Training When the County Expected Five Months of Unpaid Labor After the Training Ended, III. A. The Primary Beneficiary Test Does Not Apply to Public Agencies

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Argument Section III.A. Summary:

The Primary Beneficiary Test Does Not Apply to Public Agencies

This section argues that the District Court erred by applying the "Primary Beneficiary Test" to a public agency, specifically Miami-Dade County. The brief contends that the court's approach was not a matter of preference but a legal misstep. According to 29 C.F.R. § 553.101(a), which is "binding on courts," the only legally correct approach is to apply the regulation as it is written. The brief also points out that reliance on the Vlad-Berindan decision is misplaced, as that case involved a pro se lawsuit against various New York Transit Authority defendants and is not directly applicable here.

"The district court stated that its 'ultimate holding does not rest on the Department of Labor's regulations or Todaro' because it preferred the 'approach' taken by the court in Vlad-Berindan v. N.Y.C. Metro. Transp. Auth. The court erred because the correct approach is not a matter of

preference. Since 29 C.F.R. § 553.101(a) is 'binding on courts,' the only legally correct approach is to apply the regulation as it is written." (Pages: 13)

The brief argues that the District Court's application of the "Primary Beneficiary Test" was not only legally incorrect but also contradicted the positions of both parties, who agreed that this test did not apply to public agency volunteers.

"In light of the County's decision not to rely on the primary beneficiary test, as well as its concession that the primary beneficiary test does not apply to government employers, it was error for the district court to rest its decision on the primary beneficiary test." (Pages: 12,13)

In summary, the brief contends that the District Court's application of the "Primary Beneficiary Test" was a legal error that warrants the reversal of the summary judgment.

This summary is based on the text excerpts from the brief and should be reviewed for accuracy and context. Would you like to delve into any other facets of this case?



Summarize the following segment III.B., III. B. The Court Erred in Granting Summary Judgment Because the County Was the Primary Beneficiary of McKay's Internship III. B.1. The Primary Beneficiary Test III. B.2.The County Was the Primary Beneficiary of McKay's Participation in the FIPP After McKay's Training Ended

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Argument Section III.B. Summary:

III. B. The Court Erred in Granting Summary Judgment Because the County Was the Primary Beneficiary of McKay's Internship

This section argues that the District Court erred in its application of the "Primary Beneficiary Test," asserting that the County, not McKay, was the primary beneficiary of the internship. The brief contends that the County received a substantial benefit by obtaining unpaid labor, which allowed it to avoid hiring a paid employee. This benefit far outweighed the minor benefit McKay received from a four-week training course.

"The County was plainly the primary beneficiary of McKay's participation in the FIPP after her four weeks of training was completed. The County admits that it treated her as a part-time or temporary employee and that it relies on interns to save labor costs and to budget less overtime." (Pages: 19)

III. B.1. The Primary Beneficiary Test

The brief outlines the "Primary Beneficiary Test" as established in the leading case addressing unpaid private sector interns. It argues that even if the court does decide to apply this test, it should conclude that the District Court erred in its application.

"In the leading case addressing unpaid private sector interns, the Eleventh Circuit outlined a 'primary beneficiary' test to determine whether services provided during an internship constitute employment." (Pages: 14)

III. B.2. The County Was the Primary Beneficiary of McKay's Participation in the FIPP After McKay's Training Ended

This subsection argues that the County was the primary beneficiary of McKay's participation in the Forensic Imaging Preceptorship Program (FIPP) after her initial four weeks of training. The County expected five months of service in alternating weeks as either a primary autopsy photographer or a backup autopsy photographer. The brief contends that the County would need to hire additional staff or pay overtime compensation to its current staff in the absence of work done by interns like McKay.

"In exchange, the County expected five months of service, in alternating weeks, as either a primary autopsy photographer or a backup autopsy photographer. In the absence of work done by interns like McKay, the County would need to hire additional staff or to pay overtime compensation to its current staff." (Pages: 5,6)

In summary, the brief argues that the District Court's application of the "Primary Beneficiary Test" was flawed and that the County was the actual primary beneficiary of McKay's internship, thereby warranting the reversal of the summary judgment.

These summaries are based on the text excerpts from the brief and should be reviewed for accuracy and context. Would you like to explore any other aspects of this case?



Summarize the following segment III.C., The District Court Misapplied the Primary Beneficiary Test

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Argument Section III.C. Summary:

The District Court Misapplied the Primary Beneficiary Test

This section argues that the District Court misapplied the "Primary Beneficiary Test" by failing to adequately weigh the benefits received by the County against those received by McKay. The brief contends that the court's analysis was one-sided, focusing only on the benefits McKay received from the four-week training course but neglecting to consider the substantial benefits the County gained from McKay's unpaid labor.

"In any event, the district court's summary repeats that McKay received a benefit but fails to weigh that benefit against the benefit received by the County. The court failed to recognize that the County obtained a substantial benefit by receiving unpaid labor that allowed it to avoid hiring a paid employee. The court made no effort to balance that benefit against the rather

minor benefit that McKay received from a four-week training course. The court thus erred as a matter of law by misapplying the test." (Pages: 21)

The brief argues that a fair application of the "Primary Beneficiary Test" would lead to the conclusion that the County was the primary beneficiary of the relationship, thereby warranting the reversal of the summary judgment.

"As the discussion above demonstrates, a fair analysis leads to only one conclusion: The County was the primary." (Pages: 21)

In summary, the brief contends that the District Court's misapplication of the "Primary Beneficiary Test" constitutes a legal error that necessitates the reversal of the summary judgment.

This summary is based on the text excerpts from the brief and should be reviewed for accuracy and context. Would you like to explore any other aspects of this case?



Please summarize the Conclusion section of the brief.

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Conclusion Section Summary:

The conclusion of the brief asserts that the Court of Appeals should reverse the District Court's order granting summary judgment to Miami-Dade County and denying it to McKay. It argues that the District Court erred in its application of the law and that McKay is entitled to be paid for her work. The brief calls for the case to be remanded to the District Court with instructions to enter summary judgment in McKay's favor. It also suggests that the District Court should either determine the damages or set the issue for trial before a jury if the relevant facts are disputed.

"For the reasons stated, the court of appeals should reverse the order granting summary judgment to the County and denying summary judgment to McKay. The court should remand the case to the district court with instructions to enter summary judgment as to liability in McKay's favor and to either determine damages or, if it considers the relevant facts to be disputed, to set the damages issue for trial before a jury." (Pages: 21)

This summary is based on the text excerpts from the brief and should be reviewed for accuracy and context. Would you like to explore any other aspects of this case?



I would now like you to start summarizing the Appellee's Answer brief, that provides counter-arguments to those stated in the Appellant brief that we just considered. The Appellee's Answer brief can be found at: https://aiethicscom.files.wordpress.com/2023/10/mckay-v.-miami-dade-county_-2021-u.s.-11th-cir.-briefs-lexis-9523-1.pdf. Please review and summarize the Statement of Jurisdiction, and Statement of the Issues.

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Statement of Jurisdiction:

The Appellee's brief confirms that the appeal arises from a summary judgment entered in an action alleging violations of sections 206 and 207 of the Fair Labor Standards Act (FLSA). The district court had subject-matter jurisdiction under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331. The summary judgment order is a final decision, and the Court of Appeals has jurisdiction pursuant to 28 U.S.C. § 1291. The notice of appeal was timely filed.

"This appeal is from a summary judgment entered in an action alleging a violation of sections 206 and 207 of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. The district court had subject-matter jurisdiction pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331. The district court's summary judgment order is a final decision of the district court that disposed of all parties' claims. The court of appeals has jurisdiction pursuant to 28 U.S.C. § 1291. The district court's summary judgment order was entered on October 13, 2020. The notice of appeal was timely filed on October 28, 2020." (Pages: 2)

Statement of the Issues:

The Appellee's brief outlines three primary issues:

1. Did the district court err by failing to defer to the administrative definition of "volunteer" in 29 C.F.R. § 553.101(a) and by failing to determine that McKay was not a volunteer but was employed by the County during her internship?
2. Did the district court err by basing summary judgment on a defense that the County disavowed?
3. Did the District Court err by applying the primary beneficiary test to a public agency and by deciding that McKay was the primary beneficiary of an internship that gave her four weeks of training when the County expected five months of unpaid labor after the training ended?

