No. 18-389

In the
Supreme Court of the United States

PARKER DRILLING MANAGEMENT SERVICES, LTD.,

Petitioner,

v.

BRIAN NEWTON,

Respondent.

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

BRIEF OF CALIFORNIA APPLICANTS' ATTORNEYS ASSOCIATION ("CAAA") AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

WILLIAM A. HERRERAS
ATTORNEY AT LAW
709 E. Grand Ave.
Arroyo Grande, CA 93421
(805) 473-8550
wahatty@williamaherras.com

JOHN J. KORZEN
Counsel of Record
WAKE FOREST UNIVERSITY SCHOOL OF LAW APPELLATE ADVOCACY CLINIC
Post Office Box 7206
Winston-Salem, NC 27109
(336) 758-5832
korzenjj@wfu.edu

MARCH 2019 ***Counsel for Amicus Curiae***

*Gibson*Moore Appellate Services, LLC
206 East Cary Street♦ Richmond, VA 23219
804-249-7770 ♦ www.gibsonmoore.net

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF AMICUS CURIAE[1]

Formed in 1966, the California Applicants' Attorneys Association ("CAAA") is an association and organization of California State Bar members who represent men and women who sustained injuries arising out of, and occurring in the course of, their employment. As a regular part of its activities, CAAA files Amicus Curiae briefs in cases of far reaching significance and/or first impression before the California Workers Compensation Appeals Board, Courts of Appeal, and Supreme Court. Because its members represent people who were injured while working on oil platforms, CAAA has a strong interest in this case. As representatives of workers injured in and around the State of California, including on Outer Continental Shelf oil platforms, CAAA has the knowledge and expertise to address important aspects of state law and of life on oil platforms.

SUMMARY OF ARGUMENT

Other federal acts using the phrase "applicable and not inconsistent" when establishing governing law support the court below's conclusion that no "gap" in federal law is required before state legal standards become "applicable." The Mining Act of 1872 used the same phrase in authorizing the exploration and purchase of mineral deposits, and this Court interpreted the language to allow the

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[1] This brief was prepared by counsel for amicus curiae and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief. Both parties have given written consent to the filing of this brief.

states to enact laws more protective than existing federal law. The "organic acts" that established the Indian Territories and the Oregon Territory are other federal acts that used the language at issue here and that have been interpreted to allow states to enact more protective law.

Unlike Petitioner and its amici, the court below recognizes the important interests states have regarding Outer Continental Shelf ("OCS") oil platforms. States are legitimately concerned with working conditions on the platforms, possible catastrophic effects on the states' coastal environments, and financial impact to the states' economies. Here, California's concerns regarding working conditions include health, safety, and the prevention of overwork. As to the environment, such catastrophes as the 1969 Santa Barbara oil spill and the 2010 Deepwater Horizon explosion illustrate how what happens on OCS oil platforms does not necessarily stay on OCS oil platforms. The states have a financial interest in OCS oil platforms, too, sharing significantly in the government revenue they generate and benefitting economically from the gainful employment of their citizens there. In addition, state labor laws already apply on the OCS oil platforms in numerous ways.

Finally, the court below protects the interests of oil platform workers. Despite the portrayal, by Petitioner's amici, of life on the platforms as cushy, workers there endure difficult and dangerous conditions. Petitioner's argument threatens the ability of injured workers to obtain concurrent federal and state workers compensation benefits, an ability that California courts have long recognized

and this Court has approved. If accepted, Petitioner's "no gap to fill" theory could be used to argue that federal workers compensation benefits are exclusive, undoing decades of protection for workers injured on the platforms.

ARGUMENT

CAAA fully agrees with all of Respondent's contentions regarding the proper interpretation of the phrase "applicable and not inconsistent" in the Outer Continental Shelf Lands Act ("OCSLA"). Indeed, CAAA submits that Respondent's Summary of Argument (at 16-21) provides a clear, persuasive, and thorough analysis for the eventual opinion in this case. Rather than repeat Respondent's contentions, CAAA writes separately to address other aspects of federal and state law that support Respondent.

