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**

## BRIEF FOR PETITIONER


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## QUESTION PRESENTED

In the Outer Continental Shelf Lands Act (OCSLA), Congress declared federal law to be the exclusive source of law on the Outer Continental Shelf (OCS). To fill the gaps in the coverage of federal law, Congress provided that the law of the adjacent state would be borrowed as federal law, to the extent that such state law is "applicable" and "not inconsistent with" existing federal law. Consistent with this Court's decisions, the Fifth Circuit has long held that state law is not borrowed as surrogate federal law under OCSLA unless there is a gap in federal law, as with a garden-variety contract claim. In the decision below, the Ninth Circuit expressly disagreed with the Fifth Circuit and held that state law should be borrowed as federal law governing the OCS whenever state law pertains to the subject matter of a lawsuit and is not preempted by inconsistent federal law, regardless of whether there is a gap in federal law. It thus held that California's wage-and-hour laws apply to claims filed by workers on drilling platforms on the OCS, even though the Fair Labor Standards Act already provides a comprehensive set of federal rights and remedies. The result is wholly unanticipated and potentially massive liability for OCS operators that fully complied with the FLSA.

The question presented is:

Whether, under OCSLA, state law is borrowed as the applicable federal law only when there is a gap in the coverage of federal law, as the Fifth Circuit has held, or whenever state law pertains to the subject matter of a lawsuit and is not preempted by inconsistent federal law, as the Ninth Circuit has held.

## CORPORATE DISCLOSURE STATEMENT

Parker Drilling Management Services, Ltd.'s parent company and sole member is wholly owned by Parker Drilling Company, which is a publicly traded company.

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## INTRODUCTION

In the Outer Continental Shelf Lands Act (OCSLA), Congress made clear that all law on the Outer Continental Shelf (OCS) is federal law and state law never applies of its own force. To that end, Congress "extended" federal laws to the OCS "to the same extent" that they apply on other federal enclaves. 43 U.S.C. §1333(a)(1). Congress recognized that the interstitial nature of federal law would mean that some questions would arise on the OCS as to which there was no applicable federal law. To fill the gaps in the coverage of federal law, Congress provided that state law could be consulted, but only "[t]o the extent that [state laws] are applicable and not inconsistent" with federal law. *Id.* §1333(a)(2)(A). And even then, state law did not apply of its own force, but was "declared" to be federal law to be administered only by federal officials. *Id.* Congress underscored that looking to state law to supply the rule of decision for federal law would "never" give rise to any claim to state jurisdiction or sovereignty over the OCS. *Id.* §1333(a)(3). Thus, it is clear beyond cavil that Congress did not provide for the occasional borrowing of state laws out of respect for state sovereignty—indeed, states have never had any sovereignty over the OCS, and OCSLA was designed to extinguish any such claim—but solely out of necessity.

There is no dispute here that the Fair Labor Standards Act (FLSA) is among the federal laws extended to the OCS by OCSLA. Nor is there any question that the FLSA comprehensively addresses wage-and-hour questions and generally does not require employers who operate drilling platforms on

the OCS to provide compensation for every hour employees spend on the platform, such as time spent sleeping. California has adopted a different rule, which is its sovereign prerogative when it comes to wage-and-hour conditions within the Golden State, but not on the OCS. Nonetheless, respondent Brian Newton sought to export that California rule to the OCS and obtain damages for uncompensated sleep time. The Ninth Circuit validated that strategy, finding California wage-and-hour law applicable to the OCS (because it pertains to the dispute) and not inconsistent with federal law (because the FLSA has a saving clause for inconsistent state law). That decision was deeply flawed.

California wage-and-hour law does not govern on the OCS. The FLSA applies on the OCS and, in the absence of a gap in federal law, California wage-and-hour law is not "applicable" to the OCS. Nor is California wage-and-hour law "consistent" with the FLSA. The FLSA prescribes a federal minimum wage of $7.25 and treats sleep time as non-compensable; California's minimum wage is $12 and sleep time must be compensated. The rules are "inconsistent" and applying them both as *federal* law on the OCS makes no sense. One set of comprehensive federal wage-and-hour rules for the OCS is enough. The Ninth Circuit's contrary view ignores Congress' basic judgments in enacting OCSLA. Congress made clear that all law on the OCS would be federal law, and state law would be borrowed only when necessary. Borrowing California wage-and-hour law when federal law already provides different answers to the same questions is nonsensical and contrary to the entire thrust of OCSLA.

## OPINIONS BELOW

The Ninth Circuit's opinion is reported at 881 F.3d 1078 and reproduced at Pet.App.1-41. The district court's order granting judgment on the pleadings is available at 2015 WL 12645746 and reproduced at Pet.App.46-60.

## JURISDICTION

The Ninth Circuit issued its opinion on February 5, 2018, which it amended on April 27, 2018. The petition for writ of certiorari was filed on September 24, 2018, and was granted on January 11, 2019. This Court has jurisdiction under 28 U.S.C. §1254(1).

## STATUTORY PROVISIONS INVOLVED

Relevant provisions of OCSLA are set forth in the appendix to this brief.

## STATEMENT OF THE CASE

### A. The Outer Continental Shelf And OCSLA

The OCS consists of all submerged coastal lands that are within the United States' jurisdiction but outside the territorial jurisdiction of the individual states. *See* 43 U.S.C. §1331(a). The territorial jurisdiction of the states over submerged lands typically extends three nautical miles from the coast. *See Outer Continental Shelf*, Bureau Of Ocean Energy Mgmt., https://perma.cc/65BW-LCM9.[1] All submerged lands seaward from there and within the United States' jurisdiction under international law (ordinarily, submerged lands within 200 nautical

[1] The only exceptions are Texas and the west coast of Florida, where state jurisdiction extends three marine leagues instead of three nautical miles.

miles of the shore) constitute the OCS and fall under exclusive federal jurisdiction. *Id.*; *see Amber Res. Co. v. United States*, 538 F.3d 1358, 1362 (Fed. Cir. 2008).

This differential treatment of submerged lands is rooted in international law and in domestic history that culminated in the enactment of OCSLA. Early writers on international law posited that a nation's dominion extended as far into the sea as projectiles could be fired from its shore, a distance generally set at three miles. Ernest R. Bartley, *The Tidelands Oil Controversy* 9 (1953). This rule became customary international law in the nineteenth century, and in this country precipitated a dispute about which sovereign possessed rights to the minerals beneath submerged lands in the three-mile belt: the federal government or the coastal states. *See United States v. California*, 332 U.S. 19, 31-34 (1947). This Court resolved the dispute in favor of the federal government. *Id.* at 38-39. Not long afterward, however, Congress, recognizing that states had long exercised *de facto* control over the three-mile belt, passed the Submerged Lands Act, which ceded to the states the federal interest in submerged lands within the three-mile belt. 43 U.S.C. §§1301-15 (1953).

While the dispute over the three-mile belt was ongoing, President Truman proclaimed the United States' exclusive control over natural resources in submerged lands seaward of the three-mile belt, *i.e.*, the OCS. He declared that the "United States regards the natural resources of the subsoil and sea bed of the Continental Shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its

jurisdiction and control." Proclamation No. 2667, 59 Stat. 884 (Sept. 28, 1945). The continental shelf beyond the three-mile belt had never seriously been thought of as within state control. *See United States v. Texas*, 339 U.S. 707, 719-20 (1950) (rejecting Texas' claim to a 27-mile belt); *United States v. Louisiana*, 339 U.S. 699, 705-06 (1950) (same as to Louisiana). As a result, the federal government's exclusive jurisdiction over the OCS, unlike its claim to exclusive jurisdiction over the three-mile belt (which was ceded in the Submerged Lands Act), was "never hotly controversial." Warren M. Christopher, *The Outer Continental Shelf Lands Act: Key to a New Frontier*, 6 Stan. L. Rev. 23, 24 (1953).

In 1953, Congress enacted OCSLA, which "emphatically implemented its view that the United States has paramount rights to the seabed beyond the three-mile limit." *Shell Oil Co. v. Iowa Dep't of Revenue*, 488 U.S. 19, 27 (1988). OCSLA's primary purpose was to make clear that the OCS was an exclusively federal enclave on which all law was federal law and to "define a body of law applicable to the seabed, the subsoil, and the fixed structures such as [drilling platforms] on the [OCS]." *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 355 (1969). Congress initially considered treating drilling platforms like vessels and applying federal maritime law, but ultimately concluded "that maritime law was inapposite to these fixed structures." *Id.* at 363. Congress also considered and emphatically rejected the direct application of the law of the adjacent state, deciding against "the notion of supremacy of state law administered by state agencies." *Cont'l Oil Co. v.*

*London S.S. Owners' Mut. Ins. Ass'n*, 417 F.2d 1030, 1036 (5th Cir. 1969).

Congress instead declared that the OCS would be governed exclusively by federal law. Specifically, Congress provided: "The 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). Put succinctly, the OCS is entirely within federal "civil and political jurisdiction," and all law on the OCS is federal law. *See Rodrigue*, 395 U.S. at 357 ("[F]ederal law is 'exclusive' in its regulation of this area.").