"1. Did the district court err by failing to defer to the administrative definition of 'volunteer' in 29 C.F.R. § 553.101(a) and by failing to determine from the undisputed facts that McKay was not a volunteer but was employed by the County during her internship?

2. Did the district court err by basing summary judgment on a defense that the County disavowed?
3. Did the District Court err by applying the primary beneficiary test to a public agency and by deciding that McKay was the primary beneficiary of an internship that gave her four weeks of training when the County expected five months of unpaid labor after the training ended?" (Pages: 2)

These summaries are based on the text excerpts from the brief and should be reviewed for accuracy and context. Would you like to explore any other aspects of this case?



Please review and summarize in detail the section of the Answer Brief, identified as the ii. Statement of the Facts.

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It appears that the search did not yield the specific "Statement of the Facts" section from the Appellee's Answer brief. This could be due to various factors such as the structure of the PDF or the way the content is presented. Would you like me to try another approach to obtain this information?



The statement of the facts section of Appellee's Answer brief that I would like you to provide a detailed summary of begins as follows: "STATEMENT OF THE CASE i. Proceedings and Dispositions in the Court Below Defendant/Appellee Miami-Dade County is satisfied with the Procedural History included in Plaintiff/Appellant Brandi McKay's Initial Brief. ii. Statement of the Facts Miami-Dade County is political subdivision of the State of Florida. . . . "

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Statement of the Facts (Appellee's Answer Brief):

The Statement of the Facts in the Appellee's Answer Brief begins by affirming that Miami-Dade County is a political subdivision of the State of Florida. While the search did not yield the complete section, it did provide some context about the Forensic Imaging Bureau of the Miami-Dade County Medical Examiner Department ("Department").

"The Forensic Imaging Bureau of the Miami-Dade County Medical Examiner Department ('Department')" (Pages: 2,3)

Unfortunately, the search did not provide a detailed account of the facts as presented in the Appellee's Answer Brief. Would you like me to attempt another search or proceed differently?



Here is the excerpt Statement of Facts that I would like you to summarize: "Miami-Dade County is political subdivision of the State of Florida. (Appx12, Complaint at P 4). Brandi McKay applied for the Miami-Dade County Medical Examiner's Forensic Imaging Preceptorship Program ("FIPP") in 2016. (Appx978, Appx984 at P 1). The FIPP is a well-known program and many medical examiners contact the Miami-Dade County Medical Examiner first when they are hiring. (Id. at P 3). McKay learned about the preceptorship when she visited Barry College after seeing that it offered a degree in forensic photography. (Appx985 at P 4). McKay never applied for Barry's forensic photography program because she found out she could just apply to the County's program. (Appx979, Appx985 at P 5). McKay did not look into any other forensic photography degree programs because she did not want to go back to another four years of school. (Id. at PP 7-8). On September 23, 2016 McKay read and then signed a Forensic Imaging Preceptorship Program Description. (Appx92, McKay Deposition, Lines 1-12; ECF No. 27-1, McKay Deposition Exhibits, Pages 4-9). The Forensic Imaging Preceptorship Program Description stated: "Autopsy photography is the most basic aspect of forensic photography work and it is where the students will spend the majority of their time. The students will be in the morgue photographing autopsies on a rotational basis, [*3] roughly every other week and assigned weekends and holidays for the duration of the internship". (ECF No. 27-1, McKay Deposition Exhibits, Page 4). The 2016 Description also clearly stated that it is a non-paying program . (ECF No. 27-1, McKay Deposition Exhibits, Page 6). No one in the medical examiner department promised McKay a job at the end of her preceptorship. (Appx110, Nichols Deposition, Lines 6-10). McKay could not join the program until 2019 because she had to wait five years from her last conviction in order to be in the program. (Appx49, McKay Deposition, Lines 1-20). McKay did not apply for any other forensic photography programs between 2016 and 2019. (Appx979, Appx985 at PP 7-8). McKay began the FIPP on April 15, 2019. (Id. at P 9). McKay knew the preceptorship program was unpaid when she entered it. (Appx980, Appx986 at P 17). McKay signed a second Forensic Imaging Preceptorship Program Description on April 15, 2019. (Appx94-95, McKay Deposition, Lines 19-25, 1; ECF No. 27-1, McKay Deposition Exhibits, Pages 15-20). The 2019 description reiterated-" [i]t is a non-paying program ". (ECF No. 27-1, McKay Deposition Exhibits, Page 17). When she signed the description on April 15, 2019, McKay understood and agreed to abide its rules and guidelines. (Appx95, McKay Deposition, Lines 5-8). McKay expected "[j]ust to learn forensic photography and to hopefully get a job afterwards". (Id.). McKay admittedly learned forensic photography during the preceptorship. (Id. at P 18). The International Association of Identification ("IAI") is a certification required for forensic photographers; there are only about 60-65 certified IAI photographers in the country, and three of them work in Miami-Dade County's forensic photography bureau. (Appx832, Caprara Deposition, Lines 10-15). Leonard Wolf, who has worked with the County for 23 years and served as the forensic photography for [*4] the last 20 years, supervises the Forensic Imaging Preceptorship Program. (Appx980, Appx986 at at PP 19-20). Three other staff photographers are currently working for the Miami-Dade Medical Examiner Department: Belmarie Lyons, Heidi Nichols, and Dominique Tomillo. (Id. at P 21). Nichols has been employed as a Forensic

Photographer with Miami-Dade County since 2000. (Appx631-632, Nichols Deposition, Lines 23-25, 1). Tomillo has been a forensic photographer with Miami-Dade County for 14 years. (Appx487, Tomillo Deposition, Lines 10-17). Lyons has worked as a forensic photographer for Miami-Dade for 21 years. (Appx160, Lyons Deposition, Lines 14-21). The Department has always had just four photographers for as long as Wolf can remember. (Appx981, Appx986 at P 22). Wolf has never asked to hire more than the existing four staff photographers. (Appx981, Appx986 at P 23). The Department typically has four interns per year, but that varies- sometimes they have more and sometimes less. (Appx247, Wolf Deposition, Lines 7-12). The Department tries to limit the number of interns to two at a time because there was a time when they had four interns at the same time, and it was too much work to handle at the same time. (Appx395, Wolf Deposition, Lines 7-16). All of the lectures and training is exactly the same for each intern, with a set number in the beginning. (Appx701, Nichols Deposition, Lines 16-24; ECF No. 27-2, Page 40, Batista Deposition, Lines 7-15). After the interns complete the initial six weeks in the morgue, they begin a rotating schedule that includes one week in the morgue, and one week receiving specialized training. (Appx257, Wolf Deposition, Lines 6-23). On each of the backup weeks interns are trained in, and expected to complete, a specialized assignment ranging from gross [*5] specimen photography, crime scene photography, alternate light source photography, evidence photography, studio lighting, portrait photography, environmental portrait photography, high speed photography, micro photography, macro photography. (Appx257, Wolf Deposition, Page 25:11-23; ECF No. 27-1, Pages 29-30, McKay Deposition Exhibits). Many of the techniques required highly specialized equipment, and the program provides proper training on using the equipment. (Appx341-342, Wolf Deposition, Lines 24-25, 1-4). The training in specialized photography techniques "...was a lot of hands on and a lot of one on one with one of the staff photographers." (ECF No. 27-2, Page 39, Batista Deposition, Lines 2-17). A staff photographer served as backup for the morgue to avoid pulling the second intern away from their portfolio assignments for the week. (Appx510, Tomillo Deposition, Lines 12-20). The total amount of time the staff photographers spent on each specialized assignment depended on each intern's level of engagement, including the number of questions the intern asks, the intern's requests for review of their work, the amount of assignments the intern sets up, and the amount of photos [*6] the intern takes on their own time. (Appx700-701, Nichols Deposition, Lines 16-23, 3-18). Madai Batista, a forensic photography intern in 2019, received "constant feedback" throughout the whole program. (ECF No. 27-2, Page 27-28, Batista Deposition, Lines 22-25, 1-5). Batista reviewed autopsy photos with staff photographers on a daily basis, or every other day, throughout the entire program. (ECF No. 27-2, Page 36, Batista Deposition, Lines 2-22). Staff photographers were not working less when there are two interns, they are devoting a lot of time and energy training the intern that is not in the morgue. (Appx723, Nichols Deposition, Lines 19-25). It is a lot more work to teach the students than it is for the staff photographers to do it themselves. (Appx366, Wolf Deposition, Lines 1-2). Nichols spends "a lot" of time helping the interns as opposed to doing her own job. (Appx690, Nichols Deposition, Lines 9-11). Tomillo estimates that more than half of her work week is spent working with interns because its constant supervision when there are two interns. (Appx574-575, Tomillo Deposition, Lines 19-25, 1-3). The staff photographers are spending a lot more time teaching interns the [*7] assignments and going over their work. (Appx366, Wolf Deposition, Lines 2-4)."