I. THE COURT BELOW'S DECISION IS CONSISTENT WITH INTERPRETATIONS OF OTHER FEDERAL ACTS USING THE SAME OPERATIVE PHRASE

Some historic federal acts applying "applicable and not inconsistent" state law to federal territory support the judgment below, because in those acts Congress and this Court have not required any "gap" in federal law before state law applies.

For example, The Mining Act of 1872 authorizes the exploration and purchase of mineral deposits within the United States and uses language similar to that at issue in this case, providing that mineral deposits are open to exploration and purchase "under regulations prescribed by law, and according to the local customs or rules of miners in the several

mining districts, so far as the same are *applicable and not inconsistent with* the laws of the United States." 30 U.S.C. § 22 (2012) (emphasis added).

Interpreting that Act, this Court held that states have authority to enact laws more protective than existing federal law. *Butte City Water Co. v. Baker*, 196 U.S. 119, 124 (1905). Rejecting the argument that Montana state regulations were impermissibly more stringent than Congressional intent, this Court reasoned that Congress had clearly recognized the existence of state law in its statutory language, including those that were "applicable and not inconsistent" with federal law. *Id.* at 125-26. The Court noted the state might reasonably want to guard against the risk of false land claims and to create a record of mining claims for future reference. *Id.* at 128; *see also People v. Rinehart*, 377 P.3d 818, 824-25 (Cal. 2016) (noting that the Mining Act "endorses in the first instance local, rather than federal, control over the mining fields" and suggests "an apparent willingness on the part of Congress to let federal and state regulation broadly coexist").

In addition to The Mining Act of 1872, Congress similarly adopted state law to function as federal law in "organic acts" that established new territories within the United States. An organic act is "an act providing and establishing a government." *Organic act*, BALLENTINE'S LAW DICTIONARY (3d. ed. 1969). In some organic acts, Congress adapted existing state laws as federal law for the territories using the same "applicable and not inconsistent" phrase found in OCSLA.

For instance, Congress extended the laws of Arkansas into newly created Indian Territories

using the same "applicable and not inconsistent" phrase. Act of Feb. 19, 1903, ch. 707, 32 Stat. L. 841 (extending Arkansas state law into the territory "so far as the same may be *applicable and not inconsistent* with any law of Congress"). In determining that Arkansas state laws applied in the territory, this Court held that the language of the statute showed that "Congress intended they should have the same force and meaning there they had in Arkansas." *Adkins v. Arnold*, 235 U.S. 417, 421 (1914).

The organic act establishing the Oregon Territory also used language similar to OCSLA by giving the new government legislative power that should "extend to all rightful subjects of legislation *not inconsistent* with the Constitution and laws of the United States." Act of Aug. 14, 1848, ch. 177, § 6, 9 Stat. 323 (emphasis added). This Court interpreted the language to empower the Oregon legislature to pass a legislative divorce because that action was not deemed to violate any federal law or constitutional protection. *Maynard v. Hill*, 125 U.S. 190, 210 (1888). The Court was not concerned with any gap between state and federal law, but assumed the power of the state to legislate, as long as the legislation was not inconsistent with federal protections. *Id.*; *see also Clinton v. Englebrecht*, 80 U.S. 434, 445 (1871) (holding that the Utah territory could prescribe methods of jury selection as long as they did not violate federal law).

In short, as recognized by this Court's precedent, Congress has long used the phrase "applicable and not inconsistent" to allow application of state law on

federal property without regard to the existence of any "gap" in federal law.

II. THE COURT BELOW'S DECISION IS CONSISTENT WITH STATE INTERESTS

Petitioner and its amici wrongly argue that the states have nefarious intent vis-à-vis OCS oil platforms and that state law has no application on the platforms.[2] Neither argument has merit. The truth is, the states rightly care about employment and other conditions on OCS platforms near their shores, and state law applies on the platforms in many ways regardless of whether there is a "gap" in federal law.

