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 RESPONDENT

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QUESTION PRESENTED

The Outer Continental Shelf Lands Act ("OCSLA") declares that, "[t]o the extent that they are applicable and not inconsistent with" federal laws and regulations, the civil and criminal laws of an adjacent State are "the law of the United States" for the Outer Continental Shelf. 43 U.S.C. § 1333(a)(2)(A). The Fair Labor Standards Act of 1938 ("FLSA") sets a national floor for wage-and-hour standards and contains a savings clause preserving enforcement of more generous federal, state, or local minimum-wage and maximum-hour laws. California's Labor Code is such a law, setting certain wage-and-hour standards that are more generous than the provisions in the FLSA. Onshore, there is no question that, under the ordinary meaning of the terms, California's Labor Code is both "applicable" and "not inconsistent" with federal law.

The question presented is:

Should "applicable" and "not inconsistent" in OCSLA be interpreted according to their ordinary meanings, such that California's Labor Code, which is both "relevant, suitable, and fit" and not "incompatible" with the FLSA, applies to employee compensation for drilling activities on the Outer Continental Shelf?

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INTRODUCTION

In 1953, Congress enacted the Outer Continental Shelf Lands Act ("OCSLA") to clarify that federal law would govern offshore activities that had begun on the Outer Continental Shelf ("OCS") under state law. Recognizing the connection between operations on the shelf and the adjacent State's shore, Congress provided that state law would be incorporated into the federal law of the OCS to the extent it was "applicable and not inconsistent with" other federal law.

This case concerns the interpretation of the words "applicable and not inconsistent with" in OCSLA as it pertains to the interplay between California's Labor Code and the federal Fair Labor Standards Act of 1938 ("FLSA"). The court below applied the ordinary and plain meaning of those words. It held that California's Labor Code was "applicable" because it was relevant, suitable, and fit to be applied to employment matters on the OCS. It further opined that, because the federal FLSA minimum-wage and overtime laws explicitly provide only a floor and invite States to legislate more worker-friendly wage-and-hour measures, the incorporation of such state standards was "not inconsistent with" any federal law that governed OCS activities.

That holding is faithful to OCSLA and true to Congress's concern that the same law that applied onshore to a business also would be incorporated as federal law governing its offshore activities, when applicable and not inconsistent with federal standards. A company like petitioner, in other words, would not need to keep two sets of books for wages and hours depending on the exact moment the worker transitioned from shore to shelf. The power of plain language is such that petitioner grudgingly concedes

(at 22-23, 35) the Ninth Circuit's interpretation of "applicable and not inconsistent with" is "possible."

To fight OCSLA's plain language, petitioner's principal submission is that Congress meant something entirely different from the words it used: the word "applicable" really means "only when there is a gap in federal law." As a matter of ordinary meaning, petitioner's approach offers little to recommend it. Even worse, petitioner repeatedly invokes a purported background principle from the law of federal enclaves. Not only is petitioner incorrect about that principle, but applying petitioner's version actually would unsettle longstanding federal-enclave law and bring uncertainty to a rash of federal statutes and regulations that use the words "applicable" and "not inconsistent with." In practice, federal officers enforce state standards every day on federal enclaves, and statutes and regulations reflect all sorts of mechanisms for federal-state agreements to do just that. Indeed, OCSLA itself authorizes the Interior Secretary to override any state legal standards applicable on the OCS, but the Secretary simply has not chosen to exercise that power in this situation. Instead of upsetting a carefully balanced framework for the incorporation of state law in a manner that introduces great uncertainty in related areas, the Court should affirm the judgment.

STATEMENT

A. Statutory Background

1. Pre-OCSLA Drilling and Regulation on the Outer Continental Shelf

By 1896, onshore drilling operators realized California's oil fields extended offshore and drilled the first offshore oil well in the United States using wooden piers with derricks on top. Freestanding offshore-drilling platforms followed, and the offshore oil boom fully took off in 1947, when Kerr-McGee Corporation drilled a well 10 miles off the coast of Louisiana.[1]

At that time, coastal States had asserted ownership of submerged lands within their self-defined boundaries. Since 1849, California defined its seaward boundary as extending three English miles from its outermost islands. *See People v. Weeren*, 607 P.2d 1279, 1282 (Cal. 1980). Louisiana in 1938 and Texas in 1941 extended their boundaries 27 marine miles from the shore. *See United States v. Louisiana*, 339 U.S. 699, 703 (1950); *United States v. Texas*, 339 U.S. 707, 720 (1950). The federal government had not yet asserted any claims to the OCS, and the Department of Interior represented it lacked authority to issue mineral leases offshore. California, Texas, and Louisiana executed leases for drilling off their shores and collected "large sums of money in rents and royalties." *United States v. California*, 332 U.S. 19, 23 (1947); *see id.* at 38 (discussing 1921 California law permitting for oil and gas prospecting).

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[1] *See generally* William L. Leffler, Richard Pattarozzi & Gordon Sterling, *Deepwater Petroleum Exploration & Production: A Nontechnical Guide* 1-8 (Tulsa, Okla.: PennWell Corp., 2003).

In 1945, President Truman issued a proclamation announcing that the "United States regards the natural resources of" the OCS "subject to its jurisdiction and control." Presidential Proclamation No. 2667, 10 Fed. Reg. 12,303 (Oct. 2, 1945). The proclamation was directed at the international community and "d[id] not touch upon the question of Federal versus State control." Presidential Press Release (Sept. 28, 1945).

Seeking the profits from offshore royalties, the federal government brought original actions for a declaration of federal ownership of offshore lands. *See California*, 332 U.S. at 22; *Louisiana*, 339 U.S. at 701; *Texas*, 339 U.S. at 709. In those cases, this Court held that the federal government had "paramount rights in and power over" the submerged lands and "full dominion" over their natural resources. *California*, 332 U.S. at 38-39; *see also Louisiana*, 339 U.S. at 704-06; *Texas*, 339 U.S. at 717-18. The Court also enjoined all offshore oil and gas operations. In response, the Interior Secretary authorized offshore wells already operating under state-issued leases to continue operations, but with all rents and royalties going to the Secretary. The authorization disclaimed that the federal government was adopting or ratifying those leases. *See* Notice, Oil and Gas Operations in the Submerged Coastal Lands of the Gulf of Mexico, 15 Fed. Reg. 8835 (Dec. 13, 1950); Notice, Oil and Gas Operations in Submerged Coastal Lands of Gulf of Mexico, 17 Fed. Reg. 5833 (June 28, 1952).

The Court's decisions surprised the coastal States, which had "claimed jurisdiction over the submerged lands and their rich oil, gas, and mineral deposits, and some had even extended their territorial boundaries as far as the outer edge of the OCS." *Shell Oil Co. v. Iowa Dep't of Revenue*, 488 U.S. 19, 26 (1988) (citations

omitted). No federal law existed to issue new offshore leases, and new exploration and development ceased. Meanwhile, state-issued leases remained in limbo.

2. The Submerged Lands Act

In 1953, Congress responded to the outcry from coastal States following the Court's decisions in *California*, *Louisiana*, and *Texas* by promulgating the Submerged Lands Act, 43 U.S.C. § 1301 *et seq*. ("SLA"). That Act "extended the boundaries of Coastal States three geographic miles into the Atlantic and Pacific Oceans and three marine leagues into the Gulf of Mexico," and also confirmed the jurisdiction and control of the United States over natural resources seaward of state boundaries. *Pacific Operators Offshore, LLP v. Valladolid*, 565 U.S. 207, 211-12 (2012).

3. OCSLA

In 1953, Congress also enacted OCSLA to supplement the SLA and to provide for federal administration over OCS mineral-resources development. 43 U.S.C. § 1331 *et seq*.[2] "In passing OCSLA, Congress intended to provide 'for the orderly development of offshore resources.'" *Shell Oil*, 488 U.S. at 27 (quoting *United States v. Maine*, 420 U.S. 515, 527 (1975)).

OCSLA extends federal law to the OCS, providing that "[t]he Constitution and laws and civil and political jurisdiction of the United States are extended to [offshore-drilling rigs] . . . 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 originally enacted, the choice-of-law provision adopted

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[2] OCSLA defines the OCS as "the submerged lands subject to the jurisdiction and control of the United States lying seaward and outside of the submerged lands within the extended State boundaries." *Valladolid*, 565 U.S. at 212.

as federal law the then-existing civil and criminal laws of adjacent States that are "applicable and not inconsistent with" federal law:

> To the extent that they are *applicable and not inconsistent with* this [Act] 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 as of the effective date of this Act are declared to be the law of the United States for that portion of the subsoil and seabed of the [OCS], 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 [OCS], and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area.

Id. § 1333(a)(2) (1970) (emphases added). However, OCSLA expressly excluded the application of state-taxation laws to the OCS. *Id.* As the Court explained, "[t]he problem before Congress was to incorporate the civil and criminal laws of the adjacent States, and yet, at the same time, reflect the strong congressional decision against allowing the adjacent States a direct share in the revenues of the OCS, by making it clear that state taxation codes were not to be incorporated." *Shell Oil*, 488 U.S. at 27-28.

As the Court summarized, "[t]he intent behind OCSLA was to treat the artificial structures covered by the Act as upland islands or as federal enclaves within a landlocked State . . . for purposes of defining the applicable law." *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 217 (1986). Typically, state laws in existence at the time an enclave is created continue in force as federalized state law, *see James Stewart & Co.*

v. Sadrakula, 309 U.S. 94, 99 (1940), and are "applicable" so long as they do not "conflict[] [with] federal policy," *Paul v. United States*, 371 U.S. 245, 268-69 (1963). However, state laws enacted after the creation of a federal enclave are not applicable without approval by Congress. *Id.*

Arriving at OCSLA's governing-law provision presented a "challenging question" for its proponents. Warren M. Christopher, *The Outer Continental Shelf Lands Act: Key to a New Frontier*, 6 Stan. L. Rev. 23, 37 (1953). That was because the individuals employed offshore "will die, leave wills, and pay taxes . . . . [T]he whole circle of legal problems familiar to the upland could occur on these structures." *Id.* In addition to deciding what law should apply, Congress had to decide who would administer and enforce the laws offshore.

Before settling on duel application of federal and state legal standards, Congress debated various other proposals. Members thought it was important that offshore workers benefit from the "social laws" of upland States, *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 361-62 (1969), because of "the close relationship between the workers on the [artificial] island[s] and the adjoining States," *id.* at 363.

