No. 18-389

In the
Supreme Court of the United States

PARKER DRILLING MANAGEMENT SERVICES, LTD.,

Petitioner,

v.

BRIAN NEWTON,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONER

RONALD J. HOLLAND
ELLEN M. BRONCHETTI
MCDERMOTT WILL & EMERY LLP
275 Middlefield Road
Suite 100
Menlo Park, CA 94025
(659) 815-7400
rjholland@mwe.com

PAUL D. CLEMENT
Counsel of Record
GEORGE W. HICKS, JR.
LAURA WOLK
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 389-5000
paul.clement@kirkland.com

Counsel for Petitioner

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REPLY BRIEF

California wage-and-hour law is neither applicable to the Outer Continental Shelf (OCS) nor consistent with the Fair Labor Standards Act (FLSA). In contending otherwise, respondent doubles down on the Ninth Circuit's reasoning that state law applies on the OCS whenever it "pertains to the subject matter at hand" and is consistent with federal law as long as it would not be preempted onshore. That approach reads the word "applicable" out of the statute and produces the choice-of-law regime Congress considered and rejected in enacting the Outer Continental Shelf Lands Act (OCSLA).

In OCSLA, Congress expressly rejected proposals for state law to apply on the OCS as a default matter unless preempted. Instead, Congress deliberately chose to treat the OCS as a federal enclave where all law is federal and state law provides the rule of decision only where there is a gap in federal law. Even then, state law is converted into federal law and administered by federal officials. Here, there is no gap as the FLSA provides a comprehensive federal wage-and-hour regime governing everything from the appropriate minimum wage to when sleep time must be compensated. Given that Washington has already answered those questions, there is no reason to look to Sacramento for surrogate federal law. Nor is there any basis to pay respondent for a 168-hour work week when the FLSA and the parties' agreement entitle him to pay for the 84 hours he actually worked. The Ninth Circuit's decision upends five decades of settled law on the OCS and should be reversed.

ARGUMENT

I. The FLSA, Not California Wage-And-Hour Law, Supplies The Applicable Federal Law On The OCS.

A. California Wage-And-Hour Law is Inapplicable on the OCS Because the FLSA Provides the Applicable Federal Wage-And-Hour Rules.

1. Respondent follows the Ninth Circuit's lead in arguing that state law is "applicable" to the OCS under OCSLA whenever it "pertain[s] to the subject matter at hand." Resp.Br.22. That argument suffers from multiple flaws. First, respondent focuses on the word "applicable" in isolation and ignores the broader statutory context. Section 1333(a)(2)'s reference to "applicable" state law does not stand alone. It follows §1333(a)(1)'s extension of federal law to the OCS and decision to treat the OCS as a federal enclave. The balance of §1333(a)(2) then makes clear that state law never applies of its own force, but is converted to federal law to be administered by federal officials. And §1333(a)(3) underscores that even when state law applies to the OCS, it provides no basis for any claim of state sovereignty or any state interest in the OCS for any purpose. When §1333(a) is considered in its entirety, it is plain that state law is "applicable" or "suitable" or "appropriate" for application on the OCS as surrogate federal law to be administered by federal officials under §1333(a)(2) only when there is a gap in the actual federal law made directly applicable to the OCS pursuant to §1333(a)(1).

Despite his focus on the word "applicable" in isolation, respondent advances an interpretation that

"would render the term 'applicable' superfluous." *Ransom v. FIA Card Servs.*, 562 U.S. 61, 74 (2011). If Congress wanted to adopt non-conflicting state law whenever it "pertains to the subject matter at hand," it could have omitted the word "applicable" altogether, because irrelevant laws would never be implicated on the OCS either way. *See* Pet.Br.37-38; U.S.Br.20. The statute would have the same meaning if the words "applicable and" were struck from the statute and OCSLA borrowed state laws "to the extent they are ~~applicable~~ ~~and~~ not inconsistent with" federal law. Rendering critical words without effect violates cardinal principles of statutory construction. *See, e.g.*, *Loughrin v. United States*, 573 U.S. 351, 358 (2014).[1]

Respondent's attempt to give "applicable" some practical effect under his interpretation only underscores the problem. He suggests that Congress included the term "applicable" to ward off the possibility that state laws about hunting dogs and pecan trees would govern the OCS. Resp.Br.22, 37, 52. But Congress did not need any statutory language to filter out such laws. Those state laws filter themselves out because they address issues that do