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Detailed Summary of Statement of Facts (Appellee's Answer Brief):

Background and Program Description:

- Miami-Dade County is a political subdivision of Florida.
- Brandi McKay applied to the Forensic Imaging Preceptorship Program ("FIPP") in 2016.
- McKay learned about FIPP through Barry College, which offers a degree in forensic photography.
- McKay opted for FIPP to avoid another four years of school.
- She signed a program description in 2016 and again in 2019, both times acknowledging it was a non-paying program.

Program Structure and Staff:

- The program is supervised by Leonard Wolf, a veteran forensic photographer.
- The department has four staff photographers: Wolf, Lyons, Nichols, and Tomillo.
- The program typically has four interns per year.
- Interns undergo an initial six weeks in the morgue, followed by specialized training.

Training and Internship:

- Interns are trained in various specialized photography techniques.
- The training is hands-on and one-on-one with staff photographers.
- Staff photographers serve as backup in the morgue to allow interns to focus on specialized assignments.

Staff Involvement:

- Staff photographers invest significant time in training interns.
- It's more work for staff to train interns than to do the tasks themselves.
- Staff photographers provide constant feedback and review interns' work regularly.

Intern Engagement:

- The time staff spend on each assignment depends on the intern's level of engagement.
- Madai Batista, another intern, received "constant feedback" throughout the program.

This summary encapsulates the multi-faceted nature of the FIPP, emphasizing both the program's structure and the extensive involvement of staff photographers in training interns. It also underscores McKay's awareness that the program was unpaid and her specific reasons for choosing it.



Please summarize the following section of Appellee's Answer brief, ARGUMENT A. THE DISTRICT COURT'S ORDER SHOULD BE AFFIRMED BECAUSE MCKAY WAS NOT AN EMPLOYEE ENTITLED TO MINIMUM WAGE OR OVERTIME PROTECTIONS.

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I apologize for the inconvenience. It appears that I was unable to locate the specific section "ARGUMENT A. THE DISTRICT COURT'S ORDER SHOULD BE AFFIRMED BECAUSE MCKAY WAS NOT AN EMPLOYEE ENTITLED TO MINIMUM WAGE OR OVERTIME PROTECTIONS." from the Appellee's Answer brief. Would you like to proceed with a different section or would you like to provide an excerpt for summarization?



Here is the argument I would like you to provide a detail summary of: "A. THE DISTRICT COURT'S ORDER SHOULD BE AFFIRMED BECAUSE MCKAY WAS NOT AN EMPLOYEE ENTITLED TO MINIMUM WAGE OR OVERTIME PROTECTIONS The determination of whether McKay is an employee or a volunteer under FLSA is a question of law, and individuals seeking compensation pursuant to the FLSA bear the initial burden of proving that an employer-employee relationship exists and that the activities in question constitute employment for purposes of the Act. See *Freeman v. Key Largo Volunteer Fire & Rescue Dep't, Inc.*, 841 F. Supp. 2d 1274, 1278 (S.D. Fla.), *aff'd*, 494 F. App'x 940 (11th Cir. 2012) (internal citations and quotations omitted). Generally, the FLSA defines an "employee" as any individual employed by an employer. See 29 U.S.C.A. § 203(e)(1). But the term "employee" does not include any individual who volunteers to perform services for a political subdivision of a State, if (i) the individual receives no compensation; and (ii) such services are not the same type of services which the individual [*9] is employed to perform for such public agency. See 29 U.S.C.A. § 203(e)(4)(A). The FLSA also cannot be interpreted to create an employment relationship between an individual who, without any express or implied compensation agreement, works to serve their own interest, and the entity providing aid and instruction. See *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199, 1208 (11th Cir. 2015). As the District Court correctly concluded, "...an individual who voluntarily and knowingly enters into a free, unpaid internship program without the promise of a job thereafter, for purely selfish reasons, i.e. not for civic, charitable, or humanitarian reasons, for a political subdivision of a State..." is not an employee under the FLSA, as a matter of law. The District Court's finding is not a deviation from the law-the United States Supreme Court reached the same conclusion more than thirty years before McKay started her internship. See *Tony & Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290, 295 (1985) (citing *Walling v. Portland Terminal Co.*, 330 U.S. 148, 152, 67 S.Ct. 639, 641, 91 L.Ed. 809 (1947)) ("An individual who, 'without promise or expectation of compensation, but solely for his personal purpose or pleasure, worked in activities carried on by other persons either for their pleasure or profit,' [*10] is outside the sweep of the Fair Labor Standards Act". McKay does not dispute that she entered the FIPP knowing it was a six-month, unpaid program, and her reasons for doing so were motivated by her own desire to "learn forensic photography and to hopefully get a job afterwards" without

attending a four year forensic photography degree program. These undisputed facts establish that McKay's participation in the FIPP is not covered by the FLSA, as a matter of law. See, e.g. *Todaro v. Township of Union*, 40 F.Supp.2d 226, 230 (D.N.J.,1999) ("For instance, a law student who provides services as a judicial intern for a judge may consider herself a volunteer and may be thought of as a volunteer, with no promise or expectation of monetary compensation, but may freely admit that she is motivated solely by the desire to obtain personal edification, legal experience, and resume-fodder (or even a compensated position with the judge). Such an individual is not motivated by "civic, charitable, or humanitarian purposes," but it offends rationality to suggest that this individual is an employee rather than a volunteer, and is thus entitled to minimum wages under the FLSA"). On appeal, McKay challenges the District Court's failure [*11] to defer to the administrative definition of volunteer. This position is not supported by existing law. "The regulatory definition of volunteer should be applied in a common-sense manner, which takes into account the totality of the circumstances surrounding the relationship between the individual providing services and the entity for which the services are provided." *Purdham v. Fairfax Cty. Sch. Bd.*, 637 F.3d 421, 428 (4th Cir. 2011) (citing *Cleveland v. City of Elmendorf*, 388 F.3d 522, 528 (5th Cir.2004)). The regulatory definition must also incorporate a standard of reasonableness and "...a person who performs services in the face of a regulation or stated policy that specifies that such services will be unpaid, yet who nevertheless persists in 'expecting' to receive compensation, should not be permitted to satisfy the definition of 'employee' simply by unreasonably insisting that he has a subjective expectation of receiving wages". *Todaro v. Twp. of Union*, 40 F. Supp. 2d 226, 230-31 (D.N.J. 1999). McKay's suggested interpretation of the regulatory definition of "volunteer" is not based on common sense or reasonableness. In order to reach the conclusion McKay suggests, this Court would have to ignore separate parts of the same regulation,¹ as well as the undisputed factual circumstances [*12] surrounding McKay's acceptance of the preceptorship. Common sense in these circumstances requires the Court to conclude that the exemption in 29 U.S.C.A. § 203(e)(4)(A) applies as a matter of law. *Accord Strout v. Sch. Bd. of Broward Cty., Fla.*, No. 15-61257-CIV, 2016 WL 4804075, at *3 (S.D. Fla. Feb. 1, 2016) (concluding volunteer exemption applied and barred any FLSA claim regarding the time plaintiff spent coaching); *Evers v. Tart*, 48 F.3d 319, 321 (8th Cir. 1995) (concluding that poll workers were "volunteers" within the meaning of the FLSA)."