After considering and rejecting proposals to extend state jurisdiction and state police powers to the OCS, Congress turned to the adjacent State's law to provide the content of federal law, "because men working on [the OCS] are closely tied to the adjacent State, to which they often commute and on which their families live." *Id.* at 355. Congress also recognized the "special relationship" between offshore workers and the laws of the adjacent State, "with which these men and their attorneys would be familiar." *Chevron Oil Co. v.*

Huson, 404 U.S. 97, 103 (1971), *disapproved of on other grounds by Harper v. Virginia Dep't of Taxation*, 509 U.S. 86 (1993).

Congress also considered existing state conservation laws and "the desirability of extending" them to the OCS. S. Rep. No. 83-411, at 3 (1953). The Senate Report discussed "the history of Federal conservation on areas of Federal jurisdiction within the borders of a State" as demonstrating "that the Federal Government has cooperated fully with State conservation authorities, and that the two systems can operate together." *Id.*

4. 1975 OCSLA Amendments

In 1975, Congress passed the Deepwater Port Act of 1974, Pub. L. No. 93-627, § 19(f), 88 Stat. 2126, 2146 (1975), which amended then § 1333(a)(2) of OCSLA.[3] When Congress originally enacted OCSLA, it was concerned that prospective incorporation of state law "now in effect or hereafter" could be an unconstitutional delegation of authority. *See* Christopher, 6 Stan. L. Rev. at 38-39. To avoid delegation problems, in 1953 Congress had adopted only the applicable and not inconsistent "laws of each adjacent State *as of the effective date of th[e] Act*." 43 U.S.C. § 1333(a)(2) (1970) (emphasis added); *see* 99 Cong. Rec. 6963-64 (1953) (statement of Sen. Cordon) ("The enactment as Federal law by reference of the laws of the several

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[3] The Deepwater Port Act creates a regulatory regime for deepwater ports. 33 U.S.C. § 1501. The Senate Report noted that "deepwater port development will be regulated in the same manner as resource exploitation on the [OCS] . . . . State laws, to the extent they are not inconsistent with Federal law, are made applicable to deepwater ports." S. Rep. No. 93-1217, at 4 (1974), 1974 U.S.C.C.A.N. 7529, 7531-32.

abutting States meets the major constitutional objection, in that the laws so adopted are the laws as they exist at the time of the enactment of [OCSLA]. Only already existing State laws will become the law of the United States."). In other words, "applicable" state law was limited to state criminal and civil laws – except tax laws – in existence on OCSLA's effective date.

By 1975, the delegation concerns had been resolved by *United States v. Sharpnack*, 355 U.S. 286 (1958).[4] Congress therefore amended § 1333(a)(2) to provide that "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." Pub. L. No. 93-627, § 19(f), 88 Stat. 2146, codified at 43 U.S.C. § 1333(a)(2) (1976) (emphasis added).

5. 1978 OCSLA Amendments

In 1969, a blowout at a Santa Barbara Channel offshore well caused 80,000 barrels of oil to spill into the ocean and onto California's beaches. Three more blowouts closely followed and prompted a reassessment of environmental and regulatory policy governing offshore drilling.[5]

Accordingly, in 1978, Congress amended OCSLA to include environmental-protection obligations and provisions for increased cooperation between the federal

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[4] In *Sharpnack*, the Court upheld the Assimilative Crimes Act of 1948, which makes subsequently enacted state criminal laws "not made punishable by any enactment of Congress" enforceable on federal enclaves, ch. 645, § 13, 62 Stat. 683, 686, codified as amended at 18 U.S.C. § 13. *See* 355 U.S. at 292-94.

[5] For a history of the fallout from these blowouts, see generally Robert Easton, *Blacktide* (New York, N.Y.: Delacorte Press, 1972).

government and coastal States. *See* Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. No. 95-372, 92 Stat. 629. The new "National Policy for the Outer Continental Shelf" declares the rights and responsibilities of States and local governments to protect "marine, human, and coastal environments," explaining that States' "regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized." 43 U.S.C. § 1332(5). "[H]uman environment" is defined as "the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the [OCS]." *Id.* § 1331(i).

As originally enacted, OCSLA authorizes the Interior Secretary to issue rules and regulations governing the OCS. *Id.* § 1334(a). In accordance with OCSLA's governing-law provision, these regulations nullify inconsistent state law. *Id.* § 1333(a)(2)(A). The 1978 amendments retain the Secretary's paramount regulatory authority, but also require the Secretary to cooperate with "affected States" to enforce "safety, environmental, and conservation laws and regulations." *Id.* § 1334(a). The Secretary gained authority to enter into cooperative agreements with affected States "to carry out applicable Federal and State laws, regulations, and stipulations relevant to [OCS] operations both onshore and offshore." *Id.* § 1345(e). The amendments also direct the Secretary to develop leasing programs in consultation with the affected coastal States. *Id.* And the 1978 amendments augmented authority Congress promulgated in the Coastal Zone Management Act of 1972, 16 U.S.C.

§ 1451 *et seq.* ("CZMA"), which requires certification that OCS activities will be conducted in a manner consistent with the adjacent State's coastal-management program. *Id.* § 1456(c)(3)(B). The 1978 OCSLA amendments direct the Secretary not to approve an exploration or development-and-production plan unless the adjacent State concurs with the consistency certification or the Secretary of Commerce overrides the state CZMA criteria. *See* 43 U.S.C. §§ 1340(c), 1351(d).

6. The Fair Labor Standards Act

The FLSA prohibits labor conditions "detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers." 29 U.S.C. § 202(a). The FLSA establishes "a few rudimentary standards," S. Rep. No. 75-884, at 3 (1937) (quoting Franklin D. Roosevelt's May 24, 1937 message to Congress), that serve as "a national *floor* under which wage protections cannot drop," *Pacific Merch. Shipping Ass'n v. Aubry*, 918 F.2d 1409, 1425 (9th Cir. 1990). For example, the FLSA requires that employers pay a minimum hourly wage not less than the federal rate and overtime pay not less than the federal standard, 29 U.S.C. §§ 206-207, and requires employers to keep employee records, *id.* § 211(c).

The FLSA savings clause allows States and the federal government to set more favorable minimum-wage and maximum-hour requirements. The savings clause stipulates that the FLSA does not "excuse non-compliance with any Federal or State law or municipal ordinance establishing a minimum wage higher . . . or a maximum work week lower" than the FLSA. *Id.* § 218(a). Accordingly, when faced with differing state or federal laws, the savings clause establishes

that the greater minimum-wage or overtime protections apply. *See Powell v. United States Cartridge Co.*, 339 U.S. 497, 519-20 (1950).

On certain topics, the FLSA is silent as to appropriate worker protections. For example, the FLSA does not set standards for meal periods. The Department of Labor ("DOL") has instructed that, when States require meal periods, "[s]uch state requirements will prevail over the silence of the FLSA on this subject" because employees are entitled to the most beneficial provisions of each law. DOL, Employment Laws Assistance for Workers and Small Businesses, "Meal Period and Rest Breaks," https://webapps.dol.gov/elaws/whd/flsa/hoursworked/screenEE4.asp (last visited Mar. 18, 2019).

7. The California Labor Code

California's Labor Code is designed to "promote[] and develop[] the welfare of the wage earners of California." Cal. Dep't of Indus. Relations, *The Laws Relating to the Time, Manner and Payment of Wages* 2 (Oct. 2013), https://www.dir.ca.gov/dlse/lawstimemannerpaymentwages.pdf. Enacted in 1937, the Labor Code regulates California wage-and-hour standards in tandem with the Industrial Welfare Commission's ("IWC") 17 wage orders. *See Mendoza v. Nordstrom, Inc.*, 393 P.3d 375, 379 (Cal. 2017) (explaining the complementary nature of California's Labor Code and wage orders).[6]

Five of respondent's claims arise under California's Labor Code: minimum-wage violations, Cal. Lab. Code §§ 1194, 1197; paystub violations, *id.* § 226; failure to timely pay wages at termination, *id.* §§ 201-202;

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[6] Wage Order 16 applies to workers employed on-site in the drilling industry. *See* 8 Cal. Code Regs. § 11160.

failure to provide lawful meal periods, *id.* § 512; and failure to pay overtime and doubletime premium wages, *id.* § 510. All five claims are informed, in part, by the definition of "hours worked" in California Wage Order 16: "the time during which an employee is subject to the control of an employer, [including] all the time the employee is suffered or permitted to work, whether or not required to do so." 8 Cal. Code Regs. § 11160.2(J).[7]

B. Procedural History

1. Respondent Brian Newton was employed by petitioner on two OCS drilling platforms off California's coast from approximately January 2013 to January 2015. JA17.[8] Respondent was a resident of Ventura County, California, and traveled with other employees by boat to the platforms after attending mandatory safety meetings onshore. D.Ct. ECF #18-2, ¶¶ 11-12. Respondent worked in 14-day shifts, which consisted of 12 hours on duty and 12 hours of "controlled standby" each day. App. 3.[9] During the "controlled standby" periods, petitioner frequently required respondent to address problems as they arose, including combustible gas alarms or SO2 alarms, platform

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[7] Respondent also alleges claims under California's Unfair Competition Law, which aims to curb unlawful business practices, including "failure to pay wages," *Cortez v. Purolator Air Filtration Prods. Co.*, 999 P.2d 706, 716 (Cal. 2000), and seeks relief under the Private Attorneys General Act of 2004, which allows recovery of civil penalties for violations of California's Labor Code, *see* Cal. Lab. Code § 2699(a).

[8] Drilling operations have ceased on the two platforms that employed respondent. Petitioner now uses only a three-person skeleton crew on these rigs. D.Ct. ECF #24, at 2-3.

[9] Work schedules like respondent's are used to keep onshore and offshore operations online at all times.

shutdowns, and mechanical failures. D.Ct. ECF #18-2, ¶ 15. Petitioner separately paid respondent for time spent transiting to and from the rig and for time spent actually responding to incidents that arose during controlled standby periods. App. 3.

Respondent alleges he was paid for only 12 hours of work a day and was not compensated for all the hours he was required to remain on the platform each day on "controlled standby." JA17. Respondent also alleges he was not provided off-duty meal periods. JA26-27.

2. In February 2015, respondent filed a putative class action against petitioner in California state court alleging violations of California's wage-and-hour laws. Petitioner removed the case and moved for judgment on the pleadings, contending that California law was not "applicable" under OCSLA. The district court adopted the Fifth Circuit's reasoning from *Continental Oil Co. v. London Steam-Ship Owners' Mutual Insurance Ass'n, Ltd.*, 417 F.2d 1030, 1036 (5th Cir. 1969), and held that OCSLA incorporates state law on the OCS only to the extent necessary "to fill a significant void or gap" in federal law. App. 51. The court determined that the FLSA's existence meant that California's wage-and-hour laws did not apply to the OCS and granted petitioner's motion. App. 50, 51-52.