At the same time, Congress recognized that "federal law, because of its limited function in a federal system, might be inadequate to cope with the full range of potential legal problems" that could arise on drilling platforms. *Id.* Accordingly, to fill "gaps in the federal law," *id.*, Congress looked to the laws of the adjacent state as supplying the rule of decision for federal law, but only "[t]o the extent" those state laws "are applicable and not inconsistent with … other Federal laws." 43 U.S.C. §1333(a)(2)(A). To ensure that this limited incorporation of state-law standards would not erode the exclusively federal character of the OCS or federal control over the OCS, Congress emphasized that any borrowing of state-law standards as federal law "shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the [OCS]." *Id.* §1333(a)(3). Relatedly, to preclude any possibility that state agencies or state officers would be responsible for administering state law on the OCS, Congress

specified that, even when state-law standards are borrowed and "declared" to be federal law, federal law "shall be administered and enforced by the appropriate officers and courts of the United States." *Id.* §1333(a)(2)(A). In short, OCSLA makes clear that no state law operates of its own force on the OCS, and is emphatic that states have no direct sovereignty over the OCS.

This Court has described the resulting scheme as follows: "All law applicable to the Outer Continental Shelf is federal law, but to fill the substantial 'gaps' in the coverage of federal law, OCSLA borrows the 'applicable and not inconsistent' laws of the adjacent States as surrogate federal law." *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 480 (1981).

### B. The Fair Labor Standards Act

The FLSA is a "comprehensive legislative scheme," *United States v. Darby*, 312 U.S. 100, 109 (1941), that protects "all covered workers from substandard wages and oppressive working hours," *Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 739 (1981); *see also Powell v. U.S. Cartridge Co.*, 339 U.S. 497, 516 (1950) (observing that "[b]readth of coverage" is "vital to [the FLSA's] mission."). The FLSA applies to all workers nationwide and is the exclusive source of wage-and-hour law on federal enclaves, like military bases. *See, e.g.*, *Koren v. Martin Marietta Servs., Inc.*, 997 F. Supp. 196, 205 (D.P.R. 1998). "The FLSA was designed to give specific minimum protections to individual workers and to ensure that each employee covered by the Act would receive a fair day's pay for a fair day's work and would be protected from the evil of

overwork as well as underpay." *Barrentine*, 450 U.S. at 739 (alterations omitted). To that end, the FLSA sets a federal minimum wage (currently $7.25) and, subject to a series of exemptions, requires employers to pay employees for all time worked, including overtime wages equal to one-and-a-half times the employee's regular rate for all work performed in excess of 40 hours per week. 29 U.S.C. §207(a).

Congress delegated the enforcement and administration of the FLSA to the Labor Department and its Wage and Hour Division. The Department's implementing regulations address how to calculate the number of hours worked in various factual circumstances, including how to determine whether employees must be compensated for time spent on the employer's premises but off-duty, such as time spent sleeping. Federal regulations provide that "[a]n employee who resides on his employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises." 29 C.F.R. §785.23. While there is no "legal formula to resolve cases so varied in their facts as are the many situations in which employment involves" off-duty time spent on an employer's premises, *Skidmore v. Swift & Co.*, 323 U.S. 134, 136 (1944), federal regulations direct courts to accept "any reasonable agreement of the parties which takes into consideration all of the pertinent facts," 29 C.F.R. §785.23; *see Tenn. Coal, Iron & R.R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 603 (1944) ("[The FLSA] does not foreclose, of course, reasonable provisions of contract or custom governing the computation of work hours where precisely accurate computation is difficult or impossible.").

Courts have developed a substantial body of case law applying the FLSA and its regulations in this context. For example, in the Ninth Circuit, "the two predominant factors in determining whether an employee's on-call waiting time is compensable overtime are (1) the degree to which the employee is free to engage in personal activities; and (2) the agreements between the parties." *Brigham v. Eugene Water & Elec. Bd.*, 357 F.3d 931, 936 (9th Cir. 2004); *see also, e.g.*, *Brock v. Cincinnati*, 236 F.3d 793, 806 (6th Cir. 2001) (noting that an agreement is reasonable if it "falls within a broad zone of reasonableness, considering its terms and all of the facts and circumstances of the parties' relationship"); *Rousseau v. Teledyne Movible Offshore, Inc.*, 805 F.2d 1245, 1247 (5th Cir. 1986) (holding off-duty hours non-compensable for employees residing on employer's barges). Consistent with these principles, employers and employees on the OCS have long entered into agreements that do not treat every hour spent on the OCS as a compensable hour of work, and those agreements have long been understood to be fully consistent with the FLSA.

### C. Factual and Procedural Background

Respondent Brian Newton worked from January 2013 to January 2015 on Petitioner Parker Drilling's platforms, which are attached to the OCS off the California coast. Pet.App.2. As is standard for employees on drilling platforms, Newton worked fourteen-day shifts on the platform. Pet.App.3. During each shift, he remained on the platform at all times, spending 12 hours on-duty and 12 hours off-duty. Pet.App.3. Other crew members maintained the

opposite schedule, allowing the rig to operate 24 hours a day. Pet.App.3. Parker compensated Newton for the 12 hours he spent on-duty each day, but not for the 12 hours he was off-duty each day. J.A.17. Thus, in a typical seven-day work week, Newton was paid for 84 hours of work, 40 hours paid at his base wage and 44 hours of overtime. After Newton completed a 14-day shift, he would spend 14 days onshore, and two additional crews would work in 12-hour shifts, so that in a 28-day cycle, four different workers would perform the same role, and the platform would remain fully engaged around the clock. Like most employees on drilling rigs, Newton earned "well above the state and federal minimum wage," including, in light of his twelve-hour workdays, "premium rates for overtime hours." Pet.App.20.

In January 2015, the California Supreme Court interpreted a state administrative wage order and held that California wage-and-hour law, unlike the FLSA, requires employers to compensate workers "for all on-call hours spent at their assigned worksites under their employer's control," including sleep time. *Mendiola v. CPS Sec. Sols., Inc.*, 340 P.3d 355, 357 (Cal. 2015).[2] In so holding, the court underscored that

[2] Wage-and-hour issues in California are governed primarily by 18 industry-specific or occupation-specific Wage Orders issued by the now-defunct Industrial Welfare Commission and enforced by the state Division of Labor Standards Enforcement. *See Indus. Welfare Comm'n v. Superior Court*, 613 P.2d 579 (Cal. 1980). All employees working on-site in the drilling industry within California are covered by Wage Order 16, *see* 8 Cal. Code Reg. §11160, which was issued in 2001 and contains the same operative language as the Wage Order at issue in *Mendiola* (Wage Order 4).

the California agency charged with enforcing state wage-and-hour law had expressly departed from the FLSA, and the court expressly rejected the employer's reliance on 29 C.F.R. §785.23. *Id.* at 361 ("[W]e decline to import any federal standard."). The California Supreme Court further held that pursuant to the order, and again contrary to the FLSA, employers and employees *cannot* agree to exclude sleep time from hours worked for compensation purposes. *Id.* at 363. On this point, the court likewise expressly declined to follow federal law. *Id.* at 365. This is far from the only point on which California wage-and-hour law differs from the FLSA. To pick just the most obvious example, California prescribes a state minimum wage of $12, while the FLSA prescribes a federal minimum wage of $7.25.

Barely one month after *Mendiola*, Newton filed a class action complaint in California state court, alleging that California wage-and-hour law required Parker to pay him and similarly situated workers not only for the 12 hours they worked each day on the platform, but also for the 12 hours they spent off-duty, including time spent sleeping. Pet.App.3. The complaint asserts seven causes of action alleging various forms of underpayment, each of which is premised on the same theory made possible by *Mendiola—i.e.*, that California law, unlike the FLSA, required Parker to include all 24 hours each day in calculating hours worked. *See* J.A.18-31. On behalf of himself and others, Newton sought backpay for the pre-*Mendiola* periods in which Parker did not include off-duty time and sleep time as part of hours worked. Newton did not allege that Parker violated the FLSA.

Other plaintiffs, often represented by the same counsel, filed substantively identical class actions against other companies operating on the OCS. *See, e.g.*, *Kendig v. ExxonMobil Oil Corp.*, No. 18-cv-9224 (C.D. Cal. filed Oct. 26, 2018); *Garcia v. Freeport-McMoRan Oil & Gas LLC*, No. 16-cv-4320 (C.D. Cal. filed June 16, 2016); *Jefferson v. Beta Operating Co.*, No. 15-cv-4966 (C.D. Cal. filed July 1, 2015); *Williams v. Brinderson Constructors, Inc.*, No. 15-2474 (C.D. Cal. filed Apr. 3, 2015).

Parker removed the action to federal court and moved for judgment on the pleadings, arguing that California wage-and-hour law does not extend to the OCS either directly or indirectly by providing the content of federal law on the OCS. Pet.App.4. The district court granted Parker's motion. Relying on the Fifth Circuit's *Continental Oil* line of cases—which, in turn, relies on a series of decisions from this Court—the district court explained that "under OCSLA, federal law governs and state law only applies to the extent it is necessary 'to fill a significant void or gap' in federal law." Pet.App.51 (quoting *Cont'l Oil*, 417 F.2d at 1036). Because the FLSA is a comprehensive federal wage-and-hour scheme, the court observed, "there are no significant voids or gaps" in federal law, and therefore "it is not necessary to apply the law of the adjacent state." Pet.App.52.