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Summary of Argument A: The District Court's Order Should Be Affirmed Because McKay Was Not an Employee Entitled to Minimum Wage or Overtime Protections

The Appellee's argument hinges on the legal definition of an "employee" under the Fair Labor Standards Act (FLSA). They assert that McKay, who voluntarily entered an unpaid internship program, does not qualify as an employee under the FLSA. The argument cites precedent, including *Freeman v. Key Largo Volunteer Fire & Rescue Dep't, Inc.*, to emphasize that the burden of proof lies with the individual claiming to be an employee.

The Appellee contends that the FLSA explicitly excludes volunteers who perform services for a political subdivision of a State and receive no compensation for it. They argue that McKay's participation in the Forensic Imaging Preceptorship Program (FIPP) was motivated by her own

interests, specifically her desire to learn forensic photography and potentially secure employment thereafter. This, they claim, places her outside the scope of the FLSA.

The Appellee also addresses McKay's appeal point regarding the District Court's failure to defer to the administrative definition of "volunteer." They argue that this definition should be applied in a "common-sense manner," citing *Purdham v. Fairfax Cty. Sch. Bd.* They assert that McKay's interpretation of "volunteer" is neither common-sensical nor reasonable and would require the Court to ignore other parts of the same regulation.

In summary, the Appellee argues that the District Court's decision should be upheld because McKay does not meet the FLSA's criteria for being an employee. They assert that her participation in the FIPP was voluntary and motivated by her own interests, thereby exempting her from the FLSA's purview.

This argument is meticulously constructed to align with existing jurisprudence and statutory interpretation, aiming to fortify the District Court's original decision.



Now I would like you to provide a detailed summary of the Appellee's Argument in Section B, which reads as follows: "B. THE DISTRICT COURT'S ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE AFFIRMED Alternately, McKay challenges the application of the primary beneficiary test in this case. Miami-Dade County did, however, raise this alternative argument in its Motion for Summary Judgment. (Appx974-975). On appeal, McKay has not cited to any legal authority in support of her claim that the County, as a public employer, is somehow precluded from arguing, in the alternative, that it would still be entitled to judgment as a matter of law under the primary beneficiary test. Although the undersigned is unaware of any cases in this circuit addressing the issue, at least one court has rejected a similar argument. [*13] See *Vlad-Berindan v. NYC Metro. Transportation Auth.*, 779 F. App'x 774, 778 (2d Cir. 2019) (noting that plaintiff "presented no basis for concluding that the FLSA would require a public sector employer to pay an intern under circumstances in which a for-profit private employer would be exempt" and affirming dismissal of intern's FMLA claims). In *Schumann*, the Eleventh Circuit outlined seven factors for the Court to consider as part of its analysis. See *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199, 1211-1212 (11th Cir. 2015). No one factor is dispositive, and the Court "must engage in a weighing and balancing of all of the circumstances, including, where appropriate, other considerations not expressed in the seven factors". *Id.* at 1212. McKay admitted that she did not expect compensation, and both parties understood that the preceptorship was conducted without entitlement to a paid job at its conclusion, the first and seventh factors outlined in *Schumann*. As to the second factor, McKay's own deposition testimony confirmed that the internship provided training that would be similar to the training she would have received in an educational environment: Q. How did you first learn that Miami-Dade County had a forensic imaging preceptorship program? [*14] A. I found Barry University online and saw that they had a degree for forensic photography, so I went and

visited the college. Then they told me about their program through the Miami-Dade medical examiner's office. So I went and visited them, and they told me that since I already had a degree, I didn't have to go through Barry, and I could just apply to the program. (Appx47, McKay Deposition, Lines 14-22). Q. Why were you looking at the forensic photography degree from Barry? A. Since I had an interest in photography and criminal justice, I thought that would be the best way to go. Q. Did you ever apply for Barry's forensic photography program? A. No, because once I found out that I could just apply to the program, that is what I did. (Appx48, McKay Deposition, Lines 6-14). Q. Did you look at any other forensic photography degree programs? A. No, because I didn't want to go back to another four years of school. There is no other six-month program like this one. Q. Are there programs that last for longer than six months? A. I am sure there are other schools that offer degrees in forensic photography. Q. But you didn't apply to any other schools? [*15] A. No, because I wasn't trying to go back to school. (Appx51, McKay Deposition, Lines 6-17). The fifth factor is also not subject to any factual dispute because the parties agree that the FIPP was a six-month program. Although McKay claims that her "training was essentially finished by the end of the internship's fourth week" and "[t]aking more photographs did not improve her skills" her subjective view is not dispositive. When evaluating this factor, "the court should keep in mind that designing an internship is not an exact science" and should not "expect that the length of the internship will always match up perfectly with the skills to be taught and the experience to be gained through the program". See Schumann, 803 F.3d at 1213. This is especially true in light of McKay's own admission that the only aspects of forensic photography she did not learn were assignments set for the last month of the program: Q. Are there aspects of forensic photography that you didn't learn? A. Yes. Q. What aspects? A. I don't recall them right now, but they would be in the binder. Q. Can you explain? A. Because there were assignments that I didn't get to complete or learn. [*16] Q. Did you not get to complete them or learn them because they were assignments for after September 10? A. Yes. (Appx125, McKay Deposition, Lines 2-13). McKay did not create a genuine issue of fact sufficient to survive summary judgment simply by contradicting or ignoring her own previous sworn statement. See *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 806 (1999) (explaining need for explanation or attempt to resolve the disparity). The facts in this case are also entirely distinct from the indefinite training period that had already lasted 15 months in *Axel*, one of the cases cited in McKay's brief. See *Axel v. Fields Motorcars of Fla., Inc.*, 711 F. App'x 942 (11th Cir. 2017) (vacating and reversing summary judgment where the Court was unable to weigh the factors in relating to duration and displacement of work because material issues of fact remained on those issues). The fifth factor weighs in favor of Miami-Dade County. As to the sixth factor, McKay argued that the County merely exploited her "by using her to displace regular employees long after her beneficial learning ended". Again, this argument was directly contradicted by the undisputed facts on the record. First, McKay does not dispute that the Miami-Dade Medical [*17] Examiner Department has had four staff photographers for the last 20 years, or that Leonard Wolf, who supervises the Forensic Imaging Preceptorship Program, never asked to hire more than four staff photographers. During his deposition, Darren Caprara, the Department's Director of Operations, expressly rejected this claim, explaining that the staff photographers do not work longer hours if the interns were not there taking autopsy photos because this is not reflected in the overtime hours he is asked to approve. (Appx861-862, Caprara Deposition, Lines 24-25, 1-25). Moreover, Caprara and several of the staff

photographers also testified to working more hours directly as a result of training interns. McKay's attempts to dispute this testimony, without any contradictory record evidence, cannot defeat judgment as a matter of law."

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Summary of Argument B: The District Court's Order Granting Defendant's Motion for Summary Judgment Should Be Affirmed

In this section, the Appellee addresses McKay's challenge to the application of the "primary beneficiary test," a legal framework used to determine whether an intern or the employer is the primary beneficiary of an internship. The Appellee argues that McKay has not provided any legal authority to support her claim that Miami-Dade County, as a public employer, should be treated differently under this test. They cite *Vlad-Berindan v. NYC Metropolitan Transportation Authority* to support their position that public employers are not precluded from using the primary beneficiary test.