3. The Ninth Circuit vacated the district court's order. The court interpreted "applicable" as "pertain[ing] to the subject matter at hand." App. 21. The court rejected the Fifth Circuit's approach, because the ordinary meaning of "applicable" "does not lend itself to the notion that state laws have to fill a gap in federal law to qualify as surrogate federal law." *Id.* The court concluded that nothing in the legislative history or this Court's precedent mandated

"judicial substitution of 'necessary' for the actual statutory term, 'applicable.'" App. 22-23. California's laws thus were applicable in the ordinary sense.

The court then concluded that California's laws were "not inconsistent with" existing federal law, holding that laws are "inconsistent if they are mutually incompatible, incongruous, or inharmonious." App. 28 (brackets omitted). In reviewing federal-enclave law and other federal statutes, the court found that "inconsistency between state and federal law is assessed by looking at Congress's objective in enacting the federal statutes at issue." App. 35. Noting as "critical" that the FLSA "establishes a national *floor* under which wage protections cannot drop," and that the savings clause "expressly provides that states are free to adopt more protective standards," the court held that the FLSA explicitly permits the application of California's more protective wage-and-hours laws. App. 36 (brackets omitted). The court found this interpretation consistent with OCSLA's purpose, which "rejected national uniformity" in favor of "application of state law with which [OCS workers commuting from the adjacent shore] and their attorneys would be familiar." App. 37-38.[10]

[10] The Ninth Circuit amended its opinion to reserve for the district court's consideration whether the holding should be applied retrospectively. App. 43.

SUMMARY OF ARGUMENT

I. OCSLA provides that "applicable and not inconsistent" state law is adopted on the OCS as federalized state law. 43 U.S.C. § 1333(a)(2)(A).

A. Under the ordinary meaning of "applicable," state legal standards are incorporated into federal law on the OCS when they are relevant, suitable, or fit. State standards capable of being applied on the OCS – such as wage-and-hour laws – are applicable; but state rules having no relevance on the OCS – such as motor-vehicle lemon laws – are not. The rest of the statutory scheme reinforces that interpretation. It excludes the application of state-taxation laws – an unnecessary provision if Congress had intended "applicable" to be more limited than its ordinary meaning. OCSLA also affirms the coastal States' rights and responsibilities over the onshore and offshore environment, a condition satisfied only by a cohesive shore-to-shelf legal regime. 43 U.S.C. § 1332(5). The word "applicable" appears throughout OCSLA, and, by using its ordinary meaning, "applicable" carries the same meaning throughout the statute. Finally, in numerous cases discussing OCSLA, this Court has used "applicable" in its ordinary meaning, and the Court should continue to do so here.

B. Under the plain meaning of "not inconsistent," state legal standards that are not "incompatible" with or "contradictory" to federal law are adopted as federalized state law on the OCS. Whether a state legal standard is not inconsistent with federal laws requires considering the content of potentially applicable regimes and determining whether the two are incompatible.

II.A. California's wage-and-hour laws are applicable to respondent's claims regarding his OCS employment, because respondent was employed on drilling

rigs off California's coast and these laws are relevant and capable of being applied on the OCS.

B. California's wage-and-hour laws also are not inconsistent with federal law. The FLSA sets a federal floor, beneath which wage-and-hour protections cannot drop. 29 U.S.C. §§ 206-207. The FLSA's savings clause provides that, when federal, state, or local laws set higher minimum-wage or maximum-workweek requirements, those higher standards shall be enforced. *Id.* § 218(a). California's more protective standards – which exceed the FLSA's floor and are consistent with its remedial purpose of ensuring worker well-being – logically cannot be inconsistent with the FLSA. When faced with two different wage-and-hour standards, the Court has interpreted the FLSA to require application of the higher standard. *See Powell*, 339 U.S. at 519-20. This case is no different.

III. Contrary to petitioner's argument, OCSLA's plain language contains no requirement that there first be a gap or void in federal law before state legal standards become "applicable." Petitioner instead asks the Court to believe that Congress did not intend the ordinary meaning of "applicable" but instead wanted courts to look outside the statute's plain text to derive its meaning.

A. Regardless of how many times petitioner repeats its mantra, the fact that "all law on the OCS is federal law" does not require altering the text to limit the role of state law to a gap-filling role. Rather than gathering clues from petitioner's articulation of Congress's preferences, purported background principles of law, and other subsections of OCSLA to divine congressional intent, the Court can apply established rules of statutory interpretation and give

the text its ordinary meaning. Congress knows how to limit the application of state legal standards to only fill gaps in federal law and has legislated accordingly when that was its intent. Beyond OCSLA, Congress and federal agencies frequently use "applicable" to outline what laws are to be used. Interpreting "applicable" as "necessary" would unnecessarily complicate provisions throughout the U.S. Code and the Code of Federal Regulations ("C.F.R."). For example, DOL's regulations provide that "applicable" federal, state, or local wage-and-hour laws are not displaced by the FLSA. Petitioner's interpretation of "applicable" as necessary to fill a gap would mean that no federal, state, and local wage-and-hour laws would ever apply, because the FLSA is a comprehensive scheme.

Petitioner and the government rely on federal-enclave law to provide context to OCSLA's text. However, what law applies on a federal enclave varies enclave by enclave. Each enclave raises its own question of congressional intent from the statute that creates it. Accordingly, OCSLA's text should control over generic federal-enclave principles. Contrary to petitioner's argument, state law does far more than just "fill gaps" on federal enclaves. This Court has recognized that state laws existing at the time of cession that are not inconsistent with federal law generally became federalized state law; however, state laws enacted after the cession do not. OCSLA tracks federal-enclave principles by making the not-inconsistent laws of adjacent States applicable to the OCS as federalized state law. And, consistent with the rule that Congress can alter background presumptions on federal enclaves, in OCSLA amendments Congress provided that state laws enacted after its passage also would apply on the OCS.

Petitioner unnecessarily blurs the distinctions between "jurisdiction," "administration and enforcement," and "applicable" law. There is no irregularity with a system that incorporates not-inconsistent state legal standards as federal law, to be administered and enforced by the federal government in an area of federal jurisdiction. Significantly, the Interior Secretary can issue rules and regulations governing the OCS that displace inconsistent state legal standards, but has not done so here.

Petitioner's reliance on snippets of legislative history to create ambiguity in the plain statutory text should be disregarded. The Court has recognized that Congress's desire to protect the "special relationship" between workers on the shelf and their life on the shore led to the application of "law with which these men and their attorneys would be familiar." *Huson*, 404 U.S. at 103. Accordingly, "Congress specifically rejected national uniformity and specifically provided for the application of state remedies." *Id.* at 104.

B. The fact that the FLSA sets only minimum standards and has a savings clause preserving differing legal standards should leave no doubt that state laws setting more generous standards are consistent with federal law.

Petitioner places much weight on California's laws being "different" from federal laws. But the plain meaning of "not inconsistent" does not mean "not different." The FLSA does not set a ceiling, so California's higher minimum wage cannot be inconsistent with federal standards. As this Court explained in *Powell*, two different minimum-wage regimes are not "mutually exclusive," 339 U.S. at 519-20, as Congress provided through the FLSA's savings clause that the more generous law should apply.

The fact that OCSLA applies state legal standards as federal law on the OCS is no reason to depart from the ordinary meaning of "not inconsistent." The government encounters different federal minimum wages onshore and has no issues applying both.

IV.A. Applying the same legal standards onshore and offshore ensures the closely interconnected offshore-drilling and onshore-processing facilities can synchronize operations. Consistent wage-and-hour laws allow workers on both ends of the pipeline to maintain the same schedules, which enhances operational safety. The system also makes bookkeeping easier, as employers do not need to separately track the hours of employees who move between different legal regimes. Employees also benefit from consistent laws, regardless of how their working hours are split between the shore and the shelf.

B. Local uniformity also has been established in national parks and forests, where "applicable" state and federal laws are enforced by federal officials. Recreational hunters and fishers benefit from the same legal standards on state and federal land. Reinterpreting "applicable" to mean "necessary" would create confusion over what laws actually "apply" to any given activity in a national park. The simplicity petitioner claims to seek for oil and gas operators would complicate the legal regime on federal enclaves.

C. Petitioner's fear of applying different laws off California's coastline versus Louisiana's coastline does not mandate departing from OCSLA's plain text. The Court already has noted that Congress rejected national uniformity as a goal of OCSLA. *See Huson*, 404 U.S. at 104.

Contrary to petitioner's contention of abnormality, federal officials often enforce state laws and regulations. In national parks, federal officials enforce state criminal, civil, and regulatory laws. On the OCS, the Interior Secretary has statutory authority to relieve burdens on federal enforcement and can issue regulations to displace state legal standards or delegate enforcement authority to the States.

Many operators off California's shores already apply California wage-and-hour laws in their collective-bargaining agreements and employment agreements. Petitioner's desire to avoid state standards does not justify an unsound statutory interpretation.

ARGUMENT

I. STATE LAW APPLIES ON THE OCS IF IT IS "APPLICABLE" AND "NOT INCONSISTENT" WITH FEDERAL LAW

A. Under The Ordinary Meaning Of "Applicable," State Legal Standards Apply On The OCS If They Are Relevant, Suitable, Or Fit

1. Statutory interpretation "begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). If that "language provides a clear answer, [interpretation] ends there as well." *Harris Tr. & Sav. Bank v. Salomon Smith Barney Inc.*, 530 U.S. 238, 254 (2000).

"Applicable" is not defined in OCSLA, so it should be given its ordinary meaning. *See Artis v. District of Columbia*, 138 S. Ct. 594, 603 (2018). The ordinary definition of "applicable" is "[c]apable of being applied; fit to be applied; having relevance." *Webster's Universal Dictionary* 131 (1953) ("*Webster's*"); *see also Black's Law Dictionary* 127 (4th ed. 1951) ("*Black's*") ("[f]it, suitable, pertinent, or appropriate"). Given the ordinary, natural meaning of "applicable," state civil

and criminal laws are adopted as federal law on the OCS when they are relevant, suitable, or fit – in other words, when they pertain to the subject matter at hand. "Applicable" necessarily includes on-point state law that supplements and overlaps with federal law. In ordinary parlance, two different laws are both "applicable" if they address the same topic.