The Ninth Circuit, in a decision by Judge Christen and joined by Judges Paez and Berzon, reversed. Expressly rejecting *Continental Oil*, the court held that "the absence of federal law is not … a prerequisite to adopting state law as surrogate federal law under [OCSLA]." Pet.App.2. The court acknowledged that

the Fifth Circuit interpreted OCSLA and this Court's cases as "requir[ing] that 'applicable' be read in terms of necessity—necessity to fill a significant void or gap." *Cont'l Oil*, 417 F.2d at 1036. The court likewise acknowledged that every district court in the Ninth Circuit to consider the issue had followed the Fifth Circuit's lead and "concluded that California's wage and hour laws do not extend to OCS platform workers because the FLSA leaves no gap for state law to fill." Pet.App.20 n.13. The court nonetheless disagreed with that previously unanimous interpretation: "We … reject the proposition that 'necessity to fill a significant void or gap' is required in order to assimilate 'applicable and not inconsistent' state law into federal law." Pet.App.2 (citations omitted). Instead, the court held, state laws are "applicable" under OCSLA whenever they "pertain[] to the subject matter at hand." Pet.App.21.

The court likewise held that, despite the fundamentally different treatment of sleep time and off-duty time in California and federal law, California wage-and-hour law was nonetheless "not inconsistent with" the FLSA for purposes of OCSLA. 43 U.S.C. §1333(a)(2)(A). The court held that California law is "not inconsistent with" the FLSA because the FLSA's saving clause "explicitly permits more protective state wage and hour laws." Pet.App.36; *see* 29 U.S.C. §218(a). Having concluded that "California's minimum wage and maximum hours worked provisions are applicable and not inconsistent with the FLSA," the court vacated the district court's judgment and remanded for further proceedings. Pet.App.39 (citation omitted). The court denied a petition for *en banc* review, but the panel amended its opinion to

direct the district court to consider whether its holding "should be applied retrospectively." Pet.App.43.

## SUMMARY OF ARGUMENT

California wage-and-hour law does not apply directly or indirectly on the OCS. It is clear beyond cavil that California wage-and-hour law does not apply directly to the OCS. Congress considered and rejected the possibility of state law applying to the OCS of its own force, and instead made clear that all law on the OCS is federal law. And it is equally clear that California wage-and-hour law does not apply to the OCS indirectly by supplying the content for a second federal wage-and-hour law to supplement the FLSA on the OCS. There is no question that the FLSA extends to the OCS, and nothing in OCSLA creates the anomaly of two federal wage-and-hour laws, one emanating from Washington and prescribing a $7.25 minimum wage and the other emanating from Sacramento and prescribing a $12 minimum wage and a fundamentally different rule for off-duty hours. Instead, under OCSLA, the one and only federal wage-and-hour law governing the OCS is the FLSA.

That result follows from the plain text of OCSLA. The relevant subsections of 43 U.S.C. §1333(a) work together to make clear that the FLSA provides the only applicable wage-and-hour law on the OCS. First, §1333(a)(1) provides that federal law "extend[s]" to the OCS "to the same extent" as it extends to other exclusively federal enclaves. Second, §1333(a)(2)(A) provides that state law is "declared" to be federal law, to the extent it is "applicable and not inconsistent with" federal law. That subsection further provides that even when state law supplies the rule for federal

law on the OCS, that law "shall be administered and enforced by the appropriate officers and courts of the United States." Finally, §1333(a)(3) underscores that the provisions for "the adoption of state law" as federal law "shall never be interpreted" as giving states any claim to jurisdiction over the OCS. Together, these provisions make clear that all law on the OCS is federal law and that Congress authorized the relatively extraordinary step of converting state law into federal law to be administered by federal officials only when there is a gap in applicable federal law that needs to be filled. OCSLA does not envision state law supplying the content of federal law as a matter of course whenever state law pertains to the question at hand, nor does it permit the application of two different federal wage-and-hour laws prescribing inconsistent minimum-wage and sleep-time rules.

California wage-and-hour law is neither applicable to the OCS nor consistent with the FLSA. First, California wage-and-hour law is not applicable to the OCS in the absence of a gap in federal law that needs to be filled by borrowing a state-law rule of decision as surrogate federal law. The Ninth Circuit's contrary view that all state law is applicable to the OCS whenever it pertains to the subject matter at hand ignores the primary decision of Congress in enacting OCSLA and the text of §1333(a)(1). The most fundamental decision Congress made in OCSLA was to establish that all law on the OCS is federal law. Congress implemented that judgment in §1333(a)(1), which extends federal law to the OCS "to the same extent as if the [OCS] were an area of exclusive federal jurisdiction located within a state." At the time of OCSLA's enactment, it was already well established

that state law does not presumptively apply to exclusive federal enclaves within a state in the absence of a gap in federal law; if federal law already addresses the subject, state law is inapplicable to the federal enclave. That rule applies *a fortiori* to the OCS, which unlike most federal enclaves lies completely outside state jurisdiction and can borrow a state rule only through the extraordinary process of declaring state law to be federal law to be administered by federal officials. When §1333(a)(2)(A) is read in light of §1333(a)(1) and Congress' primary judgment in making federal law the exclusive law of the OCS, it is clear that state law is not applicable to the OCS in the absence of a gap in federal law. That result is confirmed by context, legislative history, and an unbroken line of this Court's cases.

Second, California wage-and-hour law does not apply to the OCS because it is inconsistent with the FLSA. The Ninth Circuit acknowledged that California wage-and-hour law does not apply of its own force, but merely supplies the content for federal law. But that would create a glaring inconsistency between the two federal wage-and-hour laws, one of which prescribes a federal minimum wage of $7.25 and the other that would prescribe an equally-federal minimum wage of $12 by borrowing a minimum wage from California. There would be an equally glaring inconsistency between the FLSA rule that does not treat every hour on an employer's premises as compensable, and a federal rule borrowed from California that treats every hour as compensable. These inconsistencies are undeniable because they are intentional: As the California Supreme Court acknowledged in *Mendiola*, in fashioning rules for

California, state regulators explicitly rejected the FLSA's approach to off-duty time.

The Ninth Circuit ignored those stark inconsistencies by invoking the FLSA's saving clause, which provides that when state and federal wage-and-hour law conflict, the FLSA will not excuse compliance with the more protective state law. *See* 29 U.S.C. §218(a). But the FLSA's saving clause does not mean that state law and the FLSA are "consistent." To the contrary, the necessary precondition for triggering the saving clause is an inconsistency between state and federal law. What is more, the FLSA saves more protective state law out of respect for state sovereignty and the state's traditional role as the primary regulator of workplace conditions within those states' jurisdictions. Those principles have no application on the OCS, an exclusive federal enclave, wholly beyond state jurisdiction, where all law is federal law. While it makes sense in our federalist system for federal law to yield to California's more protective judgment in Fresno, it makes no sense for the federal rules prescribed by Congress and the Labor Department to yield on the OCS to contrary judgments made in Sacramento. Nothing in the saving clause supports that latter result.

Finally, borrowing duplicative federal wage-and-hour rules from California would produce a host of negative consequences, all of which would frustrate Congress' underlying purposes in enacting OCSLA. The Ninth Circuit approach mandates a completely different wage-and-hour regime for OCS platforms off the California shore from those in the Gulf. There is no reason that Congress would have wanted such

needless disparity on the OCS in the absence of a gap in federal law. Similarly, Congress was sufficiently alarmed by the prospect of state officials administering state law on the OCS that it specified that even when state law is borrowed for the OCS, federal officials remain responsible for administering that law. That unusual arrangement is understandable when there is no applicable federal law and the only alternative is state officials administering state law on the OCS. But foisting the extraordinary responsibility of administering California wage-and-hour law on federal wage-and-hour officials already charged with administering on-point federal law (and who have already reached a contrary judgment about off-duty time) makes no sense. Finally, the Ninth Circuit's decision opens up the prospect that states with a different and dimmer view of OCS operations than the federal government may inflict burdensome policies on OCS operators. Congress precluded that result by envisioning only a limited gap-filling role for state law on the OCS. This Court should restore Congress' vision and reverse the Ninth Circuit.

## ARGUMENT

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

#### A. OCSLA Makes Clear That All Law on the OCS is Federal Law and State Law is Limited to a Gap-Filling Role.

Congress enacted OCSLA to provide a comprehensive body of law for disputes arising on the OCS. Congress considered and rejected the possibility

of applying state law directly to the OCS or treating OCS platforms as vessels subject to admiralty and maritime law. Instead, Congress embraced a regime where all law on the OCS is federal law. Under OCSLA, if federal law addresses the subject matter of a dispute, that federal law governs exclusively. There is no role for dual sovereigns on the OCS, as the whole point of OCSLA was to establish the OCS as an exclusively federal enclave and to emphatically reject any claim to state jurisdiction more than three miles seaward from the coast.