A. The States Have A Strong Interest In What Occurs On OCS Oil Platforms

California and other coastal states have numerous legitimate concerns related to OCS oil platforms, including employment conditions for their workers, possible environmental harm to their coasts, and financial impact on their economies.

First, California has an interest in regulating employment conditions in the Santa Barbara Channel, where Respondent worked. *See Tidewater Marine Western, Inc. v. Bradshaw*, 927 P.2d 296, 301 (Cal. 1996) ("California employment laws implicitly extend to employment occurring within California's state law boundaries, including all of the Santa

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[2] *See, e.g.*, Br. of Chamber of Commerce at 21 (fearing states will "second guess or supplant otherwise comprehensive federal schemes" and create "turmoil" on the OCS); Br. of Freeport-McMoran Oil & Gas LLC et al. at 22 (fearing states will engage in the "strategic behavior" of enacting facially neutral statutes that "increase the difficulty and cost of OCS operations").

Barbara Channel."); Cal. Gov. Code § 110 (West) ("The sovereignty and jurisdiction of this State extends to all places within its boundaries as established by the constitution."); Gov. §§ 170-171 (defining the state law boundaries, as defined by the state Constitution, to include the area between the coastal islands and the mainland). The state has "unambiguously asserted a strong interest in applying its overtime law to all nonexempt workers, and all work performed, within its borders." *Sullivan v. Oracle Corp.*, 254 P.3d 237, 245 (Cal. 2011) (citing Cal. Lab. Code § 1171.5(a) ("All protections, rights, and remedies available under state law . . . are available to all individuals . . . employed, in this state."). The state's interests as to its employees include "protecting health and safety . . . and preventing the evils associated with overwork." *Sullivan*, 254 P.3d at 245.

Second, all of our coastal states have a vital interest in protecting the environment from the ecological disasters that OCS oil platforms can cause. Fifty years ago, the Santa Barbara oil spill revealed that OCSLA, at least before it was amended in 1978, "failed to protect the public interest in wise management of offshore resources. The Santa Barbara spill probably would not have occurred had California's drilling regulations, rather than the Interior Department's, been in force." Daniel S. Miller, *Offshore Federalism: Evolving Federal-State Relations in Offshore Oil and Gas Development*, 11 Ecology L. Q. 401, 434 (1984).

As amended in 1978, OSCLA now contains a declaration of Congressional policy to consider and recognize the rights of states "to preserve and

protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity." 43 U.S.C. § 1332(5) (2012).

The states' interest in protecting their coastal environment is made evident by the devastating impact of the Deepwater Horizon spill. That disaster in the coastal areas adjacent to Louisiana caused damage with costs exceeding $65 *billion*. Ron Bousso, *BP Deepwater Horizon costs balloon to $65 billion*, REUTERS (Jan. 16, 2018), https://www.reuters.com/article/us-bp-deepwaterhorizon/bp-deepwater-horizon-costs-balloon-to-65-billion-idUSKBN1F50NL. More than 400,000 damages claims were filed and millions of people were affected. *Id.*

Third, the states also have a financial interest in OCS oil platforms. For instance, twenty-seven percent of the revenue from federal leases in the first three miles of the OCS beyond the seaward boundary goes to the adjacent state. 43 U.S.C. § 1337(g)(5)(a)(i). Employees pay state income tax and contribute to the economy. Offshore oil platform operators both can be a county's leading taxpayer and can leave behind platforms that cost taxpayers many millions of dollars to decommission. *See* Thomas Curwen, *A historic oil platform off Santa Barbara turns into a rusty ghost ship*, Los Angeles Times (March 14, 2019), https://www.latimes.com/projects/la-me-platform-holly/.

B. State Law Applies On OCS Oil Platforms In Many Ways

Referring to OSC oil platforms, this Court has observed that Congress "recognized that the 'special relationship between the men working on these artificial islands and the adjacent shore to which they commute' favored application of state law with which these men and their attorneys would be familiar." *Chevron Oil Co. v. Huson*, 404 U.S. 97, 103 (1971) (quoting *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352, 365 (1969)). This observation is borne out on OSC platforms to this day, because state law applies on the platforms in many ways.