2. Applicable state law includes non-tax state laws "now in effect or hereafter adopted, amended, or repealed" that are capable of being applied, relevant, suitable, or fit to the subject matter at hand. 43 U.S.C. § 1333(a)(2)(A). Not all adjacent-state laws, however, are "[c]apable of being applied" or "hav[e] relevance" on the OCS. *E.g.*, 8 Cal. Code Regs. § 11140 (setting wage-and-hour laws for agricultural occupations); Cal. Fish & Game Code § 3961 (hunting dogs may be "lawfully seized" for "inflicting injury or immediately threatening to inflict injury to any deer, elk, or pronghorned antelope"); La. Stat. § 51:1941 *et seq.* (lemon laws for motor vehicles); Tex. Gov't Code § 3101.010 ("caus[ing] pecans to fall from a pecan tree by any means, including by thrashing," on government land, criminalized without written consent).

3. Reading "applicable" as pertaining to the subject at issue is consistent with OCSLA's statutory scheme and purpose.

Section 1333(a)(2)(A), for example, provides that "State taxation laws shall not apply to the [OCS]." Under the ordinary meaning of "applicable," state tax laws would apply to the OCS because they are pertinent to the subject matter. However, if Congress had intended a silent requirement of a gap in federal law before state law is "applicable," it would have been superfluous for Congress also to specify that state-taxation laws do not apply on the OCS. There would have been no void or gap for state law to fill because

federal-taxation laws existed for decades prior to OCSLA's enactment.

Other OCSLA provisions confirm the plain meaning of "applicable." The "National Policy for the Outer Continental Shelf," incorporated into OCSLA in 1978, recognizes the connection between adjacent States and offshore activities. The policy affirmed "the rights and responsibilities of all States . . . to preserve and protect their . . . human . . . environments through . . . regulation." 43 U.S.C. § 1332(5). Congress defined "human environment" to include "the physical, social, and economic components, conditions, and factors which interactively determine the . . . *employment* . . . of those affected, directly or indirectly, by activities occurring on the [OCS]." *Id.* § 1331(i) (emphasis added). That purpose is best achieved by interpreting "applicable" in accordance with its plain meaning, so that state laws protecting the "marine, human, and coastal environments" apply to the OCS just as they do in the uplands.

Congress used "applicable" in numerous other OCSLA provisions. The only way to give "applicable" a consistent and coherent meaning throughout the text is to use its ordinary meaning. *See Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1723 (2017) ("[I]dentical words used in different parts of the same statute carry the same meaning."). For example, OCSLA provides that all "*applicable* laws" on the OCS are "administered and enforced by the appropriate officers and courts of the United States." 43 U.S.C. § 1333(a)(2)(A) (emphasis added). The Interior Secretary is authorized to enter into cooperative agreements with States to form "joint surveillance and monitoring arrangements to carry out *applicable* Federal and State laws." *Id.* § 1345(e) (emphasis added). States must use royalties received under the Act

"in accordance with all *applicable* Federal and State laws." *Id.* § 1356a(d)(1) (emphasis added). In each instance, "applicable" refers to laws that are relevant, suitable, or fit to the OCS. Interpreting "applicable" as requiring only gap filling in § 1333(a)(2)(A) would violate every normal canon of statutory construction.

4. The Court has not yet interpreted the meaning of "applicable" state law in OCSLA's governing-law provision. However, the Court repeatedly has decided cases where the ordinary meaning of "applicable" provides the necessary context.

a. In *Rodrigue*, the survivors of two platform workers brought wrongful-death claims under both the Death on the High Seas Act ("DOHSA") and Louisiana law. 395 U.S. at 353-54. The Court considered whether DOHSA, a maritime law, applied of its own force or whether state law, made applicable through OCSLA, supplied the appropriate remedy.[11] The Court held OCSLA's text and legislative history made clear that admiralty law does not apply on the OCS, and the federal action under DOHSA was "no more appli[cable] to these accidents actually occurring on [fixed drilling platforms] than it would [be] to accidents occurring in an upland federal enclave." *Id.* at 366. Thus, Louisiana law applied as federal law, federally enforced.

In reaching that conclusion, the Court did not need to address the meaning of "applicable" when both state and federal law provided a remedy, because federal law was deemed unsuited to the issue.

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[11] The question before the Court was not whether federal law as defined in § 1333(a)(1) applied on the OCS and whether state law also was applicable pursuant to § 1333(a)(2)(A). Rather, the question was whether DOHSA, a federal statute that left no room for application of any other federal or state law, was the only law that applied. *See* 395 U.S. at 359.

The only law left to apply after excluding DOHSA was Louisiana law. However, the Court considered OCSLA's governing-law provision more generally and declared that OCSLA "makes it clear that federal law, supplemented by state law of the adjacent State, is to be applied to these artificial islands as though they were federal enclaves in an upland State." *Id.* at 355. In other words, the law on the OCS "was to be federal law of the United States, applying state law only as federal law and then only when not inconsistent with applicable federal law." *Id.* at 355-56. A "theme" running through the OCSLA hearings "was the close relationship between the workers on the island and the adjoining States." *Id.* at 363.[12] This theme underscores Congress's intent for "applicable" to carry its ordinary meaning, so that the familiar legal standards of the adjacent State are adopted on the OCS.

b. Two years later, the Court again considered OCSLA's governing-law provision in a manner that reinforced the plain meaning of "applicable." In *Huson*, the Court addressed whether a personal-injury claim was time-barred under Louisiana law, as incorporated into federal law through OCSLA, or whether the federal admiralty doctrine of laches applied. 404 U.S. at 98-99. The Court held that the

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[12] Petitioner argues (at 26) that the Court "repeatedly emphasized that state law applied only to fill federal voids." What the Court actually stated was that "state law *could* be used to fill federal voids," not that state law applies *only* when there is such a void. *Rodrigue*, 395 U.S. at 358 (emphasis added). Regardless, such asides were dicta, because the Court did not consider how state law would apply if there were also applicable federal law. As the government recognizes (at 18 n.5), *Rodrigue* can be read to support respondent's position. Any ambiguous dicta in *Rodrigue* should not distract from OCSLA's text, which confirms that relevant state legal standards apply on the OCS when not inconsistent with federal law. *See* 43 U.S.C. § 1333(a)(2)(A).

laches doctrine did not apply because Congress did not intend admiralty law to apply as federal common law on the OCS. *Id.* at 103-04. Rather, the state statute was "'applicable' in federal court under [OCSLA] just as it would be applicable in a Louisiana court." *Id.* at 103. The Court did not define "applicable" but gave the word its ordinary meaning, concluding that state law "applicable" in Louisiana courts also is "applicable" on the OCS.

The Court was not confronted with potentially applicable federal and state laws. Nonetheless, the Court explained, "[t]o the extent that a comprehensive body of federal law is applicable under § 1333(a)(1), state law 'inconsistent' with that law would be inapplicable under § 1333(a)(2)." *Id.* at 100-01. The Court also observed that "[a] primary purpose underlying the absorption of state law as federal law in [OCSLA] was to aid injured employees by affording them comprehensive and familiar remedies." *Id.* at 107-08. Giving "applicable" its plain meaning reinforces that goal.

c. In *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473 (1981), the Court considered seemingly conflicting state and federal common-law jury instructions regarding personal-injury damages: "Our first task is to determine the source of law that will govern . . . . In any particular case, the adjacent State's law applies to those areas 'which would be within the area of the State if its boundaries were extended seaward to the outer margin of the [OCS].'" *Id.* at 485-86 (quoting 43 U.S.C. § 1333(a)(2)(A)). Again, the Court used "applicable" to refer to relevant state law, noting that Congress "incorporated . . . the applicable law of Louisiana, but only to the extent it is not inconsistent with federal law. . . . Congress borrowed a remedy provided by state law and thereby specifically rejected

national uniformity as a paramount goal." *Id.* at 487 (brackets omitted); *see also id.* at 489 (Blackmun, J., concurring in part and concurring in the result) ("[T]he purpose of incorporating state law was to permit actions arising on these federal lands to be determined by rules essentially the same as those applicable to actions arising on the bordering state lands. Congress apparently intended to provide a kind of local uniformity of result . . . ."). Notably, the Court did not consider Louisiana's jury instruction not "applicable" merely because a federal jury instruction addressed personal-injury damages.

B. Under The Ordinary Meaning Of "Not Inconsistent," State Law That Is Not Incompatible With Or Not Contradictory To Federal Law Applies On The OCS

The plain meaning of "inconsistent" is "incompatible" or "contradictory." *Webster's* at 1259; *see also Black's* at 907 ("[m]utually repugnant or contradictory"). Pursuant to the ordinary, natural meaning of the phrase "not inconsistent," state laws that are not incompatible with or contradictory to federal laws are adopted as federal law on the OCS. Thus, even when the laws embrace overlapping subjects, OCSLA adopts state rules as federal law, so long as those rules are not incompatible with federal law.

In *Gulf Offshore*, the Court laid out a framework for determining if a state law is inconsistent with federal law. The Court explained that "[t]o apply the statutory directive a court must consider the content of both potentially applicable federal and state law." 453 U.S. at 486. The Court then remanded to the state court to determine if the state and federal jury instructions were inconsistent. *Id.* at 488.

That conceptual approach was not new. In *Franklin v. Lynch*, 233 U.S. 269 (1914), the Court considered

the application of state and federal laws regarding land conveyances in Indian Territory. Congress declared the laws of Arkansas, to the extent they were "'applicable and not inconsistent with any law of Congress,'" were adopted as the laws of that territory. *Id.* at 273 (quoting Act of Feb. 19, 1903, ch. 707, 32 Stat. 841, 841-42). At issue was a federal law prohibiting the sale by Native Americans of any lands issued to them by a land patent and an Arkansas law that would have allowed the conveyance in question. *Id.* at 270-71. The Court noted that the Arkansas law was extended to the territory, but "[i]t has no effect here because it is inconsistent with the act of [Congress]." *Id.* at 273; *see also Adkins v. Arnold*, 235 U.S. 417, 421 (1914) ("Congress intended [Arkansas law] should have the same force and meaning [in the territory] that [it] had in Arkansas."). As with the framework in *Gulf Oil*, the Court considered the content of both potentially applicable federal and state laws to determine if there was a conflict or incompatibility between the two.

II. CALIFORNIA'S WAGE-AND-HOUR LAWS ARE RELEVANT AND NOT INCOMPATIBLE WITH THE FLSA

A. California's Wage-And-Hour Laws Are "Applicable" Because They Are Relevant To The Pertinent Subject Matter

California law applies to the drilling rigs on the Santa Barbara Channel where respondent worked because the drilling rigs "would be within the area of [California] if its boundaries were extended seaward." 43 U.S.C. § 1333(a)(2)(A). California has applied its state wage-and-hour laws offshore, and thus California's wage-and-hour laws are "[c]apable of being applied" on the OCS. *Webster's* at 131; *see Aubry*, 918 F.2d at 1420 (holding California wage-and-

hour laws apply in the Santa Barbara Channel); *Tidewater Marine Western, Inc. v. Bradshaw*, 927 P.2d 296, 297-302 (Cal. 1996) (holding California Labor Code applies to federal waters).