At the same time, because of the interstitial nature of federal law, Congress understood that there would be some circumstances in which there would be no on-point federal law, as in a garden-variety contract or tort case. In those cases, Congress provided that the law of the adjacent state could be adopted, but not as state law. Instead, state law would be declared federal law (to be administered by federal officials) and supply the content for federal law. The upshot of this arrangement is that *all* law on the OCS is federal law, and state law supplies the rule of decision for federal law only when there is a gap in federal law. The Ninth Circuit's alternative rule, under which state law is applicable to the OCS whenever it pertains to the subject matter at hand, is incompatible with Congress' fundamental judgment in enacting OCSLA as well as OCSLA's text, legislative history, and a host of this Court's precedents.

1. The most basic judgment Congress made in enacting OCSLA was to establish federal law as the exclusive law that governed on the OCS. Congress expressly rejected the notion that state law would

govern the OCS and was particularly alarmed at the prospect that state officials could administer the law applicable on the OCS. Multiple provisions of OCSLA underscore Congress' basic judgment that all law on the OCS is federal law, and state law never applies of its own force.

Section 1333(a)(1) makes Congress' preference for federal law unmistakable. That provision 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 outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State." 43 U.S.C. §1333(a)(1). Importantly, this provision not only extends federal law to the OCS, but does so "to the same extent" as if the OCS were an exclusive federal enclave. As this Court explained 50 years ago in *Rodrigue*, this sweeping provision "makes it clear that federal law … is to be applied to these artificial islands as though they were federal enclaves in an upland State." 395 U.S. at 355.

Section 1333(a)(1)'s reference to federal enclaves itself makes clear that state law is not presumptively applicable whenever it pertains to an issue that could arise on the OCS, but rather is limited to a gap-filling role. Even in the context of a federal enclave located entirely within the boundaries of a sovereign state, state law is not presumptively applicable within the federal enclave. Rather, in such enclaves, the presumption is that federal law is exclusive, and state law applies only if there is a gap in federal law. *See Chi., Rock Island & Pac. Ry. Co. v. McGlinn*, 114 U.S. 542, 546-47 (1885). Congress' assertion of exclusive

legislative power over a federal enclave "bars state regulation without specific congressional action." *Paul v. United States*, 371 U.S. 245, 263 (1963); *see* U.S. Const. art. I, §8, cl.17.[3] That principle applies *a fortiori* to the OCS, which is an exclusive federal enclave wholly outside the sovereign territory of an adjacent state. Indeed, the only exception to the need for "Congress [to] provid[e] 'clear and unambiguous' authorization for [state] regulation" of federal enclaves within states is for local laws that predated the establishment of the federal enclave. *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 180 (1988); *see also Allison v. Boeing Laser Tech. Servs.*, 689 F.3d 1234, 1238 (10th Cir. 2012). But on the OCS, no state exercised sovereignty pre-OCSLA.

Congress reinforced its decision to make all law on the OCS federal and to limit state law to a gap-filling role in §1333(a)(2)(A). That subsection provides that "to the extent that they are applicable and not inconsistent with" federal law, the laws of each adjacent state "are declared to be the law of the United States." 43 U.S.C. §1333(a)(2)(A). Unlike §1333(a)(1), which "extend[s]" federal law to the OCS, §1333(a)(2)(A) does not "extend" state law to the OCS or otherwise make it directly applicable to the OCS.

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[3] As an example of the requisite clear and unambiguous authorization for the application of state law to federal enclaves, Congress has provided: "In the case of the death of an individual by the neglect or wrongful act of another in a place subject to the exclusive jurisdiction of the United States within a State, a right of action shall exist as though the place were under the jurisdiction of the State in which the place is located." 28 U.S.C. §5001(a); *see also* 40 U.S.C. §3172(a); 26 U.S.C. §3305(d); 10 U.S.C. §2671(a); 42 U.S.C. §7418(a).

Instead, §1333(a)(2)(A) takes the content of state law and "declare[s]" it to be "the law of the United States," which is to say, federal law. And §1333(a)(2)(A) converts state laws into federal law in that unusual fashion only "to the extent they are applicable and not inconsistent with" federal law. Then, §1333(a)(2)(A) underscores the limited role of state law—and Congress' extreme aversion to the prospect of the OCS being regulated by state officials—by providing: "All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States." Finally, to remove all doubt concerning the exclusivity of federal law on the OCS, §1333(a)(3) provides that "[t]he provisions of this section providing for adoption of state law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over" the OCS. A clearer disclaimer of any direct sovereign interest of the states with respect to the OCS would be hard to imagine.

The reinforcing provisions of §1333(a) make at least two things plain. First, all law on the OCS is federal law. There is absolutely no role for dual-sovereignty principles or for state law applying of its own force. Second, the role of state law is limited to a gap-filling role, and even then its only role is to provide a rule of decision for federal law, not to replace already existing federal law. This second proposition is reflected in §1333(a)(1)'s extension of federal law to the OCS "to the same extent" as on an exclusive federal enclave, and in §1333(a)(2)(A)'s limited incorporation of state law as federal law "to the extent applicable and not inconsistent with" federal law. To

be sure, it might be possible to read the word "applicable" in isolation to provide for the extension of state law to the OCS whenever state law is written in broad enough terms that it could be said to pertain to the subject matter at hand. But such a reading is plainly incompatible with Congress' basic decision to treat the OCS as an exclusive federal enclave where all law is federal law and state law is inapplicable in the absence of a gap in federal law, as well as with the broader context of §1333(a), including §1333(a)(1) and §1333(a)(3). Read together and against the backdrop of Congress' primary decision to make federal, and not state, law presumptively applicable on the OCS, those provisions make clear that state law is only "applicable" to the OCS when there is a gap that needs to be filled in the federal law directly "extended" to the OCS by §1333(a)(1).

2. The limited gap-filling role of state law on the OCS is confirmed by OCSLA's legislative history. The initial Senate version of OCSLA would have treated drilling platforms as if they were vessels, and thus filled the gaps in federal law with maritime law. *See* Christopher, *supra*, at 40. But in legislative hearings on OCSLA, Senator Daniel and others repeatedly urged "the application of State laws in the fields where we do not have specific federal laws," *Outer Continental Shelf, Hearings Before the Comm. on Interior and Insular Affairs*, 83d Cong. 45, 645 (1953). In response, the Senate Committee replaced its maritime-law proposal with the language that now appears in §1333(a). *See* Christopher, *supra*, at 40-41 & n.93.

The accompanying Senate Report explains the limited role state law would play "in the absence" of applicable federal law. In particular, the Senate Report states:

> To carry out the primary purposes of the measure, a body of law is extended to the outer shelf area, consisting of:
>
> (a) The constitution and the laws, and the civil and political jurisdiction, of the Federal Government;
>
> (b) the regulations, rules, and operating orders of the Secretary of the Interior; and
>
> (c) *in the absence of such applicable Federal law or adequate Secretarial regulation*, the civil and criminal laws of the State adjacent to the outer shelf area. Such State laws are adopted as Federal law….

S. Rep. No. 83-411, at 2 (1953) (emphasis added). A section of the Senate Report explaining the Committee's amendments describes §1333(a)(2)(A) the same way: "Paragraph (2) adopts State law as Federal law, *to be used when Federal statutes or regulations of the Secretary of the Interior are inapplicable*." *Id.* at 23 (emphasis added). As this Court noted in *Rodrigue*, "this language makes it clear that state law could be used to fill federal voids." 395 U.S. at 358.

The Senate-House conferees accepted the Senate's version of the bill, with just one modification not relevant here. *See* Christopher, *supra*, at 31. Senator Cordon, the acting chair of the Senate Interior and Insular Affairs Committee, introduced the

conference bill on the Senate floor. He explained that the Committee had considered "the extension of State laws and with them State boundaries to the outer edge of the shelf," but rejected that approach because the OCS "is not and never has been within the boundary of any State or Territory, and it is, therefore, uniquely an area of exclusive Federal jurisdiction and control." 99 Cong. Rec. 6963 (1953). The Committee decided instead to apply to the OCS "the whole body of Federal law which applies today to those areas inside the States owned by the Federal Government under exclusive Federal jurisdiction." *Id.* But because "the Federal Code was never designed to be a complete body of law in and of itself," the bill proposed, as a "housekeeping law," the "enactment as Federal law by reference of the laws of the several abutting States." *Id.* As Senator Anderson, a member of the conference committee, put it: "The real point is … that the language in section 4 provides that Federal laws and regulations shall be applicable in the area, but that where there is a void, the State law may be applicable." 99 Cong. Rec. 7164 (1953).

3. This Court's cases have likewise repeatedly recognized the limited role of state law, which is applicable to the OCS only as a gap-filler when federal law is inapplicable. This Court first confronted §1333(a) in *Rodrigue*, a dispute about whether the federal Death On The High Seas Act (DOHSA) or Louisiana state law (declared to be federal law under OCSLA) should apply to wrongful-death actions filed by survivors of workers who died on the OCS. 395 U.S. at 352-53. In answering that question, this Court extensively traced OCSLA's history, recounting that Congress had rejected both the wholesale application

of maritime law and the wholesale application of state law, electing instead to make federal law exclusive. *Id.* at 355-58. In describing state law's limited role, this Court repeatedly emphasized that state law applied only "to fill federal voids." *Id.* at 358; *see id.* at 357 ("[T]he Act supplemented gaps in the federal law with state law."); *id.* at 362 ("[T]he whole body of Federal law was made applicable to the area as well as state law where necessary." (alterations omitted)).