[1] Respondent's superfluity problem does not end there. Because respondent would interpret "not inconsistent with" merely to invoke conflict preemption principles that apply even when Congress is silent, respondent manages to render all the critical words in §1333(a)(2) superfluous. If Congress had wanted to extend the laws of adjacent states to the OCS and have them apply in the same way they apply onshore—*i.e.*, whenever relevant and not preempted—it would have adopted Senator Long's amendment to do just that. *But see Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 353, 359 (1969) (noting that "the amendment was rejected").

not arise on the OCS. The absence of hunting dogs and pecan trees on the OCS, rather than any meaning of "applicable," whether ordinary or esoteric, renders those laws irrelevant. Respondent thus cannot escape the reality that, under his interpretation, the word "applicable" could be "remove[d]" from the statute and "everything would be precisely the same." *Sturgeon v. Frost*, No. 17-949, slip op. at 21 (Mar. 26, 2019).[2]

Respondent passingly invokes OCSLA's express exclusion of state taxation laws as evidence that "applicable" must have a broader meaning than "gap-filling." Resp.Br.22-23. Even the Ninth Circuit did not adopt this argument, and for good reason. The specific exclusion for state tax laws reinforced that states could not impose certain taxes on businesses operating on the OCS—for example, severance and production taxes—*regardless of* whether there were existing federal laws addressing those matters. *See generally Shell Oil Co. v. Iowa Dep't of Revenue*, 488 U.S. 19, 29-30 (1988); Pet.Br.38 n.7.

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[2] Respondent contends that petitioner's and the United States' interpretation of "applicable" "renders superfluous the term 'not inconsistent,'" because they cannot "articulate a scenario where a state law can be 'applicable' ... yet 'inconsistent with' federal law." Resp.Br.37. This assertion is mystifying, as petitioner and the United States both presented examples of scenarios where the phrases do independent work. *See* Pet.Br.41 n.8; U.S.Br.25-26. Moreover, §1333(a)(2) requires consistency with federal statutes *and* Interior Secretary regulations, such that even when there is a gap in federal statutory law and state law is therefore applicable to the OCS, it must operate in a manner consistent with the Secretary's regulations "in effect or hereafter adopted." 43 U.S.C. §1333(a)(2)(A).

Respondent observes that "Congress used 'applicable' in numerous other OCSLA provisions" and argues that the "only way to give 'applicable' a consistent and coherent meaning throughout the text is to use its ordinary meaning." Resp.Br.23-24. But it is not clear that any of OCSLA's uses of "applicable" means anything other than the law applicable by virtue of a proper interpretation of §1333(a)'s choice-of-law provisions. Moreover, even assuming "applicable" means "suitable" or "appropriate" throughout OCSLA, what is "suitable" for purposes of one statutory provision is not necessarily "suitable" for another. The definition remains consistent, but what is "suitable" depends on context. As already explained, the broader context of §1333(a) makes plain that state law is "applicable" or "suitable" for conversion into surrogate federal law to govern the OCS only when there is a gap in the actual federal law extended to the OCS by §1333(a)(1). In all events, the principle that respondent invokes is far from absolute even with words that are less context-dependent than "applicable" or "suitable." "In law as in life, ... the same words, placed in different contexts, sometimes mean different things." *Yates v. United States*, 135 S. Ct. 1074, 1082 (2015); *accord Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 313-14 (2006).

As both petitioner and the United States have explained, this Court's decision in *Ransom* underscores the flaws in respondent's reading of "applicable." Pet.Br.35-36; U.S.Br.11. Respondent contends that *Ransom* is unavailing because the Court used "context" and "purpose" there not to "depart from the ordinary meaning of the statute" but to "'support' and 'strengthen[]'" its plain meaning. Resp.Br.36.

Just so here. *Ransom* acknowledged that "applicable" means "suitable," "fit," or "appropriate," but then proceeded to use the statutory context to determine "[w]hat makes an expense amount 'applicable' in this sense." 562 U.S. at 69. Here, too, the broader context of §1333(a) makes clear that state law is "applicable"—*i.e.*, "suitable" or "appropriate"—for conversion into surrogate federal law to govern the OCS under §1333(a)(2) only when there is a gap in the actual federal law extended to the OCS under §1333(a)(1). Respondent contends that his construction of "applicable" is similar to that in *Ransom* because it "also serves as a 'filter,'" Resp.Br.36-37, but if all respondent's interpretation filters out are laws concerning hunting dogs, pecan trees, and other things that have not yet made their way to the OCS, then "applicable" serves no "filtering" function or any function at all. *See* pp.3-4, *supra*.