The Appellee then delves into the seven factors outlined in *Schumann v. Collier Anesthesia, P.A.*, which courts use to apply the primary beneficiary test. They argue that no single factor is dispositive and that the court must weigh all circumstances. They point to McKay's own deposition to argue that the first, second, fifth, and seventh factors weigh in favor of Miami-Dade County. Specifically, they note that McKay did not expect compensation and that the training she received was similar to an educational environment. They also argue that the duration of the internship (six months) was reasonable and that McKay did not displace regular employees.

The Appellee contends that McKay's subjective view that her training was complete after four weeks is not dispositive. They cite *Schumann* to argue that internship design is not an "exact science" and that the court should not expect the internship's length to perfectly align with the skills to be gained. They also point out that McKay admitted there were aspects of forensic photography she did not learn because they were set for the last month of the program. Lastly, the Appellee argues that McKay's claim that she was exploited to displace regular employees is contradicted by the record. They cite depositions from Miami-Dade Medical Examiner Department staff to argue that the presence of interns did not reduce the workload for regular employees.

In summary, the Appellee argues that the District Court's granting of summary judgment should be affirmed because the primary beneficiary test, when applied to the facts of the case, supports the conclusion that McKay was not an employee under the FLSA. They assert that McKay's challenges are either unsupported by legal authority or contradicted by the factual record, and thus, do not create a genuine issue of fact sufficient to survive summary judgment.



Please summarize the Conclusion in Appellee's brief, if you can.

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Certainly, I would need the text of the Conclusion section from the Appellee's brief in order to provide a detailed summary. Could you please provide that text? Thank you.



Here is the Appellee's brief conclusion, original text: "Ultimately, this Court, like the District Court, is tasked with making a legal ruling in light of the undisputed material facts and record evidence. For the reasons set forth above, Defendant/Appellee Miami-Dade County respectfully requests that the District Court's order be affirmed."

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The Conclusion section of the Appellee's brief is succinct and straightforward. It essentially argues that both the District Court and the appellate court have the responsibility to make a legal decision based on the undisputed material facts and evidence on record. The Appellee, Miami-Dade County, respectfully urges the appellate court to affirm the District Court's order for the reasons they have outlined in their brief. The tone is deferential yet confident, encapsulating the essence of their legal arguments in a concise manner.



Now I would like you to review the decision of the district court that has been appealed. This is the Summary Judgment Order of U.S. District Court Judge Robert N. Scola, Jr., dated October 13, 2020. It is 4,152 words. Due to its length, I will submit it to you in stages and ask you to summarize it in stages. Ok?

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Certainly, that sounds like a prudent approach. Please go ahead and submit the Summary Judgment Order in stages, and I'll provide summaries for each part as you submit them.



Here is the beginning of the Order and the Background section. Please summarize this and then I will submit the second part of the opinion: "McKay v. Miami-Dade Cty. United States District Court for the Southern District of Florida October 13, 2020, Decided; October 13, 2020, Entered on Docket Civil Action No. 20-20638-Civ-Scola Reporter 494 F. Supp. 3d 1244 *; 2020 U.S. Dist. LEXIS 189046 **; 2020 WL 6047466 Brandi McKay, Plaintiff, v. Miami-Dade County, Defendant. Counsel: [**1] For Brandi McKay, Plaintiff: Robert Scott Norell, Robert S. Norell P.A., Plantation, FL. For Miami-Dade County, a Municipal Corporation, Defendant: Leona Nicole McFarlane, LEAD ATTORNEY, Miami-Dade County Attorney's Office, Miami, FL. Judges: Robert N. Scola, Jr., United States District Judge. Opinion by: Robert N. Scola, Jr. Opinion Order on Cross Motions for Summary Judgment This matter is before the Court upon the respective cross motions for summary judgment of the Plaintiff, Brandi McKay, and the Defendant, Miami-Dade County. (ECF Nos. 31, 32.) For the reasons set forth below, the Court denies Ms. McKay's motion for summary judgment (ECF No. 31) and grants the County's motion for summary judgment (ECF No. 32). I. Background Miami-Dade County (the "County") is a political subdivision of the State of Florida. The County, through the Forensic Imaging Bureau of the Medical Examiner's Department administers a Medical Examiner's Forensic Imaging Preceptorship Program (the "Program"). (ECF Nos. 30, 38 at ¶1-2.) This free Program is well known, and many medical examiners contact the Program when they are hiring for open positions. (ECF Nos. 33, 35 at ¶3.) The Plaintiff, Ms. McKay applied for the Program in 2016, and after [**2] being admitted, began her internship with the County on April 15, 2019. (ECF Nos. 30, 38 at ¶3.) She first learned of the Program while visiting Barry College to learn about the school's forensic photography degree program. (ECF Nos. 33, 35 at ¶4.) Other than her application to the Program, Ms. McKay did not apply to Barry College, other colleges with a program in forensic photography or any other programs like the County's Program because she did not want to attend "another four years of school." (ECF Nos. 33, 35 at ¶5-8.) When Ms. McKay began the Program, she did so with the understanding that it was free-of-charge, six-months long, unpaid, and required weekend work. (ECF Nos. 33, 35 at 17; see also ECF No. 32 at 5 (noting the program is free of charge).) She undertook the Program with the expectation of learning forensic photography and agrees that she did indeed learn forensic photography over the course of her internship. (ECF Nos. 33, 35 at ¶17-18.) In addition to learning about autopsy photography, Ms. McKay learned about other topics such as ultraviolet and infrared light and fingerprints on glass, among others. (ECF Nos. 38, 41 at ¶74, 77.) It is undisputed that Ms. McKay [**3] undertook the program knowing she would have no opportunity to earn academic credit through her participation and knew that her participation was not required as a condition to obtaining professional licensure or employment. (ECF Nos. 30, 38 at ¶6.) Moreover, it is undisputed that Ms. McKay's participation was motivated solely to help her develop specialized photography skills and enhance her employability, and was not undertaken for any "civic, charitable or humanitarian reasons" or to benefit the County. (ECF Nos. 30, 38 at ¶7.) At no point was Ms. McKay promised a job at the end of her participation in the Program. (ECF Nos. 38, 41 at ¶57.) When Ms. McKay began the Program, she had not used

any of the equipment that was found in the County's photography lab, except for a camera. (ECF Nos. 33, 35 at ¶16.) In terms of the structure of the Program, at a high level, Ms. McKay and the County agree that during the first two weeks of her internship, Ms. McKay was given a binder of workbook assignments to complete and during the third and fourth weeks, she received training in the morgue where she shadowed the County's staff photographers as they took forensic autopsy photos. (ECF Nos. 30, [**4] 38 at ¶15-16.) During weeks five to eight, Ms. McKay and another intern worked together in the morgue taking autopsy photographs, sometimes with and without the supervision of County staff photographers. (ECF Nos. 30, 38 at ¶18-19.) After her eighth week in the program, Ms. McKay and the other Program intern would alternate the weeks they would work taking autopsy photographs in the morgue. (ECF Nos. 30, 38 at ¶20.) On off-weeks when Ms. McKay was not working in the morgue, she would complete assignments in the Program office. (ECF Nos. 30, 38 at ¶21.) Ms. McKay notes these assignments were educational and included instruction by staff photographers as well as equipment training. (ECF No. 1 at ¶17.) Over the course of her participation in the Program, Ms. McKay received some written feedback on her work but did not receive a formal evaluation, similar to what the County's staff photographers would prepare for an intern completing their internship through an educational institution, such as Barry College. (ECF Nos. 30, 38 at ¶32, 34-35.) On February 12, 2020, Ms. McKay filed the instant suit against the County, seeking minimum wage and overtime payments under the Fair Labor Standards Act [**5] of 1938 ("FLSA") for her participation in the Program. (ECF No. 1.) In her motion for summary judgment, Ms. McKay claims that the County abuses the Program to "save labor costs" by providing training early in the program so they can require their interns to work "seven days in a row . . . performing exactly the same work that staff photographers would be performing if interns were not available." (ECF No. 31 at 2.) Ms. McKay also argues that she cannot be considered a "volunteer" that is exempt from the FLSA's protections because she joined the County's Program to develop her skills and increase her employability and not for civic, charitable, or humanitarian purposes. (ECF No. 31 at 2.) Ms. McKay argues she was an employee of the County and must be paid minimum wage and overtime for her time as a Program intern. In its own motion for summary judgment, the County argues that Ms. McKay was never a County employee as her internship was accepted without any promise or expectation of compensation or a job at its completion, provided similar training to what Ms. McKay would have received from a degree program, and her internship did not displace, but rather slowed, the work of paid staff [**6] photographers. (ECF No. 32 at 5.) In light of these facts, the County argues that Ms. McKay could not have been considered an employee of the County under the FLSA."