The question in *Rodrigue* thus came down to whether DOHSA covered the subject matter of the dispute or whether it left a gap in federal law that made it necessary to borrow state law and convert it into federal law. In the end, the Court decided that the incidents did not occur on the "high seas" and thus fell outside DOHSA's scope. *Id.* at 359-60. It followed, therefore, that there was a "gap" in federal law that needed to be filled with adopted state law: "[T]he inapplicability of [DOHSA] removes any obstacle to the application of state law by incorporation as federal law through [OCSLA]." *Id.* at 366. The "recurring theme" of *Rodrigue*, as the Fifth Circuit later observed, is that state law does not apply on the OCS unless it is "necess[ary] to fill a significant void or gap" in federal law. *Cont'l Oil*, 417 F.2d at 1036.

Later OCSLA decisions have reaffirmed state law's limited gap-filling role on the OCS. For example, there was a gap in *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971), because federal law did not prescribe a statute of limitations for the suit at issue, and the question before the Court was how to fill it. The Court began its analysis by noting that, in *Rodrigue*, "we recognized that there exists a substantial 'gap' in

federal law. Thus, state law remedies are not 'inconsistent' with applicable federal law." *Id.* at 101. Although the court of appeals had filled that gap by creating federal common law, this Court held that OCSLA requires such gaps to be filled with borrowed state law: "Congress made clear provision for filling in the 'gaps' in federal law; it did not intend that federal courts fill in those 'gaps' themselves by creating new federal common law." *Id.* at 104-05.[4] Similarly, in *Gulf Offshore*, 453 U.S. 473, this Court emphasized that the role of state law under OCSLA is "to fill the substantial 'gaps' in the coverage of federal law." *Id.* at 480.

To be sure, this Court has not yet confronted a case where, as here, there is no gap in federal law. But courts in the Fifth Circuit have long employed this Court's precedents to find state law inapplicable when federal law applied, leaving no gap and no justification for converting state law into federal law to fill the gap.

For example, in *Continental Oil*, the Fifth Circuit affirmed the district court's dismissal of a lawsuit based on a Louisiana statute, stating that state law

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[4] *Huson* underscores that when state law fills a gap in federal law, it fills the gap not by simply applying as state law but by being converted into *federal law*, and thus ceases to be state law. The difference was critical in *Huson* because under Louisiana law "prescriptive time limitations are not binding outside their own forum." 404 U.S. at 102. The Court of Appeals applied that Louisiana law principle to hold the Louisiana time limit inapplicable on the OCS. This Court rejected that reasoning, explaining that such state-law limits were inapplicable because Louisiana law was not being projected outside Louisiana contrary to state policy. Rather, Louisiana's time limit was being borrowed as federal law and being applied in a federal forum.

applies under OCSLA only when needed "to fill a significant void or gap" in federal law. 417 F.2d at 1036. The court, relying extensively on *Rodrigue*, held that because federal law already provided "substantive rights and remedies" for the plaintiffs' injuries, "[t]here is no void, there are no gaps" for state law to fill. *Id.* Accordingly, the Louisiana statute did not apply. *Id.* at 1040. The court expressly rejected the argument that "the term 'applicable'" means only that the relevant state law is "applicable to the subject matter in question." *Id.* at 1035. That interpretation, the court explained, "imputes to Congress the purpose generally to export the whole body of adjacent [state] law onto the" OCS. *Id.* Such a result "is hardly in keeping with" Congress' "reject[ion]" in OCSLA of "the notion of supremacy of state law administered by state agencies." *Id.* at 1036. The Fifth Circuit and other courts have continued to rely on *Rodrigue*, *Huson*, and *Gulf Offshore* in refusing to convert state law into federal law applicable to the OCS unless doing so is "necessary to fill some gap in federal law." *Nations v. Morris*, 483 F.2d 577, 589 (5th Cir. 1973); *see also LeSassier v. Chevron USA, Inc.*, 776 F.2d 506 (5th Cir. 1985); *Moody v. Callon Petroleum Operating Co.*, 37 F. Supp. 2d 805, 809-12 (E.D. La. 1999); *Williams v. Brinderson Constructors, Inc.*, 2015 WL 4747892, at *4 (C.D. Cal. Aug. 11, 2015).

There is no justification for departing from this Court's longstanding view that state law plays only a gap-filling role and is inapplicable to the OCS when on-point federal law applies and leaves no gap. That is especially true given that Congress has since amended §§1333(a)(1) and (a)(2)(A)—including the specific sentences at issue here—without disturbing

this Court's interpretation. *See* Pub. L. 95-372, Tit. II, §203, 92 Stat. 635 (1978); Pub. L. 93-627, §19(f), 88 Stat. 2146 (1975); *Faragher v. City of Boca Raton*, 524 U.S. 775, 792 (1998) ("[T]he force of precedent here is enhanced by Congress's amendment to the liability provisions of Title VII since the *Meritor* decision, without providing any modification of our holding.").[5]

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

1. California wage-and-hour law is inapplicable on the OCS because OCSLA unambiguously extends to the OCS the FLSA and its federal wage-and-hour regulations administered by federal officials. *See* 43 U.S.C. §1333(a)(1). The applicability of the FLSA to the OCS ensures there is no gap in federal law and

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[5] The inference that Congress was actually aware of and did not intend to disturb judicial decisions recognizing the inapplicability of state law in the absence of a gap in applicable federal law is particularly strong given that Congress amended §1333(a)(2)(A) in 1975 as an explicit response to a decision of this Court, namely, *United States v. Sharpnack*, 355 U.S. 286, 287 (1958), which held that the Assimilative Crimes Act did not create a non-delegation-doctrine problem by incorporating subsequently enacted state criminal laws on federal enclaves to fill gaps in federal criminal law. In response, Congress amended OCSLA, which initially limited §1333(a)(2)(A) to applicable and not inconsistent state law in existence as of OCSLA's effective date. *See* Outer Continental Shelf Lands Act, ch. 345, §4, 67 Stat. 462-63 (1953). OCSLA's original text underscores that Congress looked to pre-existing state law only as a potential gap-filler, and the amendment in light of *Sharpnack* reinforces that Congress viewed the OCS as an exclusive federal enclave where federal law is exclusive in the absence of a gap.

renders California wage-and-hour rules inapplicable for purposes of §1333(a)(2)(A). Even putting aside the glaring inconsistencies between the FLSA and California wage-and-hour law, *but see* pp.38-45, *infra*, there is no need to have two federal wage-and-hour regimes applicable to the OCS—and no need to take the rather extraordinary step of borrowing state law and declaring it to be federal law (to be administered exclusively by federal officials)—when Congress has already supplied applicable federal law (administered by those same federal officials). Put simply, when there is already applicable federal wage-and-hour law emanating from Washington, there is no need to look to Sacramento. In the absence of a gap in applicable federal law, state law is simply inapplicable to the OCS. As explained above, this result flows from the text, context, and legislative history of OCSLA.

There is no question here that the FLSA both is applicable to the OCS and comprehensively regulates wage-and-hour issues, including the issues here. It is beyond dispute that the FLSA is among the federal laws that OCSLA "extend[s]" to the OCS "to the same extent" as other federal enclaves. And this Court has already recognized that the FLSA is "a comprehensive legislative scheme," *Darby*, 312 U.S. at 109, the "[b]readth" of which is "vital to its mission," *Powell*, 339 U.S. at 516. The FLSA's expansive protections are "stated in terms of substantial universality," *id.*, shielding "all covered workers from substandard wages and oppressive working hours, labor conditions that are detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers," *Barrentine*, 450 U.S. at 739. The FLSA specifies the

federal minimum wage, the federal maximum workweek, requires the payment of overtime subject to numerous exemptions, and via Labor Department regulations, addresses a wide range of wage-and-hour issues. Because the FLSA comprehensively addresses wage-and-hour issues on the OCS, there is no "gap[] in the federal law" and thus no role for California wage-and-hour law. *Rodrigue*, 395 U.S. at 357.

Examining Newton's specific claims reinforces that there is no gap for California's wage-and-hour law to fill. At bottom, all of Newton's claims are premised on a single California wage-and-hour rule: that employees are entitled to compensation for all off-duty time spent on the employer's premises, including time spent sleeping. *See Mendiola*, 340 P.3d at 357. But federal law has its own set of rules for determining whether such hours must be compensated. *See* 29 C.F.R. §785.23; *see also* pp.7-9, *supra*. Indeed, when California regulators adopted their rules for off-duty time, they did not think they were filling a gap in the FLSA. To the contrary, they expressly and intentionally departed from the FLSA, as the California Supreme Court recognized in *Mendiola*. *See* 340 P.3d at 357-65. Thus, when an employee claims that he has not been compensated for all "hours worked," there is a federal law for that. That dispute can be resolved by looking to the federal statutory and regulatory scheme Congress created precisely for such disputes—*i.e.*, the FLSA.