For example, labor law posters mandated by California law are posted on the OCS oil platforms. They are posted somewhere that is accessible to the employees, and among other aspects of labor law they set out California wage-and-hour protections. They list many relevant state and federal employment law policies, regardless of whether the state laws fill any sort of "gap" in the federal law.

Brochures regarding state law—including domestic violence, sexual harassment, disability insurance, and workers compensation laws—are also prominently placed in areas on the platforms visited by employees.

In almost all situations of which CAAA members are aware, OCS platform employers are paying daily overtime after 8 hours of work and double time after 12 hours of which, which are both California Labor Code concepts not found in federal law. Many employment agreements between OCS platform operators and their employees provide that the

California Labor Code applies and incorporate it by reference. They do not refer to any federal employment law and certainly not to any "gap" in federal labor law requirements.

Moreover, employees on the OCS oil platforms adjacent to California pay California state taxes and have those taxes withheld from their paychecks. They also have state disability insurance contributions withheld.

In short, state law already applies on the OCS oil platforms regardless of whether there is any "gap" in federal law.

III. AFFIRMING THE JUDGMENT BELOW WOULD PROTECT WORKERS ON OIL PLATFORMS

Finally, CAAA urges the Court to affirm the judgment below because that would protect OCS oil platform workers. Their working conditions are challenging, and Petitioner's argument could jeopardize their eligibility for concurrent federal and state workers compensation benefits.

A. Life On OCS Oil Platforms Is Difficult And Dangerous

The petroleum industry's amicus brief wrongly represents working conditions on the platforms, in two major ways. *See* Br. of Freeport-McMoran Oil & Gas LLC et al. at 24-26. First, the brief implies that employees freely choose to live for 14 days in a row on oil platforms at sea. *See id.* at 24. Employees agree to do so, the brief states, to avoid an

undesirable commute. *Id.*[3] In truth, employees are not free to leave the platforms or to come and go as they please. They can be disciplined and even suspended for doing so.

Second, the industry brief portrays a cushy lifestyle on the platforms akin to a resort, with "abundant time off" and various free "amenities" such as cable TV, "allowing employees to engage cost-free in many of the same personal and leisure activities they enjoy on land." *Id.* at 25-26. The reality is quite different.

Living offshore for 14 straight days strains family relationships and limits one's social life. *See* U.S. Dep't of the Interior, *Social and Economic Impacts of Outer Continental Shelf Activities on Individuals and Families* 28 (2002) (noting that the length and variance in work schedules create severe hardships on family life with a wife reporting "struggle and conflict every time her husband returned because of the length of his absence"). Unlike guests at a resort, employees on the platforms live four to a room, with no real privacy. They are subject to random drug testing 24/7. Their lockers are also subject to random searches. No alcohol is allowed. No visitors are allowed. No pets are allowed. Internet use is restricted. During their 12 hours off, employees are still subject to being called back to work at any time.

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[3] The commute might be difficult, the industry brief posits, because employees need to live far inland in order to find affordable housing. *Id.* In fact, the cost of living that the industry alludes to instead highlights one reason that the state has a strong interest in having its wage and overtime pay requirements apply.

And then there is the danger. Oil workers are "seven times more likely than the average U.S. worker to die on the job." Jie Jenny Zou, *8 Years After Deepwater Horizon Explosion, Is Another Disaster Waiting to Happen?*, NPR (Apr. 20, 2018), https://www.npr.org/2018/04/20/603669896. Deaths on the platforms, or serious injuries, have many causes. The causes of deaths and serious injuries include:

- fires and explosions,
- fall-related accidents,
- falling objects, and
- fatigue from long, hard hours.

The Dangers of Offshore Oil Rigs, MARITIME INJURY GUIDE (July 30, 2014), https://www.maritimeinjuryguide.org/blog/dangers-offshore-oil-rigs/. In 2010, the Deepwater Horizon explosion killed 11 oil platform workers and injured 17 more, and there have been other deaths at offshore platforms since then. Zou, *supra*.