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Summary of the Background Section and Initial Order in "McKay v. Miami-Dade Cty."

Court and Counsel

The case was decided in the United States District Court for the Southern District of Florida on October 13, 2020, by Judge Robert N. Scola, Jr. Brandi McKay was represented by Robert Scott Norell, while Miami-Dade County was represented by Leona Nicole McFarlane.

Order on Cross Motions for Summary Judgment

The court denied Brandi McKay's motion for summary judgment and granted Miami-Dade County's motion for summary judgment.

Background

Miami-Dade County administers a Medical Examiner's Forensic Imaging Preceptorship Program, which is free and well-known in the medical examiner community. Brandi McKay applied for this program in 2016 and began her internship on April 15, 2019. She learned about the program while exploring a forensic photography degree at Barry College but chose the County's program to avoid another four years of school.

The program was unpaid, six months long, and required weekend work. McKay entered it with the understanding that she would not receive academic credit or a job at the end. Her primary motivation was to develop specialized photography skills to enhance her employability. She did indeed acquire skills in forensic photography and other related areas during her internship.

Structure of the Program

The program was structured in stages, starting with workbook assignments, followed by shadowing staff photographers, and then taking autopsy photographs. McKay received some written feedback but no formal evaluation.

Legal Claims

McKay filed a suit against the County under the Fair Labor Standards Act (FLSA), seeking minimum wage and overtime payments. She claimed the County was abusing the program to save labor costs and argued that she should be considered an employee, not a volunteer. The County countered that McKay was never an employee under the FLSA, as her internship was educational and did not displace paid staff.

This sets the stage for the legal arguments and the court's reasoning, which presumably will follow in the subsequent sections of the document.



Here is the second part of the opinion for you to summarize. After that I will provide the third and final portion of the opinion to summarize. This second portion consists of the second section of the opinion, Legal Standard. Please summarize: "II. Legal Standard A. Summary Judgment The Court applies the familiar legal standard for summary judgment motions. "Summary judgment is appropriate where the pleadings, affidavits, depositions, admissions, and the like show that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1050 (11th Cir. 2015) (punctuation & citation omitted). "[T]o survive summary judgment, the nonmoving party must . . . make a showing sufficient to permit the jury to reasonably find on its behalf." *Id.* B. Fair Labor Standards Act The FLSA, was enacted by Congress to "aid the unprotected, unorganized and lowest paid of the nation's working population." *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199, 1207 (11th Cir. 2015) (quoting *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 707 n.18, 65 S. Ct. 895, 89 L. Ed. 1296 (1945)). In order to achieve this stated purpose,

the FLSA requires employers pay employees a minimum wage and overtime. 29 U.S.C. §§ 206(a), 207(a). However, the protections of the FLSA only extend to individuals "falling within the Act's definition of 'employee'." *Id.* While Congress intended for the definition of "employee" to be "broad," the terms "employee" and "employer" cannot [**7] be interpreted so as to "make a person whose work serves only his own interest an employee of another person who gives him aid and instruction." *Schumann*, 803 F.3d at 1208 (quoting *Walling v. Portland Terminal Co.*, 330 U.S. 148, 152, 67 S. Ct. 639, 91 L. Ed. 809 (1947)). While the FLSA broadly defines employee as "any individual employed by an employer," the Act exempts from that definition "any individual who volunteers to perform services for a public agency which is a State, [or] a political subdivision of a State . . . if the individual receives no compensation . . . and such services are not the same type of services which the individual is employed to perform for such public agency." 29 U.S.C. § 203(e)(4)(A) (emphasis added). While the FLSA itself does not define the term "volunteer," the Department of Labor, which is charged with enforcing the FLSA, has issued regulations and interpretive papers defining or applying the term. Specifically, the Department of Labor has defined the term "volunteer" as meaning "[a]n individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation." 29 C.F.R. § 553.101(a). In a separate interpretive regulation also dealing with the definition of volunteer, the Department of Labor writes that "individuals who [**8] are not employed in any capacity by State or local governments often donate hours of service . . . for civic or humanitarian reasons" and notes that such individuals "are considered volunteers and not employees of such public agencies if their hours of service are provide with no promise, expectation, or receipt of compensation for the services rendered." 29 C.F.R. § 553.104(a). Finally, the Department of Labor has promulgated a fact sheet which reaffirms these general principles, adding that "[u]npaid internships for public sector . . . organizations, where the intern volunteers without expectation of compensation, are generally permissible." Wage & Hour Div., U.S. Dep't of Labor, Fact Sheet #71: Internship Programs Under the Fair Labor Standards Act (Updated January 2018), n.1, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs71.pdf>. To prevail on minimum wage and overtime claims, a Plaintiff must demonstrate: 1) that the defendant employed her; and 2) that she was employed by an enterprise engaged in commerce. *Vazquez v. Uooligan Gas Station Convenience Store Inc.*, No. 2:18-cv-611-FtM-38NPM, 2020 U.S. Dist. LEXIS 104634, 2020 WL 321151, at *2 (M.D. Fla. May 22, 2020). As the FLSA regulations make clear that public agencies are engaged in commerce, the main question [**9] before the Court is whether Ms. McKay was an employee under the FLSA. See 29 C.F.R. § 553.3(b) ("Certain definitions already in the Act were modified by the 1974 Amendments. . . . The term 'enterprise engaged in commerce or in the production of goods for commerce' . . . was expanded to include public agencies."). Ultimately, whether an individual is an employee under the FLSA is a question of law. *Schumann*, 803 F.3d at 1207."

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Summary of the "Legal Standard" Section in "McKay v. Miami-Dade Cty."

A. Summary Judgment

The court adheres to the conventional legal standard for summary judgment, which is appropriate when there is no genuine dispute over any material fact and the moving party is entitled to judgment as a matter of law. The nonmoving party must present sufficient evidence to allow a jury to reasonably find in its favor.

B. Fair Labor Standards Act (FLSA)

The FLSA aims to protect the lowest paid and most vulnerable workers by mandating a minimum wage and overtime pay. However, these protections only extend to those who meet the FLSA's definition of "employee." While the definition is broad, it does not include individuals whose work serves only their own interests.

The FLSA exempts "volunteers" from its definition of "employee," particularly those who perform services for public agencies without compensation. The Department of Labor, responsible for enforcing the FLSA, defines a "volunteer" as an individual who performs services for civic, charitable, or humanitarian reasons without expectation of compensation.

To succeed in claims for minimum wage and overtime under the FLSA, a plaintiff must prove:

1. That the defendant employed her.
2. That she was employed by an enterprise engaged in commerce.

Since public agencies are considered to be engaged in commerce under FLSA regulations, the crux of the matter before the court is whether Ms. McKay qualifies as an "employee" under the FLSA. This is ultimately a question of law.

This section sets the legal framework for evaluating whether Ms. McKay was an "employee" under the FLSA, thereby laying the groundwork for the court's subsequent analysis and decision.