If Newton's claims are broken down into their component parts, the applicability and comprehensiveness of the FLSA is equally clear. Newton's first and sixth claims allege minimum-wage

and overtime violations. J.A.18-20, 28-30. The FLSA addresses those issues by "establish[ing] federal minimum-wage, maximum-hour, and overtime guarantees." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 69 (2013). Newton's second claim alleges pay stub violations, J.A.20-22, which the FLSA addresses by, *inter alia*, requiring employers to keep records of hours worked and wages paid, 29 U.S.C. §211(c). Newton's fourth claim alleges failure to timely pay final wages, J.A.24-26, which the FLSA addresses by imposing penalties on employers who fail to pay terminated employees on the next regularly scheduled payday, 29 U.S.C. §216(b); Pet.App.58. Newton's fifth claim alleges a failure to provide valid meal periods, J.A.26-28, which the FLSA addresses by requiring employers to compensate employees for any meal period that is not "bona fide," 29 C.F.R. §785.19. In short, whether examined generally or in light of the specific claims alleged in this case, the FLSA leaves no gaps for state law to fill.[6]

2. The Ninth Circuit never claimed that there was a gap in federal wage-and-hour law or any need to replace existing federal law with California wage-and-hour rules converted into limited-purpose federal law.

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[6] Newton's third claim, for unfair competition, is based on the same predicate acts as his wage and meal-period claims. J.A.22-24. Likewise, his seventh claim seeks civil penalties for acts described in the other claims. J.A.30-35. The Ninth Circuit ruled only on Newton's minimum-wage and overtime claims (*i.e.*, first and sixth claims), remanding the rest for the district court to assess in light of the court's interpretation of OCSLA. Pet.App.35-40. Because those claims necessarily fail under the proper interpretation of OCSLA, this Court should direct that they be dismissed as well.

Instead, the Ninth Circuit deemed the entire question of whether there was a gap in federal law irrelevant. In the Ninth Circuit's view, state law is "applicable" to the OCS as long as it "pertain[s] to the subject matter at hand." Pet.App.21. That interpretation—the product of simply looking at the dictionary definition of a single word in isolation—disregards the broader statutory context and produces a result that Congress could not have intended. Congress considered and rejected proposals to make state law apply of its own force whenever it was relevant to a dispute arising on the OCS. The Ninth Circuit's ruling produces nearly the same result, with the twist that state law is presumptively applicable to the OCS but only after being converted into federal law that must be administered by federal officials. Congress did not embrace that bizarre regime in OCSLA, but rather treated the OCS as an exclusively federal enclave where federal law is exclusive when applicable, and state law is inapplicable in the absence of a gap in federal law. The decision below is thus not only wrong as a textual matter, but defies Congress' fundamental judgment that the OCS should be an exclusively federal enclave on which federal law is the rule, and state law the exception.

The Ninth Circuit's construction of "applicable" was the product of a flawed brand of textualism that defies this Court's precedents. "Statutory language cannot be construed in a vacuum." *Sturgeon v. Frost*, 136 S. Ct. 1061, 1070 (2016). Rather, "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Id.* By focusing simply on the dictionary definition of a single word in a vacuum, instead of construing OCSLA as a

whole, the Ninth Circuit contravened this Court's command to "consider not only the bare meaning of the word but also its placement and purpose in the statutory scheme." *Bailey v. United States*, 516 U.S. 137, 145 (1995).

In construing the word "applicable" in §1333(a)(2)(A) in isolation, the Ninth Circuit jumped right past §1333(a)(1) and its direction that all federal law "extend[s]" to the OCS as if the OCS were a federal enclave within a state. That error left the court without the context necessary to understand the specific problem that Congress was trying to solve in §1333(a)(2)(A)—declaring additional federal law to fill the gaps in the federal law "extended" under §1333(a)(1)—and the background principles against which Congress used the word "applicable," *viz.*, only the kind of state laws that would be "applicable" to a federal enclave.

When Congress enacted OCSLA in 1953, it was well understood that state law applied in newly created federal enclaves only if needed to fill gaps in federal law. S*ee McQuiggin v. Perkins*, 569 U.S. 383, 398 n.3 (2013) ("Congress legislates against the backdrop of existing law"). Under longstanding federal-enclave doctrine, if pre-existing state law touched "upon the same matters" as federal law, it was "necessarily … superseded" by federal law upon creation of the enclave; if not, it remained applicable until "altered or repealed." *See, e.g.*, *McGlinn*, 114 U.S. at 546-47. This rule ensured that federal enclaves would be principally regulated by federal law supplied by federal authorities but would not "be left without a developed legal system for private rights."

*James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 99-100 (1940).

When Congress establishes a typical federal enclave—*e.g.*, when it acquires land from a state—it need not spell out the foregoing rule; the rule operates automatically because there is already pre-existing state law to fill the gaps. But because the OCS was never part of any state, there was no pre-existing state law to remain in force. As a result, Congress had to take affirmative steps to fill the gaps in federal law—which it did with §1333(a)(2)(A). In providing that state laws would be declared to be federal law "[t]o the extent they are applicable," Congress used the term "applicable" to refer to state laws that apply in a federal enclave—*i.e.*, those laws necessary to supplement federal law and complete "a developed legal system for private rights" on the OCS, *Sadrakula*, 309 U.S. at 99-100—not to refer to state laws that covered "the same matters" already addressed by federal law, *McGlinn*, 114 U.S. at 546, which have no place on the OCS.

Accordingly, while the Ninth Circuit's expansive definition of "applicable" is certainly one of the possible meanings of that word, it is hardly the only meaning, and the balance of the text of §1333(a) and the broader statutory context make clear it is not the meaning Congress intended. This Court's recent decision in *Ransom v. FIA Card Services*, 562 U.S. 61 (2011), is instructive. There, the Court was called upon to interpret the word "applicable" in the phrase "applicable monthly expense amount." 11 U.S.C. §707(b)(2)(A)(ii)(I). The Court began by citing dictionaries that defined "applicable" broadly as

"appropriate, relevant, suitable, or fit." *Ransom*, 562 U.S. at 69-70. But instead of stopping there and adopting a broad definition of "applicable," the Court considered what meaning of applicable made the most sense in light of the statute's "text, context, and purpose." *Id.* at 80; *see id.* at 69-74. The Court concluded that Congress must have used the word "applicable" as a limiting term—*i.e.*, to "filter[] out debtors for whom a deduction is not at all suitable." *Id.* at 74. Here, Congress' use of the word "applicable" serves a similar function, conveying that only a subset of state laws are suitable to be adopted as federal law on the OCS—specifically, those laws that fill gaps in federal law by addressing subjects that could arise in a federal enclave that are not already addressed by federal law.

The conclusion that Congress intended the word "applicable" to serve a filtering function is strongly reinforced by the surrounding text. By addressing the process for declaring state law to be federal law "[t]o the extent that [state laws] are applicable," §1333(a)(2)(A) necessarily assumes there is some extent to which state laws are inapplicable to the OCS. While the text may not supply that answer, the broader statutory context does: State laws are applicable to the OCS as surrogate federal law to the extent there is a gap in ordinary federal law; if there is no gap, state laws are inapplicable.

That conclusion is buttressed by the balance of §1333(a)(2)(A), which does not end with the sentence providing for the adoption of state laws "[t]o the extent that they are applicable and not inconsistent." It goes on to specify that the applicable state law is declared

to be federal law, and "[a]ll of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States." This conversion of state law into federal law and assignment of administrative authority over such laws to federal officials should have provided strong clues to the Ninth Circuit that its expansive view of "applicable" state laws was dubious. It is hard to imagine that Congress wanted to take the rather extraordinary step of converting state law into federal law when doing so was unnecessary. Why would Congress want courts to look to Sacramento when Congress itself already provided an answer in the FLSA? It is even harder to imagine Congress wanted to task federal officials with enforcing two competing sets of federal laws when there is perfectly serviceable federal law already in place. Yet apart from quoting language from *Continental Oil* that laws on the OCS were to be "federally administered," Pet.App.22 (quoting 417 F.2d at 1036), the Ninth Circuit wholly disregarded the absurdities produced by its reading of "applicable."