B. California's Wage-And-Hour Laws Are "Not Inconsistent" With Federal Law Because Both The FLSA And OCSLA Contemplate Application Of More Protective State Labor Laws

1. The FLSA imposes federal minimum-wage and hour protections on employers. The minimum wage must be "*not less than*" the federal minimum, 29 U.S.C. § 206(a)(1) (emphasis added), and the rate of overtime pay must be "*not less than* one and one-half times the regular rate" an employee receives, *id.* § 207(a) (emphasis added). These standards are a floor below which worker protections may not drop. *See Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 11 (2011) (FLSA "seeks to prohibit 'labor conditions detrimental to the maintenance of [a] minimum standard of living'") (quoting 29 U.S.C. § 202(a)); *Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 739 (1981) (FLSA "was designed to give specific minimum protections to individual workers") (emphasis omitted). The purpose of setting that floor was "not to establish absolute uniformity in minimum wage and overtime standards nationwide at levels established in the FLSA." *Aubry*, 918 F.2d at 1425. Instead, the FLSA contemplates employees benefiting from more protective state wage-and-hour laws, when they exist.

To avoid any doubt over which wage-and-hour laws should apply in the face of parallel regimes, the FLSA's savings clause directs that the higher standard will apply. *See* 29 U.S.C. § 218(a) ("No provision of this chapter . . . shall excuse noncompliance with

any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum workweek established under this chapter . . . .").

DOL regulations support the States' ability to adopt more protective standards, which the FLSA does not "override or nullify." For example, the regulations governing minimum-wage and overtime compensation create room for state standards to apply. *See* 29 C.F.R. § 778.5 ("Various Federal, State, and local laws require the payment of minimum . . . wages different from the minimum set forth in the [FLSA], and the payment of overtime compensation computed on bases different from those set forth in the [FLSA]. Where such legislation is applicable and does not contravene the requirements of the [FLSA], nothing in the act, the regulations or the interpretations announced by the Administrator should be taken to override or nullify the provisions of these laws."); *see also id.* § 531.26 (adopting same provision for how wages must be calculated and paid).

In a recent opinion, DOL interpreted opposing state and federal laws regarding payment of subminimum wages to workers with disabilities. DOL instructed that the more generous state-law provisions should apply – even when employers receive federal waivers excusing compliance with the federal standards – because "[b]oth the FLSA and the corresponding regulations allow states to establish a higher minimum wage rate than the rate set by the FLSA."[13]

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[13] Administrator's Interpretation No. 2016-2, "Effect of state laws prohibiting the payment of subminimum wages to workers with disabilities on the enforcement of section 14(c) of the Fair Labor Standards Act" (Nov. 17, 2016), https://www.dol.gov/whd/opinion/AdminIntrprtn/FLSA/2016/FL SAAI2016_2.pdf.

Accordingly, the FLSA contemplates, and allows for, the coexistence of more protective minimum-wage and maximum-work-week provisions.

2. California's minimum-wage laws are not "incompatible" with the FLSA. Because Congress enacted the FLSA as a floor, and California's wage-and-hour laws are "not less than" that floor, California laws are not inconsistent with the FLSA. *Compare* 29 U.S.C. § 206(a) (setting hourly federal minimum wage of $7.25) *with* Cal. Lab. Code § 1182.12(b)(1)(C) (setting hourly California minimum wage of $12). The savings clause allows California to provide greater minimum-wage protections and resolves any doubt regarding how to reconcile the two different minimum wages: the employer must pay the higher amount. *See* 29 U.S.C. § 218(a). The same analysis applies to respondent's overtime claim, which relies on California laws that permissibly set standards above the federal floor. The FLSA savings clause directs petitioner to pay wages according to the more generous provision.

3. The Court's interpretation of the FLSA savings clause in *Powell* establishes that California's wage-and-hour laws are not inconsistent with the FLSA. There, the Court addressed the application of two federal wage-and-hour laws. The Walsh-Healey Act establishes a higher minimum wage for federal contractors than the FLSA; however, the FLSA contains more generous remedial provisions than the Walsh-Healey Act. The Court held these two statutes are not "mutually exclusive," as compliance with one does not make it impossible to comply with the other. 339 U.S. at 519-20. In fact, the Court determined that the FLSA savings clause indicates "congressional awareness" of potentially overlapping labor standards. *Id.* at 518. The Court deemed the two statutes "mutually

supplementary" and reconcilable by determining "the respective wage requirements under each Act and then applying the higher requirement as satisfying both." *Id.* at 519-20.

4. Applying California's more protective state legal standards also is thoroughly *consistent* with the FLSA's policy goals. The FLSA was enacted "to protect all covered workers from substandard wages and oppressive working hours." *Barrentine*, 450 U.S. at 739 (citing 29 U.S.C. § 202(a)). The FLSA was "'not designed to codify or perpetuate industry customs and contracts,'" but instead to achieve a minimum level of compensation for all employee work. *Id.* at 741 (quoting *Tennessee Coal, Iron & R.R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 602 (1944)) (brackets omitted). California's laws accord with the FLSA's remedial purpose of protecting workers with a federal floor from which States can enact more favorable protections.

Applying California's more protective state legal standards also is consistent with OCSLA's purposes. In *Valladolid*, the Court recognized not only that offshore platforms are physically connected to onshore-processing facilities via oil and gas pipelines, but also that employees move between the platforms and the shore during their employment. 565 U.S. at 215. Congress, and this Court, emphasized that the special relationship between offshore workers and the adjacent State where they live "favored application of state law with which these men and their attorneys would be familiar." *Huson*, 404 U.S. at 103. In incorporating state legal standards into federal law on the OCS, Congress "specifically rejected national uniformity as a paramount goal." *Gulf Offshore*, 453 U.S. at 487. Congress also emphasized the rights and responsibilities of all States "to preserve and protect their . . .

human . . . environments," 43 U.S.C. § 1332(5), which it defined to include "the state, condition, and quality of . . . employment" on the OCS, *id.* § 1331(i). Those rights and responsibilities include wage-and-hour laws, and California's laws fulfill that objective without creating inconsistencies with federal law.

III. PETITIONER'S ARGUMENTS LACK MERIT

A. Accepted Principles Of Statutory Interpretation Preclude Petitioner's Reading Of "Applicable"

Lacking a definition to support its interpretation of "applicable," petitioner instead suggests that Congress hid the true meaning of "applicable" in the legislative history and surrounding portions of the statute, rather than just relying on the word's plain meaning. Petitioner concedes (at 16, 35) the Ninth Circuit's definition of "applicable" "is certainly one of the possible meanings of that word," but nonetheless urges this Court to abandon established principles of statutory interpretation in favor of first considering "Congress' primary judgment" in enacting OCSLA and then reading OCSLA's text "in light of" that judgment. Petitioner's arguments lack merit.

1. The statutory text lends no support to petitioner's contention that "applicable" should be interpreted to require a gap in federal law before state law applies

Dodging the plain meaning of "applicable," petitioner creates a two-part mantra for how it wishes OCSLA's governing provision to work. Petitioner hopes that the Court will be persuaded to combine an undisputed proposition with one that is textually insupportable: "First, all law on the OCS is federal law. . . . Second, the role of state law is limited to a gap-filling role." Pet. Br. 22. The first point is undisputed – and beside

the point. Section 1333(a)(1) extends "[t]he Constitution and laws . . . of the United States" to the OCS, and § 1333(a)(2)(A) declares "applicable and not inconsistent" state law "to be the law of the United States" on the OCS. The fact that the law is "federal," however, says nothing about whether the content of that law derives from state standards.

Petitioner's trick move lies in the second step, because it is not supported by the statute's text. Rather, petitioner bases the assertion on a combination of three factors that do not address when state legal standards are "applicable" to the OCS: (1) Congress's preference for federal law, which petitioner decrees is "[t]he most basic judgment" Congress made in enacting OCSLA; (2) background principles relating to federal-enclave law; and (3) the "reinforcing provisions" of other subsections of § 1333, which provide for federal administration of laws on the OCS and disclaim "any interest in or jurisdiction on behalf of any State" over the OCS. Pet. Br. 19-23. These considerations, however, do not actually support petitioner's preferred outcome that "state law is only 'applicable' to the OCS when there is a gap that needs to be filled." *Id.* at 23. As the Ninth Circuit correctly held in rejecting petitioner's arguments, nothing in "the ordinary, contemporary, common meaning of 'applicable' . . . lend[s] itself to the notion that state laws have to fill a gap in federal law to qualify as surrogate federal law." App. 21 (citation omitted).

a. Petitioner's interpretation would require a judicial rewriting of the statute to say that state laws apply "to the extent that they are applicable *because there is a significant void or gap in federal law* and not inconsistent . . . ." Had Congress intended to use "applicable" to imply gap filling, it would have said so using plain language.

Indeed, when Congress intends for state laws to serve merely a gap-filling role, it says so. For example, the Assimilated Crimes Act ("ACA") applies state criminal law to federal enclaves only when an act or omission is not already made punishable "by any enactment of Congress." 18 U.S.C. § 13(a); *see also Lewis v. United States*, 523 U.S. 155, 160 (1998) ("The ACA's basic purpose is one of borrowing state law to fill gaps in the federal criminal law."). And the Civil Rights Attorney's Fees Awards Act of 1976 authorizes courts to borrow state common law where "the laws of the United States . . . are not adapted to the object [of the applicable federal statutes], or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law." 42 U.S.C. § 1988(a).[14]

b. Petitioner's outcome-determinative approach to the phrase "applicable and not inconsistent" creates a potentially destabilizing effect on other statutes and regulations that use the same language. For example, under DOL regulations governing the FLSA, *see supra* p. 36, when a federal, state, or local law providing different minimum wages or methods for computing overtime compensation is "*applicable and does not contravene* the requirements of the [FLSA]," the FLSA does not "override or nullify the provisions of th[o]se laws." 29 C.F.R. § 778.5 (emphasis added). Under the ordinary meaning of "applicable" (relevant, suitable, fit), this regulation "saves" more protective state

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[14] The government argues (at 13) that Congress's "practice of making state criminal law 'applicable on federal enclaves' only to 'fill gaps' in federal law[] strongly indicates" that OCSLA also makes state law applicable on the OCS only to fill gaps. What the ACA actually evinces is that, when Congress wants state law only to fill gaps, it legislates accordingly.

wage-and-hour laws that pertain to the subject matter at hand. Under petitioner's interpretation of "applicable" ("necessary to fill a significant void or gap," Pet. Br. 26), however, none of the more protective federal, state, and local laws would ever apply, because, as petitioner asserts, the FLSA leaves no such gap.

c. The Court's holding in *Ransom v. FIA Card Services, N.A.*, 562 U.S. 61 (2011), does not support petitioner's interpretation. In *Ransom*, the Court interpreted "applicable monthly expense amounts" – undefined in the Bankruptcy Code – by looking "to the ordinary meaning" of "applicable." *Id.* at 69. Relying on the dictionary definition, the Court concluded a monthly expense amount is "applicable" when it is "appropriate, relevant, suitable, or fit." *Id.* The Court determined that "applicable" established a "filter" so that a debtor could take deductions only appropriate to her individual financial circumstances. *Id.* at 69-70. Contrary to petitioner's contention, the Court did not use "context" or "purpose" to depart from the ordinary meaning of the statute, Pet. Br. 36, but merely to "support" and "strengthen[]" the conclusion reached from the plain meaning, 562 U.S. at 70-71.