2. In insisting that state law governs the OCS in much the same way it applies onshore—*i.e.*, whenever it pertains to the subject at hand and is not preempted—respondent largely ignores both §1333(a)(1) and the limited role of state law on federal enclaves more generally. Section 1333(a)(1) expressly states that "[t]he Constitution and laws and civil and political jurisdiction of the United States are extended to the [OCS] ... to the same extent as if the [OCS] were an area of exclusive Federal jurisdiction located within a State." 43 U.S.C. §1333(a)(1). As this Court has observed, that provision firmly establishes that all law on the OCS is federal law, and that federal law applies on the OCS's structures "as though they were federal enclaves in an upland State." *Rodrigue*, 395 U.S. at 355.

Respondent cannot dispute that Congress expressly made all law on the OCS federal law and so dismisses it as "beside the point." Resp.Br.33-34. But the point is critical, for it renders considerations of state sovereignty and principles of preemption wholly inapposite on the OCS. What is more, it underscores that state law *never* applies on the OCS of its own force, but extends only pursuant to the extraordinary process of being converted into federal law to be administered by federal officials. To assume that Congress intended that extraordinary process of creating surrogate federal law to occur unnecessarily when actual federal law already comprehensively addresses a subject is to commit a fundamental error.

Congress' decision to treat the OCS as a federal enclave is equally consequential. This Court has long made clear that state law is not generally "applicable" on federal enclaves. To the contrary, when Congress creates a new federal enclave, previously applicable state laws are "necessarily ... superseded by existing laws of the new government *upon the same matters*." *Chi. Rock Island & Pac. Ry. Co. v. McGlinn*, 114 U.S. 542, 546-47 (1885) (emphasis added). At the same time, existing state laws governing matters not addressed by federal law extend to the enclave to avoid gaps or voids in the law applicable to the enclave. *See id.*; U.S.Br. at 4, 12 (citing *McGlinn* and noting that "[w]hen Congress enacted [OCSLA], choice-of-law principles governing federal enclaves were well-established" and dictated that "state law applies only when federal law leaves a gap").

Respondent makes the bold claim that the federal government "misunderstands how law applies on

federal enclaves." Resp.Br.37. In particular, respondent suggests that *McGlinn* and its principle that state law serves only a gap-filling function on federal enclaves are limited to the cession of jurisdiction from one nation to another, rather than from a state to the federal government. Resp.Br.40. That contention is mistaken and misplaced. It is mistaken because *McGlinn* rejected that exact argument. While acknowledging "a wide difference between a cession of political jurisdiction from one nation to another, and a cession to the United States by a state of legislative power over a particular tract," the Court immediately went on to say that "the principle which controls as to laws in existence at the time *is the same in both.*" *McGlinn,* 114 U.S. at 547 (emphasis added). It is misplaced because the OCS was never within the jurisdiction of any state and was determined to be within federal jurisdiction by statute and judicial decision even before OCSLA was enacted. *See* Pet.Br.4-5.

In either event, as the federal government correctly understands, the applicability of state law on the federal enclave that is the OCS is strictly limited to filling gaps in federal law. Because the FLSA predated OCSLA, there never was a gap in the federal law applicable to the OCS, and state wage-and-hour law was never applicable. *See Rodrigue*, 395 U.S. at 362 (explaining that Congress extended all federal law to OCS in order to extend, *inter alia*, "'fair-labor-standard laws'" (citing 99 Cong. Rec. 6963 (1953))).[3]

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[3] Respondent attempts to buttress his superior understanding of federal-enclave law by invoking four largely irrelevant principles and three off-point cases, *United States v. Tax*

Respondent attributes considerable significance to Congress' 1975 amendment of OCSLA to make clear that state law enacted or promulgated after OCSLA's effective date can apply to the OCS. Resp.Br.8-9, 40. In reality, that modest amendment did not expand the role of state law on the OCS in the absence of a gap, but just underscores Congress' intent to treat the OCS as an exclusive federal enclave. As originally enacted, OCSLA avoided a potential delegation problem identified by the Justice Department by limiting any borrowed state law to then-extant law. That provision was consistent with Congress' explicit statement in §1333(a)(3) that it was *not* recognizing any ongoing state sovereignty over the OCS, but rather looked to state law for a limited gap-filling purpose. None of that changed in 1975 when Congress accepted a Justice Department suggestion to amend OCSLA to authorize the borrowing of subsequently enacted state law. Instead, what changed was that this Court decided *United States v. Sharpnack*, 355 U.S. 286 (1958), and made clear while interpreting the Assimilative Crimes Act that there was no delegation problem with borrowing subsequently enacted state