Last but certainly not least, the Ninth Circuit adopted a definition of "applicable" that renders the word superfluous in §1333(a)(2)(A). If all Congress meant was that state law must "pertain to the subject matter at hand," it could have omitted the word "applicable" altogether, because the only state laws that could *ever* apply to a dispute on the OCS are ones that pertain to the subject matter at issue. The Ninth Circuit's reading of the statute thus violates the "cardinal principle of interpretation that courts must give effect, if possible, to every clause and word of a statute." *Loughrin v. United States*, 573 U.S. 351, 358

(2014). In contrast, interpreting OCSLA such that state laws apply to the OCS only to the extent there is a gap in federal law "ensures that the term 'applicable' carries meaning, as each word in a statute should." *Ransom*, 562 U.S. at 70.[7]

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

1. Even if California wage-and-hour law were otherwise "applicable" to the OCS, it still would not provide the content of federal law on the OCS because California wage-and-hour law is "inconsistent with" the federal wage-and-hour law embodied in the FLSA. 43 U.S.C. §1333(a)(2)(A). Indeed, if the Ninth Circuit's reading of "applicable" were correct and state law were applicable to the OCS whenever it pertains to the subject matter at hand, it would be particularly important to have a relatively undemanding standard of inconsistency, lest state law govern on the OCS as a matter of course. But whatever the outer limits of inconsistency, there can be no serious question but

[7] In his brief in opposition, Newton argued that Congress included the word "applicable" only to avoid confusion between, on the one hand, OCSLA's command in §1333(a)(2)(A) that "applicable and not inconsistent" state law be adopted as federal law, and, on the other hand, a sentence at the end of that provision stating that "State taxation laws shall not apply to the outer Continental Shelf." This argument—which the Ninth Circuit did not adopt—is fanciful. No one could possibly be confused by the words "shall not apply," and Congress' effort to supply a general rule for when state law is declared to be federal law governing the OCS should not be distorted (much less in a pro-state-law direction) by a provision making crystal clear that one type of state law *should not* apply.

that California wage-and-hour law and the FLSA are glaringly inconsistent and thus there is no role for California wage-and-hour law to serve as a second body of federal wage-and-hour law applicable to the OCS.

The reality that California wage-and-hour law and the FLSA are inconsistent is perhaps most obviously illustrated by one of the most important aspects of any wage-and-hour law: the applicable minimum wage. Federal law sets the applicable minimum wage at $7.25, while California sets it at $12. Those two different minimum wages are plainly inconsistent. This is not to say it is impossible for an employer to comply with both laws, but that does not render the two wages consistent. Instead, the employer complies by paying the higher of the two inconsistent minimum-wage laws.

The inconsistency between the two minimum-wage laws is particularly unmistakable if they are imposed by the same sovereign. An employer well-schooled in federalism might perceive only a degree of inconsistency between a federal minimum wage and a higher state minimum wage. But if the same federal authorities are telling the employer that the minimum wage is $7.25 and $12, the inconsistency is unmistakable. That is, however, the precise regime that the Ninth Circuit has introduced on the OCS, because under OCSLA, both the FLSA and the federal rule borrowed from California are *federal* minimum wages administered by *federal* officials. For the federal minimum wage to simultaneously be $7.25 and $12 is as inconsistent as it gets.

The same inconsistency exists between the California rules for sleep and off-duty time and the FLSA rules on the same subject. Indeed, the California Supreme Court in *Mendiola* interpreted a state wage-and-hour order that expressly rejected the FLSA approach to off-duty time, and the California Supreme Court applied that rule with a full understanding that it was inconsistent with the FLSA. Newton, for his part, has never claimed that Parker's method of calculating "hours worked" violated the FLSA, yet he alleges that the very same method of calculation violates what he would have the courts apply as a second body of federal wage-and-hour law. Indeed, Newton's complaint is itself undeniable proof that the FLSA and California wage-and-hour law are inconsistent. If the FLSA were consistent with the state laws at issue here, Newton presumably would have filed his claims under the FLSA as well. Instead, the FLSA is entirely unmentioned in his complaint. The fact that Newton did not perceive that he had any cause of action under the FLSA, and accordingly did not include those claims or even file his lawsuit until after *Mendiola* was decided, confirms that California wage-and-hour law as interpreted in *Mendiola* is inconsistent with the FLSA.

Under the comprehensive statutory scheme enacted by Congress, Newton works 84 hours in a typical seven-day workweek; under a competing scheme promulgated by California regulators, Newton works 168 hours in a typical seven-day workweek. Under the FLSA, Parker complied with its overtime-pay obligations by compensating Newton for 44 hours of overtime each week; under the competing scheme,

Parker faces the prospect of massive retroactive liability and civil penalties for failing to compensate for an additional 84 hours of overtime (128 total hours of overtime) each week. There is no sense in which these competing commands regarding "hours worked" are consistent in this case, and OCSLA explicitly prohibits plaintiffs from invoking inconsistent state laws to supplant Congress' regulatory judgments on the OCS.[8]

2. Just as the Ninth Circuit never claimed that there was a gap in federal law, it openly acknowledged that "California's minimum wage and overtime laws … establish different and more generous benchmarks than the … FLSA's statutory and regulatory scheme." Pet.App.36-37. It held, however, that the differences between state and federal law did not make them "inconsistent" for OCSLA purposes because the FLSA's saving clause "explicitly permits more protective state wage and hour laws."

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[8] OCSLA's twin requirements that state law be both "applicable" and "not inconsistent with" federal law work together to achieve Congress' vision that federal law would be the rule on the OCS and that state law would be borrowed only where necessary. To be sure, the view that state law is not applicable absent a gap in federal law means that there will be relatively few cases where state law is applicable but nonetheless inconsistent with federal law. But it will not be the null set, as there are circumstances where the gap in federal law is produced by a federal deregulatory preference, or the application of state law creates a conflict with federal law addressing a different issue from the one on which federal law leaves a gap. Similarly, when state law and federal law address the same subject in similar ways, state law will be "inapplicable" to the OCS even though fully consistent with federal law. Thus, both requirements perform independent work.

Pet.App.36; *see* 29 U.S.C. §218(a). According to the Ninth Circuit, Congress' decision to allow states to impose more demanding requirements on employers operating within their borders means there is no actual inconsistency when there are two different federal minimum wages or two different federal sleep-time rules on the OCS. *See* Pet.App.36-39.

That analysis is flawed in at least two critical respects. First, the Ninth Circuit's effort to use the FLSA's saving clause to avoid recognizing an inconsistency between California wage-and-hour law and the FLSA ignores that the saving clause is triggered only by *an inconsistency* between state and federal law. As long as state wage-and-hour law and the FLSA are consistent (or the state law is less protective of workers), the saving clause is not implicated. By its terms, the clause is applicable only when the state minimum wage is "higher," or the state maximum work week is "lower," than what federal law prescribes. 29 U.S.C. §218(a). Thus, the fact that the Ninth Circuit recognized that the FLSA's saving clause would be triggered if this case arose in California actually demonstrates that state and federal law *are* inconsistent—not the opposite.[9]

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[9] The FLSA's saving clause "saves" the application of more demanding federal laws. *See* 29 U.S.C. §218(a). But that aspect of the saving clause is of no assistance to Newton, because §1333(a)(2)(A) provides that a state law is converted into federal law applicable to the OCS only if the state law is "not inconsistent with" federal law. Section 1333(a)(2)(A) focuses on whether the *state* law is inconsistent; if so, that state law is never converted into federal law. Thus, relying on the saving clause's reference to inconsistent federal laws puts the cart before the horse, which

Second, and more fundamentally, not only does the FLSA's saving clause highlight the inconsistency between California wage-and-hour law and the FLSA, but the saving clause's interests in preserving state law and accommodating state sovereignty are wholly inapposite on the OCS. The saving clause directs employers operating within a state who may be facing inconsistent state and federal laws to comply with the more demanding state law out of a respect for state sovereignty and federalism. Those principles have no purchase whatsoever on the OCS. Not only did the states have no claim to sovereignty over the OCS to begin with; in OCSLA, Congress explicitly rejected any claim of state sovereignty over the OCS and made all law on the OCS federal law, 43 U.S.C. §1333(a)(1). In doing so, Congress "emphatically implemented its view that the United States has paramount rights" to the OCS. *Shell Oil*, 488 U.S. at 27. To avoid any confusion over the matter, Congress went out of its way to stress that the adoption of state law as federal law "shall never" be construed as a basis for any state to claim "any interest in or jurisdiction" over the OCS "for any purpose." 43 U.S.C. §1333(a)(3).

Given these elaborate congressional efforts to assert the federal government's exclusive jurisdiction over the OCS, the Ninth Circuit's reliance on the FLSA's saving clause, which "simply makes clear that the FLSA does not preempt any existing state law" establishing a higher minimum wage or shorter workweek, *Cosme Nieves v. Deshler*, 786 F.2d 455, 452 (1st Cir. 1986), is deeply misguided. Preemption

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is presumably why the Ninth Circuit focused on the extent to which the saving clause saves inconsistent state laws.

doctrine is designed to accommodate the fact that "the States possess sovereignty concurrent with that of the Federal Government." *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). There is no concurrent or dual sovereignty on the OCS. As the Fifth Circuit has noted, OCSLA cases do not implicate the "undulating conflicts of state versus national power inevitable and irrepressible in our unique federalism." *Pure Oil Co. v. Snipes*, 293 F.2d 60, 63 (5th Cir. 1961).