Here is the third and final portion of the opinion for you to summarize, consisting of the Analysis and Conclusion. Please summarize: "III. Analysis The question presented to the Court for resolution on the parties' cross motions for summary judgment is as follows: as a matter of law, under the FLSA, is an individual who voluntarily and knowingly enters into a free, unpaid internship program without the promise of a job thereafter, for purely selfish reasons, i.e. not for civic, charitable, or humanitarian reasons, for a political subdivision of a State, an "employee" under the FLSA and therefore entitled to minimum wage and overtime protections? Based on the law, applicable regulations, and additional interpretive guidance provided by the Department of Labor, the Court finds that such an individual is not an employee under the FLSA and therefore not entitled to minimum wage or overtime protections. A. Regulations The Plaintiff urges this Court [**10] to defer to 29 C.F.R. § 553.101 (ECF No. 31 at 6-7), which provides that an "individual who performs hours of service . . . for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation . . . is considered to be a volunteer during such hours" and therefore exempt from the FLSA. The Plaintiff argues that because she participated in the County's Program for purely selfish reasons,

to develop forensic photography skills and increase her employability, she cannot be considered a volunteer under the Department of Labor's regulations. Having considered the Plaintiff's arguments, the Court is not convinced that the regulation the Plaintiff points the Court to deals squarely with the issues presented in this case. Rather, the Court finds it necessary to read 29 C.F.R. § 553.101, which deals with the definition of volunteers generally, alongside 29 C.F.R. § 553.104, which deals with private individuals who volunteer to serve public agencies. This latter regulation provides that "individuals who are not employed in any capacity by State or local government agencies often donate hours of service to a public agency for civic or humanitarian reasons" and notes when such individuals undertake such service with [**11] "no promise, expectation, or receipt of compensation" they are considered volunteers. 29 C.F.R. § 553.104 (emphasis added). The regulation goes on to state that there are "no limitations or restrictions imposed by the FLSA on the types of services which private individuals may volunteer to perform for public agencies." Id. Unlike 29 C.F.R. § 553.101, § 553.104 does not appear to predicate a finding of volunteer status on an individual's civic-mindedness and therefore the regulations seem to be in a degree of tension. While 29 C.F.R. 553.101 appears to require an individual have a civic, charitable, or humanitarian purpose, 29 C.F.R. § 553.104 seems to not require such a conclusion. One court to consider this question acknowledged this tension, writing that a literal reading of 29 C.F.R. § 553.101 would lead to "obviously absurd result[s]" that could not have been intended by Congress and the Department of Labor. *Todaro v. Twp. Of Union*, 40 F. Supp. 2d 226, 230 (D.N.J. 1999). To illustrate its point the court used the example of a judicial intern who works for a judge purely to bolster his resume and increase his professional prospects. Id. The court noted classifying such an individual as an employee rather than a volunteer under the FLSA would "offend[] rationality." Id. Rather, the court said that the definition of volunteer "must be applied [**12] in a common-sense way that takes into account the totality of the circumstances surrounding the relationship." Id. In an attempt to reconcile 29 C.F.R. 553.101 with 29 C.F.R. § 553.104, the court noted its belief that the two regulations, taken together, require a finding that an individual be motivated at least in part by a civic-minded purpose in pursuing their internship. Id. Taking its example of the judicial intern, the court noted that an internship motivated purely by professional aspirations cannot take an internship out of the common-sense idea of what constitutes volunteer services. Id. This Court agrees in principle with the *Todaro* court's result and further agrees that a common-sense view of the term volunteer would necessitate a finding that Ms. McKay, like the judicial intern, is a volunteer under the FLSA. Indeed, this seems consistent with a January 2018 Department of Labor fact sheet which notes that "[u]npaid internships for public sector . . . organizations, where the intern volunteers without expectation of compensation, are generally permissible." Wage & Hour Div., U.S. Dep't of Labor, Fact Sheet #71: Internship Programs Under the Fair Labor Standards Act (Updated January 2018), n.1, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs71.pdf>. [**13] However, the Court's ultimate holding does not rest on the Department of Labor's regulations or *Todaro*, as the Court prefers another court's approach to this issue. See *Lucia Vlad-Berindan v. NYC Metro. Trans. Auth.*, 14-cv-10304 (VEC) (FM), 2016 U.S. Dist. LEXIS 43613, 2016 WL 1317700 (S.D.N.Y. April 1, 2016). That court concluded that a better way to judge whether public sector interns are employees under the FLSA is to apply the primary beneficiary test that courts otherwise use to judge private sector internships. *Lucia Vlad-Berindan*, 2016 U.S. Dist. LEXIS 43613, 2016 WL

1317700, at *8. In taking this approach, the court said that finding only public sector "volunteers" are exempt from the FLSA would be "an extreme decision, and one that could throw into disarray many public sector internship programs." *Id.* This Court agrees and accordingly its decision therefore hinges not on the Department of Labor's regulations, which seem to be in tension, but on the primary beneficiary test which the Court finds should be applied to public sector interns who do not otherwise fit the definition of volunteer.

B. Primary Beneficiary Test

The primary beneficiary test, espoused by the Second Circuit in *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528, 536-37 (2d Cir. 2016),¹ and adopted by the Eleventh Circuit in *Schumann v. Collier Anesthesia, P.A.* assists courts in making the sometimes difficult determination [**14] of just who is an employee under the FLSA. *Schumann*, 803 F.3d at 1207, 1211-12. The test serves three salient purposes: (1) it focuses on what an intern receives in exchange for their work; (2) it allows courts flexibility to look at the true economic reality of the relationship; and (3) it acknowledges the intern/employer relationship must be looked at differently from the employee/employer relationship because an internship necessarily has educational or vocational benefits. *Glatt*, 811 F.3d at 536. The test also reflects the fact that when reviewing FLSA cases involving "trainees," courts, for the most part, have "concentrated on evaluating the 'primary beneficiary' of the training . . . program to determine whether participants constituted 'employees' . . . concluding that such an approach reveals the 'economic reality' of the situation." *Id.* at 1209-10. Consistent with the *Lucia Vlad-Berindan* court, this Court finds no compelling reason as to why the *Glatt/Schumann* test cannot be applied to determine if a public sector intern is an employee under the FLSA. Indeed, the primary beneficiary test seems to effectuate the spirit of the FLSA as it ensures that public sector employers are not "abus[ing] minimum wage or overtime requirements" to pressure or [**15] coerce "individuals to volunteer their services." 29 C.F.R. 553.101. In the Eleventh Circuit, the primary beneficiary test, requires a balancing of "a non-exhaustive set of considerations," including: (1) the extent to which the intern and employer clearly understand that there is no expectation of compensation; (2) the extent to which the internship provides training that would be similar to that which would be given in an educational environment; (3) the extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning; (4) the extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern; and (5) the extent to which the intern and the employer understand the internship is conducted without entitlement to a paid job at the conclusion of the internship. *Id.* at 1211-12 (discussing *Glatt*, 811 F.3d at 536-37). No one factor is dispositive, and every factor need not point in the same direction for the court to conclude that the intern is not an employee. *Id.* at 1212. The test is not concrete, but rather, requires the Court to consider the totality of the circumstances [**16] of the relationship. *Id.* at 1210. Turning to the primary beneficiary test factors, it is clear the first factor, understanding as to compensation, weighs in favor of the County. It is undisputed that Ms. McKay and the County understood that her participation in the Program would be uncompensated. Indeed, the Parties agree that when Ms. McKay began the Program, she did so with the understanding that it was free for her and unpaid. (ECF Nos. 33, 35 at 17.) The second factor, the extent to which the internship provides training that would be similar to training Ms. McKay might have received in an educational environment also weighs in favor of the County. It is undisputed that Ms. McKay learned of the Program when visiting Barry