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Commission of Mississippi, 412 U.S. 363 (1973), *Paul v. United States*, 371 U.S. 245 (1963), and *James Stewart & Co. v. Sadrakula*, 309 U.S. 94 (1940). Respondent cherry-picks isolated phrases from these cases to contend that preexisting state laws "continue in force" within federal enclaves unless they "conflict with federal policy." Resp.Br.38-40. But that is true enough when there are gaps in applicable federal law, and none of those cases involved a competing federal statute addressing the same subject or applied state law in lieu of such an on-point federal law. Moreover, as the United States explains, courts have applied a capacious understanding of when state law conflicts with federal policy on federal enclaves. *See* U.S.Br.22-28.

laws to fill gaps on federal enclaves. *Id.* at 287. The fact that Congress amended OCSLA in light of *Sharpnack* simply highlights that Congress viewed the Assimilative Crimes Act, under which it has long been established that state law applies only to fill gaps in federal criminal law, as a model for OCSLA and the OCS.[4]

3. OCSLA's legislative history confirms the limited gap-filling role of state law on the OCS. Pet.Br.23-25; U.S.Br.14-15. The Senate report could hardly be clearer regarding the role of state law, explaining that state laws are adopted "as Federal law to be used when Federal statutes or regulations of the Secretary of Interior are inapplicable." S. Rep. No. 83-411, at 2, 23 (1953). And Senator Anderson, a member of the conference committee, explained on the Senate floor that "Federal law and regulations shall be applicable in the area, but where there is a void, the State law may be applicable." 99 Cong. Rec. 7164 (1953); *see also Rodrigue*, 395 U.S. at 357-58 (surveying same legislative history).

Respondent never acknowledges that ample legislative history. Instead, respondent emphasizes a brief colloquy concerning the effect of federal

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[4] Respondent invokes a single unpublished opinion applying state wage-and-hour laws to a federal enclave. Resp.Br.41. But multiple courts have reached the opposite result. *See, e.g.*, *Manning v. Gold Belt Falcon, LLC*, 681 F. Supp. 2d 574, 576 (D.N.J. 2010); *Mersnick v. USProtect Corp.*, 2006 WL 3734396, at *7 (N.D. Cal. Dec. 18, 2006); *George v. UXB Int'l, Inc.*, 1996 WL 241624, at *1-2 (N.D. Cal. May 3, 1996). More generally, courts recognize that "no federal statute yet allows the broad application of state employment ... law to federal enclaves." *Allison v. Boeing Laser Tech. Servs.*, 689 F.3d 1234, 1238 (10th Cir. 2012).

regulations on state conservation laws "applied ... in the fields which *are not covered* by Federal laws or by regulations." 99 Cong. Rec. 7264 (1953) (emphasis added). Senator Cordon responded that, in those circumstances, state conservation laws would govern as federal law unless and until the Secretary of the Interior adopted inconsistent regulations. *See id.* The entire colloquy proceeded on the explicit premise that state law applied because there was a gap in federal law. Thus, respondent's own hand-picked colloquy reinforces that state law is borrowed as surrogate federal law only "in the fields which are not covered by Federal laws."

In implicit recognition that the legislative history undercuts his view, respondent retreats to the observation that legislative history should not be used to cloud clear statutory text. True enough, but here, far from introducing any ambiguity, the legislative history underscores what the statutory text and context make clear—namely, that state law is suitable for borrowing and conversion into federal law on the OCS only where there is a gap in federal law to be filled. *See Rodrigue*, 395 U.S. at 359 (legislative history "buttresses" conclusion that federal law is exclusive where applicable).

4. This Court's cases have repeatedly recognized that state law applies to the OCS to fill gaps in federal law. Pet.Br.25-29; U.S.Br.16-20. In *Rodrigue*, for example, this Court extensively traced OCSLA's history, including Congress' rejection of the wholesale application of either maritime law or state law, and its decision to make federal law exclusive. 395 U.S. at 355-58. In summarizing Congress' ultimate choice,

this Court concluded that OCSLA borrowed state law "[where necessary]," *i.e.*, "to fill federal voids." *Id.* at 358, 362 (bracketed phrase supplied by Court); *see also id.* at 357, 362; *accord Chevron Oil Co. v. Huson*, 404 U.S. 97, 101, 104-05 (1971); *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 480 (1981).