The Ninth Circuit nevertheless took a clause designed to respect California's undeniable sovereignty over Fresno and used it to ignore a plain inconsistency between two competing federal wage-and-hour regimes on the OCS, one supplied by Congress and one borrowed from California as federal law. Remarkably, the Ninth Circuit's approach puts into operation nearly the same scheme that Congress rejected in OCSLA. In the Ninth Circuit's view, state law controls on the OCS whenever it pertains to the plaintiff's lawsuit and is not preempted by federal law. *See* Pet.App.36. But that is just how state law applies to areas within states that are *not* federal enclaves: relevant state law applies unless preempted by federal law. Of course, Congress considered treating the OCS that way, but chose not to. *See Rodrigue*, 395 U.S. at 358-59. And Congress did not subvert that fundamental judgment based on a peculiar notion of "consistency." The Ninth Circuit's interpretation thus violates both the elephants-in-mouseholes canon, *see Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001), and the rule that "Congress does not intend *sub silentio* to enact statutory language that it has

earlier discarded in favor of other language," *INS v. Cardoza-Fonseca*, 480 U.S. 421, 442-443 (1987).[10]

### D. Applying California Wage-and-Hour Law on the OCS Makes No Sense and Produces Results Congress Never Intended.

Creating duplicative federal wage-and-hour rules by borrowing dissimilar California law as surrogate federal law fails the test of common sense. There is simply no good reason to go through the trouble of borrowing state law, converting it into federal law, and charging federal officials with regulatory authority over the result of that alchemy when a ready-made federal wage-and-hour law is hiding in plain sight.

But the problems with the Ninth Circuit decision do not end there. First, the Ninth Circuit's ruling would produce a federal wage-and-hour regime on OCS platforms off the California shore that is completely different from that on OCS platforms off the Gulf Coast (where the adjacent states have not adopted California-like wage-and-hour policies), even though the same operators are active in both regions. One of Congress' reasons for favoring federal law on the OCS was that making federal law exclusive would promote uniformity and "provide[] for the orderly

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[10] Using the FLSA's saving clause to smuggle state wage-and-hour law onto the OCS would make the OCS an outlier among federal enclaves. Congress has not provided the "clear and unambiguous" authorization necessary for state wage-and-hour laws to apply in federal enclaves. *See Allison*, 689 F.3d at 1238 ("[N]o federal statute yet allows the broad application of state employment … law to federal enclaves.").

development of offshore resources." *United States v. Maine*, 420 U.S. 515, 527 (1975). To be sure, Congress understood there would be gaps in federal law and authorized courts to look to state law to fill those gaps. But if state rules are routinely borrowed even though federal law already provides a federal rule, inconsistent results are *needlessly* introduced. Congress did not make the OCS a federal enclave only to make it a laboratory for state experimentation when Congress itself had already provided answers to the questions at issue.

Another of Congress' concerns in OCSLA was to ensure that state-level officials would not regulate the OCS. *See Cont'l Oil*, 417 F.2d at 1036 ("[T]he notion of supremacy of state law administered by state agencies was expressly rejected."). To ensure that result, Congress specified that even when state law was borrowed for the OCS, federal officials would be responsible for administering that law. 43 U.S.C. §1333(a)(2). Having federal officials administer state law "declared" to be federal law is anomalous, but Congress preferred it when the only alternative would be having state officials administer state law on the OCS. But the Ninth Circuit's expansive interpretation of "applicable and not inconsistent with" would turn what is now a tolerable irregularity into an intolerable regularity, as this case demonstrates. The prospect of federal wage-and-hour officials already responsible for administering the FLSA both on and off the OCS simultaneously having to administer a different body of state laws addressing the same topics with conflicting results has nothing to recommend it. *Cf. Lewis v. United States*, 523 U.S. 155, 163-64 (1998). It is highly unlikely that

Congress, by permitting the adoption of a subset of state laws on a federal enclave, meant to charge agencies like the Department of Labor with the monumental task of enforcing not just the FLSA provisions with which it has "expertise and experience," *Judulang v. Holder*, 565 U.S. 42, 53 (2011), but also every non-preempted wage-and-hour law of every coastal state. This Court should not presume that Congress intended to saddle federal agencies with such burdensome and unfamiliar requirements unless Congress' intent is unmistakable.

Relatedly, the Ninth Circuit's view would lead to highly complex problems for federal administrators. To take just one example, the California Supreme Court has admonished that the state's "[w]age and hour laws are to be construed so as to promote employee protection." *Mendiola*, 340 P.3d at 359. By contrast, this Court has rejected the notion that the FLSA should be given "anything but a fair reading" favoring neither the employer nor the employee. *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1142 (2018). If federal officials (or federal courts) are applying both adopted California law and the FLSA, do they put a thumb on the employees' side of the scale for one federal law, while giving a "fair reading" to the other? The need to answer such perplexing questions would make administration of federal law on the OCS far more daunting than administration of federal law generally, something that Congress can hardly have intended by making the OCS "an area of exclusive federal jurisdiction." 43 U.S.C. §1333(a)(1).

Creating duplicative federal wage-and-hour regimes by adopting California law would also impede employers and employees on the OCS from working together to craft mutually beneficial compensation frameworks that take into account the unique nature of employment on the OCS. For example, many employers and employees have agreed to exclude sleep time from hours worked, as expressly permitted by federal law. *See* 29 C.F.R. §785.22. Under California law, however, such agreements are ineffective in all but a few select industries. *See Mendiola*, 340 P.3d at 365-66. The Ninth Circuit's holding would thus force employers and employees into compensation plans that differ from agreements they voluntarily negotiated, which, unlike California wage-and-hour law, were specifically tailored to the distinctive circumstances of work on offshore drilling platforms.

Furthermore, the Ninth Circuit's decision opens up the prospect that state officials with a different and dimmer view of OCS operations than the federal government may impose burdensome policies on OCS operators. The federal government has emphasized that it is "the policy of the United States to encourage energy exploration and production … on the" OCS. Exec. Order No. 13,795, 82 Fed. Reg. 20,815 (Apr. 28, 2017). Its most recent proposal "would make more than 98 percent of the OCS available to consider for oil and gas leasing during the 2019–2024 period," including areas off the coast of *every* coastal State. *See* U.S. Dep't of the Interior and Bureau of Ocean Energy Mgmt., *2019-2024 National Outer Continental Shelf Oil and Gas Leasing: Draft Proposed Program* at 1, 8-9 (Jan. 2018), https://bit.ly/2lU8cCV. Similarly, the federal government recently announced that over

1,000 square miles of the OCS off the California coast may be made available for offshore wind farms. *See* U.S. Dep't of the Interior, *Trump Administration Delivers Historic Progress on Offshore Wind* (Oct. 18, 2018), https://on.doi.gov/2NOwIBc.

Under the Ninth Circuit's vision of an expansive role for state law on the OCS, states may attempt to enact laws that increase the difficulty and cost of OCS operations, deterring activity the federal government seeks to encourage. *See, e.g.*, Jeff Daniels, *California Gov. Jerry Brown Moves to Block Trump on Offshore Drilling: "Not Here, Not Now*," CNBC (Sept. 8, 2018), https://perma.cc/6DDJ-6JFV (discussing California legislation intended "to thwart" federal government's "efforts to expand offshore oil drilling along the California coast"); Gavin Newsom (@GavinNewsom), Twitter (Feb. 7, 2018), https://perma.cc/WWJ9-962T ("Got news for you, @realDonaldTrump -- not a single drop from your new oil plan will ever make landfall in CA."). Allowing states to interfere with OCS operations is plainly inconsistent with Congress' basic judgment in OCSLA to make the OCS an enclave of exclusive federal jurisdiction where only federal law governs. And it is doubtful that the Congress that enacted OCSLA with mineral revenue in mind, *see* 43 U.S.C. §1333(a)(3), would have wanted to allow states to so easily be able to disrupt operations on the OCS.

Finally, as this case demonstrates, the decision below encourages opportunistic plaintiffs to file copycat suits addressed to the OCS every time a state broadens its wage-and-hour protections (or any other state laws that would apply under the Ninth Circuit's rule, for that matter). *See* pp.12-14, *supra*. Such a

result not only would provide a massive windfall to employees who were at all times compensated in accordance with the FLSA, but also would expose employers who undisputedly complied with the FLSA on platforms governed exclusively by federal law to the prospect of massive retroactive liability. Those employers, who have long relied on the unquestioned proposition that the FLSA is the exclusive source of wage-and-hour law on the OCS, have now been blindsided by the Ninth Circuit's holding that state wage-and-hour standards also apply as overlapping federal law and have done so all along. This Court has repeatedly rejected similar efforts by the Ninth Circuit to expose settled industry practices to massive, unexpected liability, *see Encino Motorcars*, 138 S. Ct. 1134; *Integrity Staffing Sols. v. Busk*, 135 S. Ct. 513 (2014); *Christopher v. SmithKline Beecham*, 567 U.S. 142 (2012), and should do so again here.

## CONCLUSION

For the foregoing reasons, this Court should reverse the judgment below.

Respectfully submitted,

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# STATUTORY APPENDIX

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**43 U.S.C. § 1332(1)**

It is hereby declared to be the policy of the United States that—

> (1) The subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter;

* * *

**43 U.S.C. § 1333(a)**

(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; international boundary disputes; restriction on State taxation and jurisdiction

> (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however*, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2) (A) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(B) Within one year after September 18, 1978, the President shall establish procedures for setting[1] any outstanding international boundary dispute respecting the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State

[1] So in original. Probably should be "settling".

for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.