College. Her purpose in visiting Barry College was to learn more about the school's forensic photography degree program. After learning of the program, Ms. McKay did not apply to Barry College, or even explore other colleges or any other programs like the County's Program because she did not want to attend "another four years of school." (ECF Nos. 33, 35 at ¶15-8.) The Court finds persuasive that the County's program provides, free-of-charge, a significant opportunity for individuals [**17] interested in forensic photography to obtain expertise in that area without having to expend potentially thousands of dollars and years of time on a collegiate program. Moreover, the Program, under the guidance of the County's staff photographers, provides the County's interns with an invaluable opportunity to expand and develop their professional network before beginning their careers in forensic photography or in a similar field. With all of this considered, it is clear the program imparted significant benefit to Ms. McKay. Ms. McKay voluntarily chose to undertake this free Program and decided not to pursue her forensic autopsy photography education elsewhere. The Court therefore finds this factor weighs heavily in favor of the County. The third factor, the extent to which the internship's duration is of appropriate length, weighs very weakly, if at all, in favor of Ms. McKay. The Eleventh Circuit explained that the duration of an internship "is not an exact science" that will not always "match up perfectly with the skills to be taught and the experience to be gained through the program." Schumann, 803 F.3d at 1213. An internship that is longer than "absolutely necessary" to teach necessary skills does not [**18] mean an intern is an employee under the FLSA, but rather, the court must consider whether the duration of the internship is "grossly excessive" in comparison to the period of beneficial learning. Id. at 1212-14. The Parties agree that the first week of Ms. McKay's internship involved extensive training in forensic photography. (ECF Nos. 30, 38 at ¶15-16.) The Parties also agree that Ms. McKay learned additional techniques, including UV/IR light and fingerprints on glass, among others, but disagree as to how much time it took for the County's staff photographers to train Ms. McKay as "training time varies depending on how needy the intern is." (ECF Nos. 38, 41 at ¶74-77.) The Plaintiff also acknowledges that on "assignment weeks" she would receive instruction on topics other than autopsy photography meaning she received training throughout the duration of the Program. (ECF No. 31 at 13.) Even if Ms. McKay was less "needy" than other interns and required less instruction time, that does not mean that the County's Program is "grossly excessive" in terms of length. The fourth factor, the extent to which the intern's work displaces or disrupts the work of other employees, weighs weakly in favor of Ms. [**19] McKay. While the County contends that having interns slows the work of the County's staff photographers, the Plaintiff points out that the County has not conducted an analysis to determine if that is in fact the case. (ECF No. 35 at ¶24.) The Plaintiff instead argues that it is possible that the benefit interns provide to the County outweighs time spent by staff photographers training those interns. While this may be the case, the Eleventh Circuit has noted that "there is nothing inherently wrong with an employer's benefiting from an internship that also plainly benefits the interns." Schumann, 803 at 1211. The Court has already found that Ms. McKay received significant benefits from participating in the Program. That the relationship between the County and its interns may be mutually beneficial is not of much consequence to the Court's analysis as to whether or not Ms. McKay was a County employee. The final factor, understanding as to employment at the end of the internship, weighs in favor of the County. Neither party contends that Ms. McKay expected a paid job with the County at the end of her internship. (ECF Nos. 32 at 5; ECF No. 36.) While

some of the above factors weigh weakly [**20] in favor of Ms. McKay, the majority of applicable factors weigh in favor of the County. Indeed, any factors weighing in favor of Ms. McKay are outweighed by the clear "economic reality" of the relationship between the County and Ms. McKay: that Ms. McKay's free internship allowed her to develop skills in forensic photography over a short period of time, imparting a significant benefit to her. Consequently, under the primary beneficiary test, the Court therefore concludes that Ms. McKay cannot be considered an employee entitled to minimum wage and overtime protections under the FLSA. IV. Conclusion For the reasons stated above the Court denies Ms. McKay's motion for summary judgment (ECF No. 31) and grants the County's motion for summary judgment (ECF No. 32). The Clerk is directed to close this case. All pending motions, if any, are denied as moot. Done and ordered in chambers in Miami, Florida on October 13, 2020. /s/ Robert N. Scola, Jr. Robert N. Scola, Jr."

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Summary of the "Analysis and Conclusion" Sections in "McKay v. Miami-Dade Cty."

III. Analysis

The court's central question is whether an individual who voluntarily joins an unpaid internship program for personal reasons is an "employee" under the Fair Labor Standards Act (FLSA) and thus entitled to minimum wage and overtime protections. The court concludes that such an individual is not an employee under the FLSA.

A. Regulations

The plaintiff argues that she should be considered an employee, not a volunteer, under 29 C.F.R. § 553.101, as she joined the program for personal gain. The court, however, finds that this regulation doesn't squarely address the issue. Instead, the court considers another regulation, 29 C.F.R. § 553.104, which doesn't require civic-mindedness for volunteer status. The court acknowledges a tension between these regulations but ultimately decides not to rely on them for its conclusion.

B. Primary Beneficiary Test

The court adopts the "primary beneficiary test" to determine if an intern is an employee under the FLSA. This test considers multiple factors, such as the understanding of compensation, the educational value of the internship, its duration, and its impact on paid employees. The court finds that most factors weigh in favor of the County, indicating that the "economic reality" is that Ms. McKay benefited significantly from the internship. Therefore, she is not an employee under the FLSA.

IV. Conclusion

The court denies Ms. McKay's motion for summary judgment and grants the County's motion for summary judgment. The case is directed to be closed.

This decision navigates the complexities of labor law, particularly the FLSA, and sets a precedent for how to legally categorize individuals in unpaid internships. It underscores the importance of the "economic reality" and the mutual benefits that can be derived from such arrangements, thereby influencing future jurisprudence on this issue.



Please provide a more detailed summary of the Analysis.

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Certainly, let's delve deeper into the "Analysis" section of the court's opinion in "McKay v. Miami-Dade Cty."

III. Analysis

Central Question

The court grapples with a nuanced legal question: Is an individual who voluntarily participates in an unpaid internship program for personal, non-civic reasons considered an "employee" under the Fair Labor Standards Act (FLSA)? The court's answer is a resounding "no," and it arrives at this conclusion through a multi-faceted analysis.

A. Regulations and Their Tensions

The plaintiff, Ms. McKay, argues that according to 29 C.F.R. § 553.101, she cannot be considered a "volunteer" because she joined the County's Program for personal benefits—specifically, to develop her forensic photography skills. The court, however, finds that this regulation is not the end-all-be-all for this case. It brings another regulation into the picture, 29 C.F.R. § 553.104, which does not make civic-mindedness a prerequisite for being considered a volunteer. The court acknowledges an inherent tension between these two regulations but decides that neither is dispositive for this case.

B. Primary Beneficiary Test as the Decisive Framework

The court opts to employ the "primary beneficiary test," a legal framework that focuses on who benefits more from the internship—the intern or the employer. This test is rooted in case law and serves three main purposes:

1. It scrutinizes what the intern gains in return for their work.
2. It allows for flexibility by considering the "economic reality" of the intern-employer relationship.
3. It recognizes that internships inherently offer educational or vocational benefits, differentiating them from typical employment.

The test involves a balancing act of several considerations, such as:

- The mutual understanding about the absence of compensation.
- The educational value of the internship.
- The duration of the internship relative to the learning benefits.
- Whether the intern's work complements or displaces the work of paid employees.
- Whether there's an expectation of future employment.

Application of the Test to Ms. McKay

The court meticulously applies these factors to Ms. McKay's situation and finds that most of them favor the County. For instance, it was understood that Ms. McKay would not be compensated, and she gained significant educational value from the program. The court

concludes that the "economic reality" shows that Ms. McKay was the primary beneficiary of this arrangement.

In summary, the court's analysis is a rigorous exercise in balancing regulatory guidance against the practical realities of modern internships. It opts for a holistic approach, the "primary beneficiary test," to navigate the complexities of the FLSA and concludes that Ms. McKay is not an "employee" under this act.