Respondent dismisses these decisions because each case involved a gap in federal law. But that fact, which petitioner and the United States readily conceded, disregards that both *Rodrigue* and *Huson* proceeded on the undisputed premise that state law pertained to the subject matter at hand, and yet they nevertheless analyzed whether federal admiralty law applied—an entirely unnecessary inquiry if state law were "applicable" whenever it pertains to the subject matter at hand. U.S.Br.20-21; *see Huson*, 404 U.S. at 101.

Finally, respondent has no answer for the fifty years of unbroken consensus in the lower courts that state law extends to the OCS only to fill gaps in federal law. *See, e.g., Cont'l Oil Co. v. London S.S. Owners' Mut. Ins. Ass'n*, 417 F.2d 1030, 1036 (5th Cir. 1969); U.S.Br.19-20 (collecting cases and observing that "[t]he decision below appears to be the first to depart from that long-settled understanding of OCSLA"); Freeport.Br.26-28. That unbroken wall of precedent did not just happen. *Continental Oil* resulted from a careful parsing of *Rodrigue*, and later cases likewise faithfully followed this Court's precedents averting to the gap-filling role of state law. Respondent barely acknowledges this extensive precedent. But when an entire industry structures its employment relationships around such a longstanding consensus,

it "is not something to be lightly cast aside." *Evenwel v. Abbott*, 136 S. Ct. 1120, 1132 (2016). *See Christopher v. SmithKline Beecham*, 567 U.S. 142, 156-59 (2012).

5. Respondent does not dispute that if petitioner's and the United States' interpretation of "applicable" is correct, California's wage-and-hour law is not applicable on the OCS and the decision below must be reversed. The FLSA comprehensively addresses wage-and-hour issues on the OCS, including the specific claims raised by Newton, so there is no "gap[] in the federal law" and thus no role for California wage-and-hour law. *Rodrigue*, 395 U.S. at 357. When, as here, an employee claims that he has not been compensated for all "hours worked," his dispute can be resolved by looking to the federal statutory and regulatory scheme that Congress created precisely for such disputes. Under such circumstances, there is no need for federal courts and officials to look to Sacramento for surrogate federal law. Congress and federal regulators in Washington have already supplied the answers. There is no reason to saddle those federal regulators with the unusual responsibility of administering California wage-and-hour law on the OCS in addition to the FLSA. One set of federal wage-and-hour laws for the OCS is enough.

B. California Wage-And-Hour Law Does Not Extend to the OCS Because It is Inconsistent With the FLSA.

Even if it were "applicable" to the OCS, California wage-and-hour law still would not provide the content of federal law on the OCS because it is "inconsistent" with the FLSA. Under the FLSA, respondent is

entitled to a minimum wage of $7.25 for 84 hours of work. Under California law, by contrast, respondent claims entitlement to a minimum wage of $12 for a 168-hour "work" week covering every hour spent on the OCS, "even sleeping time." J.A.18. Respondent knows those two legal regimes are not consistent, which is why he sued *only* under California law and only after the California Supreme Court's decision in *Mendiola*. California wage-and-hour officials also recognized that the federal and state requirements were inconsistent, which is why they expressly departed from federal law. *See* Pet.Br.10-11.

Despite all that, respondent insists that the FLSA and California wage-and-hour law are not inconsistent based on dictionary definitions treating "inconsistent" as meaning "'incompatible' or 'contradictory.'" Resp.Br.27; *see* Resp.Br.31, 45-46, 46-47. There are multiple problems with that submission. At the outset, "inconsistent" is hardly uniformly defined to require incompatibility or contradiction, and is typically defined in terms that capture lesser degrees of inconsistency. For example, "inconsistent" is commonly defined as "lacking in harmony," Random House Dictionary of the English Language 968 (2d ed. 1987), or "[l]acking agreement among parts," Black's Law Dictionary (10th ed. 2014); *see also Decker v. Nw. Envtl. Def. Ctr.*, 568 U.S. 597, 617 (2013) (Scalia, J., concurring in part and dissenting in part) (using "inconsistent with" to mean "different from"). Even respondent is forced to concede that the federal and California minimum-wage and sleep-time rules are "different," inharmonious, and "lack[] agreement."