The Court's interpretation of "applicable" in *Ransom* and the Ninth Circuit's interpretation of "applicable" here are on all fours. The ordinary meaning of "applicable," as used in OCSLA, conveys that a state law is applicable when "appropriate, relevant, suitable, or fit." *See id.* at 69. In other words, a state law is applicable on the OCS if the drilling rig is within the area of the State if its boundaries were extended seaward and the law at issue is relevant or suitable to the legal issue at hand. "Applicable," therefore, also serves as a "filter" in OCSLA, weeding out both the laws of non-adjacent States and the legal

standards of the adjacent State that are unsuitable to circumstances on the OCS. *See*, *e.g.*, Cal. Fish & Game Code § 3961 (hunting dogs may be "lawfully seized" for "inflicting injury or immediately threatening to inflict injury to any deer, elk, or prong-horned antelope").

d. Finally, petitioner's interpretation of "applicable" as "necessary" (at 26) renders superfluous the term "not inconsistent." Under petitioner's interpretation, state law "applies" on the OCS only when "necessary to fill a significant void or gap in federal law." *Id.* (brackets omitted). But, on that reading, if state law is applicable, there is no federal law addressing a particular topic and therefore no federal law for state law to be "inconsistent with." *See*, *e.g.*, *Huson*, 404 U.S. at 101 ("[T]here exists a substantial 'gap' in federal law. Thus, state law remedies are not 'inconsistent' with applicable federal law."). Petitioner (at 41 n.8) and the government (at 25) recognize this flaw in their argument, but neither can articulate a scenario where a state law can be "applicable," because there is a gap in federal law, and yet "inconsistent with" federal law. To accept petitioner's interpretation of "applicable" as "necessary" would make "not inconsistent" superfluous and, therefore, violate the "cardinal principle of statutory construction that [courts] must give effect, if possible, to every clause and word of a statute." *Williams v. Taylor*, 529 U.S. 362, 404 (2000).

2. Petitioner misunderstands how law applies on federal enclaves

a. Petitioner and the government argue relevant context can be gleaned from OCSLA's provision extending federal law to the OCS "to the same extent as if the [OCS] were an area of exclusive Federal

jurisdiction located within a State." Pet. Br. 20, 35; U.S. Br. 12-14. Federal-enclave law parallels some of OCSLA's provisions. But both briefs incorrectly claim that state law applies on federal enclaves "only if there is a gap in federal law," and therefore conclude that state law also must apply on the OCS only to fill gaps in federal law. Pet. Br. 20; U.S. Br. 13-14. That argument raises four problems.

First, it is impossible to generalize one rule for how laws apply on federal enclaves. What law applies to a federal enclave stems from the agreement reached between a State and the federal government when a particular enclave is ceded. *See Sadrakula*, 309 U.S. at 99-100 ("It is now settled that the jurisdiction acquired from a state by the United States . . . may be qualified in accordance with agreements reached by the respective governments."). Generalizations about enclaves are even less useful on the OCS, as Congress's text is what controls. There is no governing agreement between the adjacent States and the federal government. Instead, OCSLA dictates what state legal standards apply on the OCS. Even assuming Congress drew on federal-enclave principles in enacting OCSLA, the absence of a uniform enclave doctrine for determining when state law applies means that OCSLA's clear statutory text remains the starting point for interpreting its governing-law provision.

Second, the principles of law the Court has recognized as consistent across enclaves refute the argument that state law only "fills gaps" on federal enclaves. Rather, when a new federal enclave is established, state laws "existing at the time of the surrender of sovereignty," *id.*, and "not inconsistent with federal policy," *United States v. State Tax*

Comm'n of Mississippi, 412 U.S. 363, 369 (1973), continue in force until altered by Congress, *id.*; *see also Sadrakula*, 309 U.S. at 97-98 (holding existing New York labor law to be "applicable" after federal government acquired exclusive federal jurisdiction). When the federal government has exclusive jurisdiction over a federal enclave, state law existing at the time of cessation becomes federalized state law. *See Sadrakula*, 309 U.S. at 97-98 (explaining that New York labor law "remains effective as a statute of the United States"). Notably, on actual federal enclaves, "only state law existing at the time of the acquisition remains enforceable, not subsequent laws." *Paul*, 371 U.S. at 268. In other words, "future statutes of the state are not a part of the body of laws in the ceded area. Congressional action is necessary to keep it current." *Sadrakula*, 309 U.S. at 100.

In OCSLA, Congress provided that the laws of the adjacent States in existence at the time and not inconsistent with federal law would apply on the OCS as federal law – just as state law would apply in a newly created federal enclave.[15] Petitioner's contention (at 35) that "applicable," as understood in federal-enclave law, referred to only "those laws necessary to supplement federal law" disregards 130 years of federal-enclave law, in which the Court repeatedly explained that state laws in effect at the time of transfer are "applicable" as federal law so long as they do not conflict with federal policy. *See Paul*, 371 U.S. at 268; *see also State Tax Comm'n of Mississippi*, 412 U.S. at 369 (explaining "local law not inconsistent with federal policy remained in force until altered by

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[15] Consistent with the prevailing understanding of delegation principles in 1953, Congress applied only state law "as of the effective date of th[e] Act" as federalized state law.

national legislation"); *Sadrakula*, 309 U.S. at 100 (same).

Third, Congress can alter any of these background presumptions – including the principle that subsequently enacted state laws are inapplicable on federal enclaves – through "specific congressional action." *Paul*, 371 U.S. at 263. In 1975, Congress did precisely that as to the OCS, extending to it state law "now in effect or hereafter adopted, amended, or repealed." 43 U.S.C. § 1333(a)(2)(A); *see Sadrakula*, 309 U.S. at 100 (noting congressional action is needed to keep law on an enclave "current").

Finally, petitioner cites only one case for the proposition that pre-existing state law touching "upon the same matters" as federal law is "superseded" by federal law on the creation of an enclave, and that case was describing which *foreign* laws remained in force after the United States acquired territory from a foreign nation. Pet. Br. 34 (citing *Chicago, R.I. & P. Ry. Co. v. McGlinn*, 114 U.S. 542, 546-47 (1885)). The Court recognized that "there is 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." *McGlinn*, 114 U.S. at 547. It then explained how Kansas law "remained in force after the cession, it being in no respect inconsistent with any law of the United States, and never having been changed or abrogated." *Id.* The Court concluded by articulating the same mechanics for the application of state law in a federal enclave as expressed in *State Tax Commission of Mississippi*, *Sadrakula*, and *Paul*, with no mention of gap filling. *Id.*

b. Applying relevant state laws that are not incompatible with federal law on the OCS is consis-

tent with how state laws apply on federal enclaves. In *Korndobler v. DNC Parks & Resorts at Sequoia*, No. 1:15-cv-00459-LJO-SKO, 2015 WL 3797625, at *5-6 (E.D. Cal. June 18, 2015), a court applied California's minimum-wage laws to a national park after finding that the laws pre-dated the enclave's creation. However, unlike OCSLA, which provides for ongoing adoption of "applicable and not inconsistent" state laws, Congress has not provided for the ongoing adoption of state labor laws enacted after the transfer of sovereignty on federal enclaves. Therefore, States' later-enacted worker-protection statutes generally do not apply on federal enclaves unless Congress specifically provided otherwise.

3. Petitioner ignores important distinctions Congress established between "jurisdiction," "administration and enforcement," and "applicable" law

OCSLA undisputedly extends federal jurisdiction to the OCS and creates a system of federal enforcement. *See* 43 U.S.C. §§ 1333(a)(1), (a)(2)(A), (a)(3).[16] However, those provisions are consistent with Congress's choice to apply both federal and state law on the OCS. The historical context leading to OCSLA's passage and the subsequent amendments demonstrate that Congress recognized and maintained an important role for adjacent States in offshore-drilling operations off their coasts. Incorporating state legal standards as surrogate federal law on the OCS does not result in "supremacy of state law administered by state agencies." Pet. Br. 5-6, 28, 46 (citing *Continental Oil*,

[16] The Secretary is directed to cooperate with other federal agencies and "the affected States" "[i]n the enforcement of safety, environmental, and conservation laws and regulations." 43 U.S.C. § 1334(a).

417 F.2d at 1036). State laws are not "supreme," as federal law displaces inconsistent state law.

Importantly, the Interior Secretary is authorized to issue rules and regulations governing the OCS, 43 U.S.C. § 1334, and these rules and regulations displace inconsistent state law, *id.* § 1333(a)(2)(A). That regulatory power of displacement is crucial to Congress's design because, if the application of any particular state law is undesirable, the Secretary can displace that state standard by issuing regulations to override it. Accordingly, the incorporation of state law as federal law does not cede the United States' jurisdiction over the OCS to state agencies. OCSLA mandates that all laws on the OCS "shall be administered and enforced by the . . . United States," *id.*, and forecloses state-agency administration.[17]

4. Any purported ambiguities in the legislative history cannot override the text's plain meaning

Petitioner's reliance on legislative history to attempt to create ambiguity in the statutory language is backwards. The Court should not consider legislative history when, as here, the text is clear. *See Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004) ("[W]hen the statute's language is plain, the sole function of the courts – at least where the disposition required by the

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[17] The Fifth Circuit's longstanding reference to *Continental Oil*'s reasoning has no bearing on its correctness. *See* U.S. Br. 19. The Court had no issue rejecting a longstanding Fifth Circuit test in *Valladolid*. *See Valladolid*, 565 U.S. at 215 (rejecting Fifth Circuit test for applicability of Longshore and Harbor Workers' Compensation Act ("LHWCA") under OCSLA). And it is not clear the Fifth Circuit still relies on *Continental Oil*. *See Union Texas Petroleum Corp. v. PLT Eng'g, Inc.*, 895 F.2d 1043 (5th Cir. 1990).

text is not absurd – is to enforce it according to its terms."). In any event, petitioner's invocation of OCSLA's legislative history does not provide clear evidence of Congress's intent to use "applicable" as meaning "necessary" to fill a "significant void or gap." Rather, it confirms that Congress intended to apply not-inconsistent state legal standards as surrogate federal law.