The difficult and dangerous conditions that oil platform workers endure underscore the need for robust labor law protection, including state wage-and-hour laws.

B. Petitioner's Argument Could Limit Workers Compensation Benefits

California law has long provided that employees injured while working on OCS oil platforms are not limited to benefits under the Longshoremen's and Harbor Workers' Compensation Act (LHWCA) and may claim state workers compensation benefits. *Bobbitt v. Workers' Comp. Appeals Bd.*, 192 Cal. Rptr. 267, 269 (Cal. Ct. App. 1983). Benefits in one

proceeding are credited against the other, to prevent double recoveries. *Id.* In that way, injured employees may recover whichever benefits are more generous. *Id.* The California Court of Appeals in *Bobbitt* applied this Court's reasoning in *Sun Ship v. Pennsylvania*, 447 U.S. 715 (1980).

In *Sun Ship*, this Court stated that "[c]oncurrent jurisdiction for state and federal compensation laws is in no way inconsistent with [the LHWCA] policy of raising awards to a federal minimum." *Id.* at 723. The Court noted that "if state remedial schemes are more generous than federal law, concurrent jurisdiction could result in more favorable awards for workers' injuries than under an exclusively federal compensation system." *Id.* at 724. The Court concluded that "we find no evidence that Congress was concerned about a disparity between adequate federal benefits and *superior* state benefits." *Id.*

More recently, this Court rejected a platform operator's argument "that the OCSLA excludes OCS workers from LHWCA coverage when they are also eligible for state benefits." *Pac. Operators Offshore, LLP v. Valladolid*, 565 U.S. 207, 218 (2012). Amicus CAAA is concerned, however, that Petitioner's "no gap to fill" argument could be logically extended to prevent injured workers from seeking concurrent benefits under state and federal workers compensation laws, on the ground that the LHWCA is a comprehensive federal statute with "no gaps to fill." Indeed, the Fifth Circuit came to that very conclusion, in *Nations v. Morris*, 483 F.2d 577 (5th Cir. 1973). The *Nations* court held that, under OCSLA, a state injury law could not supplement the LHWCA because the federal statute was

"comprehensive," "complete and self-sufficient," and did not have any gaps ("not even a tiny one") that the state injury law could fill. *Id.* at 588-89; *see also LeSassier v. Chevron USA, Inc.*, 776 F.2d 506 (5th Cir. 1985) (holding that *Sun Ship* did not control in an OCS-based claim and that a state injury law was not applicable when an OCS worker was covered by the LHWCA).

Accepting Petitioner's argument could therefore undercut both *Valladolid* and California workers compensation law, jeopardizing the rights of injured workers.

It is worth remembering that workers compensation laws were passed as a "trade-off" in which employees gave up the right to sue for tort damages in exchange for fixed, limited benefits and the end of harsh (and by now abolished) common law defenses such as contributory negligence. *See, e.g.*, *Riley v. Southwest Marine, Inc.*, 250 Cal. Rptr. 718, 727 (Cal. Ct. App. 1988); Cal. Labor Code § 3602(a) (West) (providing that an employee's exclusive remedy against his employer for a work injury is workers' compensation, with very limited exceptions). Thus, with workers compensation already a limitation on possible remedies and forums, the Court should avoid creating any doubt in this case about the availability of concurrent state and federal workers compensation benefits.

CONCLUSION

The judgment of the Ninth Circuit should be affirmed.

Respectfully submitted,

JOHN J. KORZEN
Counsel of Record
WAKE FOREST UNIVERSITY
SCHOOL OF LAW
APPELLATE ADVOCACY CLINIC
Post Office Box 7206
Winston-Salem, NC 27109
(336) 758-5832
korzenjj@wfu.edu

WILLIAM A. HERRERAS
ATTORNEY AT LAW
709 E. Grand Ave.
Arroyo Grande, CA 93421
(805) 473-8550
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