Moreover, to the extent there are degrees of inconsistency, ranging from lack of agreement to outright contradiction, context can help determine what degree of conflict Congress wanted to tolerate. Here, the relevant context is a statute that makes the OCS a federal enclave, declares all law to be federal law, and adopts state law only by converting it to federal law to be administered by federal officials. In that context, there is no reason to think Congress wanted to go to the trouble of borrowing state law and creating surrogate federal law when the resulting law would be inharmonious with existing on-point federal law. Indeed, as the United States thoroughly explains—and respondent largely ignores—federal-enclave doctrine generally adopts a low bar for inconsistency, treating a state law as inconsistent "if it 'would interfere with the achievement of a federal policy,' if adoption of 'state law would effectively rewrite' federally prescribed and 'carefully considered' standards, or if 'federal statutes reveal an intent to occupy so much of a field as would exclude use of the particular state statute.'" U.S.Br.23-24. Under that standard, California wage-and-hour law is "inconsistent with" the FLSA and its carefully considered regulations. U.S.Br.26-27.

That said, this discussion of degrees of inconsistency is largely beside the point as the federal and California wage-and-hour laws are flatly inconsistent under any conception of the term. The FLSA prescribes a minimum wage of $7.25; California prescribes a minimum wage of $12. The FLSA requires compensation for the 84 hours that respondent actually works in a week; California wage-and-hour law requires compensation for the full 168

hours respondent is on the OCS. There is no way that those two diametrically different wage-and-hour regimes can be deemed consistent.[5] To be sure, an employer can comply with both by complying with the more demanding regime, but that is because they are both *minimum*-wage regimes, not because the two minimum-wage regimes are *consistent*. If the two regimes really were consistent, respondent would be indifferent to which regime petitioner followed. Respondent was not indifferent; he sued under California law, and not the FLSA.

Respondent seeks to avoid that straightforward conclusion by invoking the FLSA's saving clause and *Powell v. U.S. Cartridge Co.*, 339 U.S. 497 (1950). But neither helps respondent. As petitioner and the United States have explained, the saving clause is not even implicated without "some measure of inconsistency between the FLSA and another law." U.S.Br.29; Pet.Br.42. Respondent's answer—that the saving clause "actually ensures consistency between different state and federal laws," Resp.Br.49—is mistaken. In reality, the saving clause does not make different state and federal laws consistent. Instead, it tells an employer that complying with the FLSA does not "excuse non-compliance" with a more demanding—*i.e.*, inconsistent—state law. 29 U.S.C. §218(a). The saving clause is not even implicated

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[5] The inconsistencies do not end there. The FLSA provides employers greater flexibility concerning paystubs, mealtimes, and payments to terminated employees. Respondent perceives these as gaps in federal law, *see* Resp.Br.48 n.19, but they are just further inconsistencies between the FLSA and California law.

when state and federal law are consistent. And the principal reason the FLSA directs an employer to follow inconsistent state law onshore (a healthy respect for state sovereignty) is wholly inapposite on the OCS, where Congress expressly negated any claim of state sovereignty "for any purpose." 43 U.S.C. §1333(a)(3).[6]

Respondent contends that *Powell* informs the meaning of "inconsistent with" because, in that case, the Court held that two federal wage-and-hour regimes are permissible unless they are "mutually exclusive." Resp.Br.19, 31-32, 46, 49. But as petitioner and the United States have explained, to the extent *Powell* establishes an "impossibility" standard for two competing *federal* laws, that cannot inform the interpretation of §1333(a)(2)(A), because California wage-and-hour law does not become federal law under that provision *unless* it is *first* determined to be "not inconsistent with" federal law. *See* Pet.Br.42 n.9; U.S.Br.27-28. Respondent cannot put the cart before the horse.

Furthermore, *Powell* involved two substantive acts of Congress, each of which underwent rigorous debate and reflected the "hard-fought compromise[s]" associated with bicameralism and presentment. *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 543 (2019). No similar claim to congressional consideration can be

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[6] For the same reason, respondent's reliance on *Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715 (1980), is misplaced. The Court's conclusion that Congress' novel extension of a federal maritime statute to land-based facilities traditionally regulated by states did not preempt state law reflects precisely the respect for state sovereignty that is wholly misplaced on the OCS.

made for California wage-and-hour law generally, let alone the sleep-time rule recently endorsed in *Mendiola*. Nothing in OCSLA stands as an obstacle to allowing two federal laws embodying national legislative judgments to co-exist. But OCSLA asks a different question: namely, whether Congress would want to adopt state law as surrogate federal law even though it would be at odds with already-promulgated federal law on the same subject. *See* U.S.Br.22-23.