The Court has recognized that the desire for continuity between laws operating on the OCS and laws operating within adjacent States was an important consideration in enacting OCSLA. A "theme" running through the OCSLA hearings "was the close relationship between the workers on the island and the adjoining State." *Rodrigue*, 395 U.S. at 363. Indeed, "Congress also recognized that the special relationship between [OCS employees] and the adjacent shore . . . favored application of state law with which these men and their attorneys would be familiar." *Huson*, 404 U.S. at 103. These concerns were valid: The employees on offshore rigs start and end their shifts onshore, and at times split their time between onshore and offshore activities and between drilling rigs in state and federal waters.

Indeed, Congress rejected the application of admiralty law as unsatisfactory because, as Senator Cordon explained, "social laws necessary for protection of the workers and their families would not apply." 99 Cong. Rec. 6963 (1953). The Senate Committee instead adopted a combination of federal and state laws, which was ultimately enacted. In presenting OCSLA on the Senate floor, Senator Cordon stated that "the laws of abutting States should become a part of the Federal law . . . . The [OCS] will have the protection of the Constitution itself, and will have the

protection and provision for conduct of affairs as given by the laws of each of the abutting States." *Id.* at 6963-64. Accordingly, "Congress specifically rejected national uniformity and specifically provided for the application of state remedies." *Huson*, 404 U.S at 104.

In the following colloquy, Senator Cordon addressed the exact question now before the Court: whether state laws apply on the OCS when federal law regulates the same subject matter.

> Mr. DANIEL. . . . Since we have applied State laws in the fields which are not covered by Federal laws or by regulations . . . , I should like to ask . . . whether . . . State laws relating to conservation will apply in this area until and unless the Secretary of the Interior writes some rule or regulation to the *contrary*.
>
> Mr. CORDON. . . . The language clearly adopts State law as Federal law *where it is not inconsistent with* existing Federal law or with the rules and regulations of the Secretary of the Interior . . . . When [the Secretary] has adopted them, those rules and regulations *must be inconsistent with or in conflict with* the conservation laws of the States, which are then the conservation laws of the United States with respect to that particular area, *or else the laws of the States, having been adopted by the United States, apply to that area.* . . . [T]he language of [§ 1333(a)(2) will be] read as pari materia, give effect to both.

99 Cong. Rec. at 7264 (emphases added). In short, Senator Cordon explained that, unless a state law is inconsistent with federal law, state legal standards would be adopted as surrogate federal law. The fact

that state and federal law may overlap on some subject matters has no bearing on its application.[18]

B. Petitioner's Attempt To Manufacture Inconsistency Between California's Wage-And-Hour Laws And The FLSA Ignores Both Statutes' Text And Purpose

Neither law nor common sense supports petitioner's argument that when Congress has passed a statute setting minimum federal standards – and included a clause saving from preemption the application of more generous state laws – a state law providing something above that floor is inconsistent with federal law.

1. "Not inconsistent" does not mean "not different"

Petitioner asserts (at 39) that, because California's laws are "different" from federal laws, they are "inconsistent" with federal laws and therefore inapplicable on the OCS. However, the ordinary meaning of "not inconsistent" does not mean merely "not different." This argument also conflates petitioner's interpretation of "applicable" (requiring there to be no federal law) and "not inconsistent" (requiring there to be no *different* federal law).

a. Petitioner is correct that California's wage-and-hour laws are in some instances *different* from the FLSA. For example, the FLSA mandates a $7.25

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[18] While the Senate Report suggests state law applied only in the absence of federal law, Pet. Br. 24; U.S. Br. 14-15, the later-adopted House Conference Report, reconciling the Senate and House bills, stated that, when "not inconsistent with this act and other Federal laws and regulations, the laws of adjacent States are adopted as the laws of the United States." H.R. Conf. Rep. No. 83-1031, at 12 (1953). The quoted Daniel-Cordon exchange stating overlapping state and federal law would coexist occurred after the Senate Report was published.

hourly minimum wage and California prescribes a $12 hourly minimum wage. However, the existence of two different minimum wages does not make the provisions "incompatible" or "contradictory." Petitioner's argument is contrary to the FLSA's text, which provides that the minimum wage must be "*not less than*" $7.25. 29 U.S.C. § 206(a)(1) (emphasis added). California's minimum wage is "not less than" $7.25, and therefore not inconsistent with the FLSA despite being different from the federal minimum wage.

Petitioner's argument would make sense only if the FLSA set a ceiling, dictating that the federal minimum wage *must not be more than* $7.25. In that circumstance, any state law that exceeded the federal ceiling would be inconsistent with the FLSA. It defies logic to say that a more generous state minimum wage is inconsistent with a federal statute explicitly allowing States to set more generous minimum wages.

Consistent with *Powell*, the California and federal minimum wages are not "mutually exclusive." *See* 339 U.S. at 519 (rejecting argument that different federal minimum wages were "mutually exclusive"). Petitioner has not demonstrated that "compliance with one . . . makes it impossible to comply with the other." *Id.* Nor is it impossible to determine "respective wage requirements under each [statute] and then apply[] the higher requirement." *Id.* Indeed, Congress contemplated that employers may face overlapping wage requirements and resolved any concerns through the savings clause's directive to apply the higher requirement. *Id.* at 518.

b. Petitioner's argument (at 40) that the existence of two different methods of calculating hours worked makes California law "inconsistent with" federal law is similarly flawed. First, under the savings

clause, States are free to impose more demanding wage-and-hour standards, and nothing in the federal compensable-time rules limits the savings clause's operation. By their terms, the hours-worked "principles" promulgated by DOL guide employers in complying with the FLSA's minimum-wage and overtime requirements. *See* 29 C.F.R. § 785.1. Thus, "[t]hese are rules of federal law. States are free to set higher hourly wages or shorter periods before overtime comes due. That's what § 218(a) says." *Spoerle v. Kraft Foods Glob., Inc.*, 614 F.3d 427, 429 (7th Cir. 2010) (holding FLSA provision excluding time spent changing clothes as hours worked did not preempt Wisconsin law including that same time as hours worked for purposes of state wage-and-hour law). As the Seventh Circuit reasoned, because higher state minimum-wage laws trump the FLSA, "it must be equally so for the number of hours, because how much pay a worker receives depends on the number of hours multiplied by the hourly rate. It would be senseless to say that a state may control the multiplicand but not the multiplier." *Id.*

Second, although petitioner casts the two tests as incompatible, both federal and California law use a multifactor test for determining compensability of off-duty time. *Compare* 29 C.F.R. § 785.22(b) ("If the [sleeping] period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be [compensable].") *and id.* § 785.16(a) (whether off-duty time is compensable "depends upon all of the facts and circumstances of the case") *with Mendiola v. CPS Sec. Sols., Inc.*, 340 P.3d 355, 359-60 (Cal. 2015) (noting "whether on-call time constitutes hours worked . . . focuse[s] on the extent of the employer's control" and citing multiple factors, many from federal law, for determining control).

Whether respondent's total hours worked differ under federal and state law is a fact-intensive inquiry, which would be premature to engage in at this stage of the litigation.[19]

c. The Court's decision in *Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715 (1980), further highlights the absurdity of petitioner's inconsistency argument. There, the Court addressed whether state workers' compensation laws and the federal LHWCA were inconsistent, such that only the LHWCA applied to land-based injuries. The Court noted that Congress's goal of raising worker compensation "awards to a federal minimum" was "in no way inconsistent" with applying both state and federal law, because there was no indication "that Congress was concerned about a disparity between adequate federal benefits and *superior* state benefits." *Id.* at 723-24. Thus, the Court was "not persuaded that the bare fact that the federal and state compensation systems are different gives

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[19] Respondent's claims for paystub violations, failure to pay timely wages, and failure to provide meal periods each address gaps in the FLSA, and thus are not inconsistent under even petitioner's interpretation of OCSLA. Although petitioner contends (at 31-32) the FLSA addresses each of these claims, the provisions cited by petitioner are inapposite to respondent's claims. Section 211(c) requires employers to keep wage-and-hour records, but does not require the employer to provide such information to employees. *Compare* 29 U.S.C. § 211(c) *with* Cal. Lab. Code § 226(a). Section 216(b) imposes penalties on employers that fail to comply with FLSA's minimum-wage and overtime requirements, but makes no mention of timely paying terminated employees. *Compare* 29 U.S.C. § 216(b) *with* Cal. Lab. Code § 201(a). And 29 C.F.R. § 785.19 addresses whether bona fide meal periods count as hours worked for the purposes of overtime calculations, but is silent as to whether mealtimes must be provided at all. *Compare* 29 C.F.R. § 785.19 *with* Cal. Lab. Code § 512(a). Even if petitioner's "gap-filling" interpretation prevails, therefore, those claims still would advance on remand.

rise to a conflict that . . . necessitates exclusivity for each compensation system within a separate sphere." *Id.* at 725. Here, too, the FLSA establishes federal minimum worker protections. Congress was not concerned with any conflict between an "adequate federal" minimum wage and a "superior state" minimum wage.

2. Nothing in OCSLA requires ignoring the FLSA's savings clause

a. Petitioner's argument (at 29-30) that applying state legal standards would require the same sovereign to impose two competing sets of federal laws is far overblown. As *Powell* demonstrates, differing federal minimum wages are not unique to the OCS. *See* 339 U.S. at 519-20; *compare* Establishing a Minimum Wage for Contractors, Notice of Rate Change in Effect as of January 1, 2019, 83 Fed. Reg. 44,906 (Sept. 4, 2018) (setting $10.60 minimum wage for federal contractors), *with* 29 U.S.C. § 206(a) (setting $7.25 minimum wage). Whether onshore or offshore, the FLSA's savings clause directs the application of the higher requirement. *See Powell*, 339 U.S. at 519.

b. Petitioner's attempt (at 42) to manufacture inconsistency by declaring the savings clause is "triggered only by *an inconsistency* between state and federal law" has no support in the FLSA's text. The provisions setting federal minimum-wage and hour laws explicitly allow for more generous state laws. 29 U.S.C. §§ 206(a)(1), 207(a). Additionally, the savings clause dictates that, when a wage standard differs from the FLSA, the more generous standard should prevail. The savings clause actually ensures consistency between different state and federal laws.

c. Petitioner contends (at 43) that preemption principles should not apply to OCSLA's governing-law

provision because "state sovereignty" is "inapposite on the OCS." *See also* U.S. Br. 8. The plain meaning of "not inconsistent" and the FLSA's clear provisions allowing application of more protective state wage-and-hour laws require incorporation of California's state legal standards into the federal OCS law, without any need for the Court to address state sovereignty.