The short answer to that question is no. The FLSA provides a comprehensive statutory scheme in which Congress and federal regulators have provided answers to questions concerning the appropriate federal minimum wage and the proper treatment of sleep time. There is no reason to look to Sacramento for different answers to those same questions when it comes to the OCS. Deference to state judgments makes sense when it comes to labor conditions in that state, and deference to a contrary congressional judgment in a more specific context also makes sense. Taking the extraordinary step of borrowing state law and converting it into federal law to be administered by federal officials just to provide for federal minimum-wage and sleep-time rules at odds with the considered decisions of federal officials makes no sense at all.[7]

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[7] Respondent's reliance on *Powell* is misplaced for a further reason: The Court's ultimate holding was that, contrary to the Eighth Circuit's judgment, the FLSA applied to the workers' claims, and in reaching that conclusion, the Court relied on the comprehensiveness of the FLSA. *See* 339 U.S. at 516-17. In this case, the very comprehensiveness of the FLSA is a primary

In the end, neither respondent's capacious view of "applicable" nor his cramped view of "inconsistent" is correct, but they cannot *both* be correct without replicating the regime Congress expressly rejected for the OCS. Under his proposed regime, relevant state law applies unless preempted by federal law—which is exactly how state law applies onshore to areas that are *not* federal enclaves. *See* Pet.Br.44; U.S.Br.29-30; *Rodrigue*, 395 U.S. at 358-59. Respondent fully embraces that equivalence, declaring that the same result should obtain "[w]hether onshore or offshore." Resp.Br.49. Insisting on that equivalence even though Congress made clear that all law on the OCS (in contradistinction from onshore) was federal law and that the OCS (in contradistinction from onshore) was to be treated as a federal enclave is to disregard the most basic judgments Congress made in enacting OCSLA.

C. Applying California Wage-and-Hour Law on the OCS Produces Results Congress Never Intended.

Respondent has no credible response to the negative consequences of his effort to routinely export state law to the OCS. Respondent's only answer to creating unnecessary inconsistencies between the rules that govern the OCS in the Gulf and the Pacific is to point out that inconsistencies are inevitable when it comes to gaps in federal law. But pointing out *necessary* inconsistencies in circumstances where federal law is silent is no justification for creating

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reason why California wage-and-hour law is not "applicable" to the OCS in the first place.

unnecessary disparities when federal law comprehensively regulates the subject matter. Moreover, inconsistencies in statutes of limitations or rules of recoveries for the occasional mishap are far easier to tolerate than ongoing differences in wage-and-hour conditions. Compensating workers on Gulf platforms for an 84-hour work week, while workers on Pacific platforms are paid 24-7, is no small matter.

Respondent largely ignores the anomaly that his position would routinely force federal officials into the strange role of administering state law, even where those same federal officials reached a different conclusion on the same issue. While the federal government identifies this as a real burden, *see* U.S.Br.30-31, respondent suggests that park rangers enforce state and federal laws in National Parks and other federal officials should have the same capabilities when it comes to the OCS. Respondent likely overstates the simplicity of administering the various laws that can apply in the National Parks, which can be a difficult and confusing enterprise—as this Court's recent decision in *Sturgeon* illustrates. *See* No. 17-949, slip op. at 8-9. But in all events, it is one thing to ask a park ranger to enforce federal regulations and the criminal laws of the surrounding jurisdiction. It is quite another thing to ask the Wage and Hour Division in Washington, which has already reached its best judgment as to the proper treatment of sleep time, to administer California law reflecting state officials' conscious decision to reject that judgment. There is simply no reason to thrust federal officials into a difficult and unfamiliar role when federal law already supplies answers.

Relatedly, respondent contends that "if federal officials do not like the application of any particular state standard, the Interior Secretary can issue regulations inconsistent with the state requirements and thereby displace them." Resp.Br.54 (discussing 43 U.S.C. §1334(a)); *see also* Resp.Br.2 (alleging that §1334(a) "authorizes the Interior Secretary to override *any state legal standards applicable on the OCS*" (emphasis added)). That claim appears to overstate the Secretary's authority. The actual statutory provision states: "The Secretary shall administer the provisions of this subchapter *relating to the leasing of* the [OCS]," and "may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper *in order to provide for the prevention of waste and conservation of the natural resources of* the [OCS]." 43 U.S.C. §1334(a) (emphases added). Nothing in that text grants the Interior Secretary freewheeling authority to override state wage-and-hour laws or the whole host of other state laws that would apply as federal law under respondent's theory. *See United States v. Alexander*, 602 F.2d 1228, 1231 (5th Cir. 1979). Moreover, the very prospect that the *Interior* Secretary would need to issue regulations to prevent the *Labor* Department from unnecessarily having to administer a duplicative set of federal *wage-and-hour* laws strongly suggests that respondent's view is not what Congress had in mind.

Adopting the Ninth Circuit's position threatens to empower coastal states to accomplish the one end that Congress plainly sought to foreclose in OCSLA: namely, undermining federal policy when it comes to developing the enormous natural resources on the

OCS. Remarkably, respondent's only response is to concede that California is actively trying to frustrate federal efforts but to point out that, to date, California's efforts have been limited to "doing so through regulation of *on*shore facilities and pipelines, upon which offshore facilities rely." Resp.Br.56. It is hard to imagine a more compelling argument for limiting California's law and efforts to the water's edge (or more precisely, three miles out).

Respondent extols the virtues of the "[s]hore-to-shelf continuity" assured by his position, Resp.Br.51-52; *see also* Resp.Br.7-8, 43, as if Congress would have welcomed that result. But the clear path to "shore-to-shelf" continuity was the one Congress plainly rejected: simply adopting the laws of the adjacent state.[8] There is no reason to revisit that determination after five decades in which employers and employees on the OCS have negotiated mutually beneficial agreements in reliance on those precedents and in full compliance with the FLSA. As *amici* attest, those agreements provide employees with benefits that "generally are far more favorable—including with

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[8] Respondent emphasizes (at 43) this Court's recognition that Congress attempted to partially accommodate the close relationship between workers on the OCS and adjoining states. *See, e.g.*, *Rodrigue*, 395 U.S. at 363. But that explains only why Congress chose adjacent state law to fill gaps in federal law, and did not adopt admiralty law, which would have looked to the law of the platform owner "for supplementation." *Id.* The preference for adjacent state law was plainly limited to gap-filling, as *Rodrigue* emphasized Congress' rejection of Senator Long's amendment that would have guaranteed true "shore-to-shelf continuity" by making adjacent state law generally applicable. *See id.* at 359.

respect to wages, overtime, and other benefits—than those seen in non-OCS industries." Freeport.Br.24. Respondent's interpretation threatens to overturn those beneficial arrangements and inflict numerous other "cascading collateral consequences" upon employers and employees alike. *Id.* at 30-31. That outcome has nothing to recommend it.[9]

Finally, respondent suggests that his interpretation will save employers from having to keep "two sets of books" for onshore and offshore time. Resp.Br.1, 52. But employers have had little difficulty separating onshore and offshore time, as that division reflects OCSLA's fundamental judgment that California is sovereign onshore, but not on the OCS. The real anomaly would be forcing employers to keep two sets of federal law books, one reflecting federal wage-and-hour law promulgated in Washington and another reflecting law fashioned in Sacramento but adopted as federal law. There is no role on the OCS for that second set of inapplicable and inconsistent state-fashioned rules.

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[9] Respondent cites an "audit" allegedly demonstrating that some OCS operators "already apply California wage-and-hour laws on the platforms." Resp.Br.55. But the two identified contracts are voluntary arrangements and do not bear on whether many or even most OCS operators follow suit (petitioner does not) or whether voluntary arrangements—which may provide more generous benefits while declining to apply California law, *see, e.g.*, Freeport.Br.23-24—should be overridden by legal fiat.

CONCLUSION

The Court should reverse the judgment below.

Respectfully submitted,

RONALD J. HOLLAND
ELLEN M. BRONCHETTI
MCDERMOTT WILL & EMERY LLP
275 Middlefield Road
Suite 100
Menlo Park, CA 94025
(659) 815-7400
rjholland@mwe.com

PAUL D. CLEMENT
Counsel of Record
GEORGE W. HICKS, JR.
LAURA WOLK
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 389-5000
paul.clement@kirkland.com

Counsel for Petitioner

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