That said, preemption principles do inform what the phrase "not inconsistent with" means. For example, in *California Federal Savings & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987), the Court considered whether the more generous pregnancy-discrimination protections in the California Fair Employment and Housing Act were "inconsistent" with, and therefore preempted by, the protections in the federal Pregnancy Discrimination Act ("PDA"). *See id.* at 276-79. Congress provided that the PDA should not "'be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of th[e] Act, or any provision thereof.'" *Id.* at 282 (quoting 42 U.S.C. § 2000h-4). In determining whether California's law was "inconsistent" with the PDA, the Court considered whether the PDA prohibited States from providing more generous pregnancy-discrimination protections. The Court concluded the two statutes were not inconsistent, because Congress intended the PDA to be "a floor beneath which pregnancy disability benefits may not drop – not a ceiling above which they may not rise" – and California's law at issue furthered the PDA's goal of equal employment opportunity. *Id.* at 285-89. The same analysis can be used to interpret "not inconsistent" in OCSLA – the FLSA provides a floor beneath which worker protections cannot drop, and California's wage-and-hour laws further the

FLSA's goal of protecting workers. Therefore, there is no inconsistency.[20]

IV. PETITIONER'S APPROACH CREATES ADMINISTRABILITY PROBLEMS

A. Sound Policy Counsels For Making The Same Legal Standards Apply To Employees Working Onshore Or Offshore

Companies operating drilling rigs on the OCS also employ individuals to service the land-based operations supporting the drilling process. These onshore-processing facilities are physically connected to offshore platforms via pipelines and also are "closely linked" operationally. Tr. of Pub. Hr'g of IWC (Oct. 5, 2000) (testimony of Kent Rogers).[21] Some employees even split their time between upland and OCS activities, and even between rigs in state waters and the OCS. In applying state legal standards to operations on the OCS, Congress enabled these interrelated facilities to operate as a cohesive unit.

Shore-to-shelf continuity benefits both operators and their employees. Employee shift changes are tied

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[20] Oddly, the government argues (at 25) that ordinary preemption principles should not apply, but then also argues (at 24) that *Lewis*, which relies on ordinary preemption principles, should apply. *See* 523 U.S. at 164-65. *Lewis* addressed how to determine if there is a "gap" in federal law – a necessarily narrower question. *Id.* at 164.

The government also argues (at 29) that applying preemption principles undermines Congress's decision not to adopt an amendment that would have made state law directly applicable to the OCS. However, that amendment proposed to establish state police power over the OCS and was broader than OCSLA's requirement that only "not inconsistent" state legal standards apply as federal law.

[21] *Available at* https://www.dir.ca.gov/iwc/PUBHRGo5.htm.

to operational safety and are meticulously synchronized between the onshore and offshore facilities to mitigate accidents during the turnover. Keeping wage-and-hour standards consistent onshore and offshore enables coordinated work schedules that optimize operations and safety. *See id.* Employers also benefit from not having to keep two different sets of books tracking onshore versus offshore employee hours. Employees, their families, and their lawyers should benefit from the familiar laws of California, *see Huson*, 404 U.S. at 103, regardless of how time is split between land and the OCS.

B. Petitioner's Interpretation Disrupts Established Methods Of Applying State Laws On Federal Enclaves

The benefits of local uniformity between state and federal standards on federal enclaves is not unique to the OCS. In national parks and forests, federal officials administer applicable federal and state laws on numerous topics, including alcohol sales and hunting. *See*, *e.g.*, 36 C.F.R. § 2.15(b) (allowing hunting dogs "in accordance with applicable Federal and State laws"); *id.* § 5.2(a) (adopting "all applicable Federal, State, and local laws and regulations" for "[t]he sale of alcoholic, spirituous, vinous, or fermented liquor"); *id.* § 241.23(a) (adopting "applicable State and Federal law" for hunting, trapping, or fishing). A hunter can spend one weekend on federal land and another on state land while complying with the same legal regime. Under petitioner's interpretation of "applicable," however, this legal regime becomes complicated for everyday park-goers. What state laws are "applicable" would no longer be a simple question of what state laws are relevant, but a question that requires first dissecting the U.S. Code and the C.F.R. to

determine if there is a void or gap in federal law. Petitioner's desire for a specialized outcome for its oil and gas operations would disrupt the accepted understanding of how state and federal laws coexist on federal enclaves.

C. Other Policy Considerations Argue For Rejecting Petitioner's Interpretation

1. Petitioner's concerns (at 45-46) that applying state laws to the offshore platforms place operators in California and Louisiana under different legal regimes is overstated and not a reason to depart from OCSLA's plain text. There is nothing remarkable about sophisticated companies complying with multiple regulatory schemes when their operations span multiple jurisdictions. Indeed, petitioner maintains both *on*shore and *off*shore-drilling operations in the United States. It already must conform to state laws for its land-based operations.[22] In choosing to adopt a regime reliant on state and federal law, Congress knowingly rejected interstate uniformity as a goal of OCSLA. *See Gulf Offshore*, 453 U.S. at 487.

In fact, California's laws are applied offshore in other instances where Louisiana's and Texas's are not. For example, under § 328 of the Clean Air Act, for OCS facilities located within 25 miles of a State, Environmental Protection Agency ("EPA") regulations are to be "the same as would be applicable if the source were located in the corresponding onshore area." 42 U.S.C. § 7627(a)(1). This includes "[s]tate and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting." *Id.* States can seek delegation from EPA to enforce

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[22] Petitioner's drilling operations in Guatemala, Iraq, and Russia raise substantial doubt that petitioner otherwise benefits from regulatory simplicity.

these requirements, *see id.* § 7627(a)(3), and California has done so, *see* 40 C.F.R. § 55.15. However, § 328 does not apply to the central and western Gulf of Mexico, and emissions there are regulated by the Interior Secretary.

2. Petitioner's contention (at 46-47) that federal agencies enforcing state laws is "anomalous" ignores multiple instances where the federal government is tasked with enforcing state law. On federal enclaves, federal law-enforcement officers are charged with enforcing state criminal law, adopted as federal law under the Assimilative Crimes Act, 18 U.S.C. § 13. In national parks, federal law-enforcement officers enforce overlapping state and federal laws and regulations. And, in federal facilities, federal agencies and departments are required to comply with federal, state, and local clean-air, clean-water, and hazardous-waste standards. *E.g.*, 33 U.S.C. § 1323 (water-pollution standards); 42 U.S.C. § 7418 (air-pollution standards); 42 U.S.C. § 6961 (solid- or hazardous-waste standards). EPA is tasked with enforcing violations of these various laws on federal facilities. *Id.*

Petitioner's argument (at 46-47) also fails to address specific OCSLA provisions capable of relieving the "burdens" on federal officials administering OCSLA. *See also* U.S. Br. 8, 30-31. For example, 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. Second, the Secretary is required to "cooperate with the relevant departments and agencies of the Federal Government and of the affected States" to enforce "safety, environmental, and conservation laws and regulations." 43 U.S.C. § 1334(a). Accordingly, the burden of enforcing state

safety, environment, and conservation laws does not fall exclusively on federal officers. Third, the Secretary is permitted to enter cooperative agreements with States "to carry out applicable Federal and State laws, regulations, and stipulations." *Id.* § 1345(e). Therefore, if the federal government does not want to enforce particular state laws, the Secretary can enlist States to do so.

3. Petitioner's assertion (at 48) that existing compensation agreements will have to be rewritten has no factual support. To the contrary, an audit of payroll practices on the OCS indicates that contracts between operators and their employees or their unions already apply California wage-and-hour laws on the platforms or contain provisions that mirror California laws.[23] Indeed, petitioner also already has adopted certain California wage-and-hour practices that do not exist in the FLSA, such as paying employees like respondent double overtime. Wage Order 16, covering offshore-drilling activities, provides a safe harbor to employers that have entered into collective-bargaining agreements. *See* 8 Cal. Code Regs. § 11160.3(H)(2) (providing that certain provisions do not apply if a "collective bargaining agreement expressly provides otherwise"); Cal. Lab. Code §§ 510(a)(2), 514

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[23] *See*, *e.g.*, Answering Br. 6, 10, *Curtis v. Irwin Indus., Inc.*, No. 16-56515 (9th Cir. Feb. 28, 2018) (Collective Bargaining Agreement, stating: "The parties to this Agreement recognize and agree that Industrial Wage Order 16-2001 covers [Irwin's] operation and recognize the applicability of and incorporate the provisions of Industrial Wage Order 16-2001"); *Jensen v. Safety Equip. Corp.*, No. 2:18-cv-02890-RGK-GJS, ECF #28-12, at 1 (C.D. Cal. July 5, 2018) ("This [employment] Agreement includes ... the duties imposed on employees by law pursuant [to] the California Labor Code, all of which are incorporated herein by reference.").

(same). Wage Order 16 also contains an alternative workweek schedule drilling operators can adopt to largely avoid paying overtime to offshore workers. *See* 8 Cal. Code Regs. § 11160.3(B)(1)(h). Operators and employees therefore can continue to rely on mutually beneficial agreements and comply with the law.

4. Petitioner's concern (at 48-49) that States could destroy offshore drilling by enacting increasingly stringent requirements to be imputed offshore through OCSLA is mistargeted. The articles petitioner cites (at 49) contend California *already* is trying to regulate offshore drilling but is doing so through regulation of *on*shore facilities and pipelines, upon which offshore facilities rely. For its argument to carry any weight in this case, however, petitioner must demonstrate how OCSLA precludes such exercises of state sovereignty to state onshore activity, which Congress clearly did not intend to displace.

5. Petitioner's concern (at 49-50) about "opportunistic plaintiffs" applies equally to companies operating on land. Changes in state wage-and-hour laws in California have not destroyed onshore business through "windfall[s]" and "massive retroactive liability"; there is no reason to fear the offshore-drilling industry would fare differently.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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