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Parker Drilling Management Services, Ltd. v. Newton: The Supreme Court Resolves the Circuit Split Regarding the OCSLA Choice-of-Law Provision

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I. OVERVIEW

Brian Newton (Newton) was employed by Parker Drilling Management Services, Ltd. (Parker) and spent fourteen-day shifts on platforms working twelve hours per day on duty and twelve hours per day on standby.¹ Newton was paid for on-duty time, but he was not paid for time he was on standby.² The drilling platform on which Newton worked was off the coast of California; during his time on standby, he was not permitted to leave the platform. Newton’s pay rate was above the federal minimum wage.³ Newton was part of a class action suit that alleged violations of state wage laws, and Parker removed the case to federal court.⁴

The United States Circuit Court of Appeals for the Ninth Circuit held that Newton’s claims should not have been dismissed at the district court level because California minimum wage and overtime laws were able to be applied under the Outer Continental Shelf Lands Act (OCSLA).⁵ The Ninth Circuit decided that a gap in federal law was not a requirement when determining whether state law could apply on the Outer Continental Shelf (OCS).⁶ It reasoned that the more generous provisions concerning minimum wage and overtime under California state law were not

1. Parker Drilling Mgmt. Servs., Ltd. v. Newton, 139 S. Ct. 1881, 1886, 2019 AMC 1548, 1549 (2019).

2. *Id.*

3. *Id.*

4. *Id.*

5. Newton v. Parker Drilling Mgmt. Servs., Ltd., 881 F.3d 1078, 1099, 2018 AMC 1030, 1058-59 (9th Cir. 2018).

6. *Id.* at 1081, 2018 AMC at 1031.

inconsistent with the federal scheme.⁷ Because of a circuit split between the Fifth and Ninth Circuits concerning the interpretation of the OCSLA choice-of-law provision, the Supreme Court of the United States granted certiorari.⁸ The Supreme Court *held* that for state law to apply on the OCS, there must be a gap in federal law such that federal law does not address the issue at hand. *Parker Drilling Management Services, Ltd. v. Newton*, 139 S. Ct. 1881, 1892, 2019 AMC 1548, 1559 (2019).

II. BACKGROUND INFORMATION

OCSLA was enacted to define the OCS and to impose the responsibility of administering mineral exploration and development on the Secretary of the Interior.⁹ OCSLA states, in relevant part:

- (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf
- (2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary . . . , the . . . laws of each adjacent State . . . are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf¹⁰

One of the main consequences of the enactment of OCSLA was the question of which body of law applies to “the seabed, the subsoil, and the fixed structures . . . on the Outer Continental Shelf.”¹¹ Because federal law is not a complete body of law capable of handling all legal issues that could arise on the OCS, OCSLA asserts that state law should be applied when it is not inconsistent with applicable federal law.¹² Under this system, state laws are applied as surrogate federal law.¹³ However, Congress did not intend for the OCS to be included within the boundaries of the adjacent states.¹⁴

The OCSLA choice-of-law provision has been interpreted several times by the courts. In *Rodrigue v. Aetna Casualty & Surety Co.*, the

7. *Id.* at 1097, 2018 AMC at 1056.

8. *Parker*, 139 S. Ct. at 1886-87, 2019 AMC at 1550.

9. *OCS Lands Act History*, BUREAU OCEAN ENERGY MGMT., <https://www.boem.gov/OCS-Lands-Act-History/> (last visited Apr. 22, 2020).

10. 43 U.S.C. § 1333(a)(1)-(2) (2012).

11. *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 355, 1969 AMC 1082, 1085 (1969).

12. *Id.* at 357, 1969 AMC at 1086.

13. *Id.*

14. *Newton v. Parker Drilling Mgmt. Servs., Ltd.*, 881 F.3d 1078, 1085, 2018 AMC 1030, 1036 (9th Cir. 2018).

Supreme Court of the United States held that maritime law did not apply to claims of the families of men who died working on a platform on the OCS.¹⁵ The Court instead considered OCSLA and held that, instead of maritime law governing disputes on platforms on the OCS, federal law should be exclusively applied with state law only serving as a surrogate.¹⁶ Two lines of jurisprudence extended from the *Rodrigue* decision: *Continental Oil Co. v. London Steam-Ship Owners' Mutual Insurance Ass'n* and *Union Texas Petroleum Corp. v. PLT Engineering, Inc.*¹⁷

The *Continental Oil* decision supported the finding that OCSLA should be interpreted to mean that state law should fill gaps in the federal law.¹⁸ In that case, a vessel hit a platform attached to the OCS, and a maritime claim was filed because of the incident.¹⁹ However, the platform owner also filed a claim under the direct action statute of Louisiana, which the court dismissed.²⁰ On appeal, the Fifth Circuit considered whether the dismissed claim was viable under OCSLA as a state law necessary to supplement the federal law.²¹ The court noted that there was a “fully effective maritime right and remedy” available for the claims before it.²² The platform owner argued that “applicable” means “applicable to the subject matter in question.”²³ The court rejected this argument, noting that this would result in the incident being treated as if it had happened within Louisiana waters, or it would “impute[] to Congress the purpose generally to export the whole body of adjacent law onto the Outer Continental Shelf.”²⁴ The court decided that either of these outcomes would not be in accordance with the intention of the legislators in enacting OCSLA.²⁵ It decided that “applicable” means only when needed to fill a gap in the existing federal law.²⁶ It referred to the Supreme Court’s precedent in *Rodrigue*, which demonstrated that gaps in federal law should be supplemented with state law.²⁷ Additionally, the court reviewed the

15. *Rodrigue*, 395 U.S. at 355, 1969 AMC at 1084.

16. *Id.* at 357, 1969 AMC at 1086.

17. *Newton*, 881 F.3d at 1088-89, 2018 AMC at 1042-44; see *Union Tex. Petrol. Corp. v. PLT Eng'g, Inc.*, 895 F.2d 1043 (5th Cir. 1990); *Cont'l Oil Co. v. London S.S. Owners' Mut. Ins. Ass'n*, 417 F.2d 1030, 1969 AMC 1882 (5th Cir. 1969).

18. See *Newton*, 881 F.3d at 1088, 2018 AMC at 1042.

19. *Cont'l Oil*, 417 F.2d at 1032, 1969 AMC at 1885.

20. *Id.* at 1033, 1969 AMC at 1886.

21. *Id.*

22. *Id.* at 1035, 1969 AMC at 1889.

23. *Id.*

24. *Id.*, 1969 AMC at 1890.

25. *Id.* at 1035-36, 1969 AMC at 1890.

26. *Id.* at 1036, 1969 AMC at 1890.

27. *Id.*, 1969 AMC at 1890-91.

legislative history of the statute, finding several examples of legislators stating that state law should be applied in the instance of a void in federal law.²⁸ The court decided that there was no such gap in the federal law in the situation with which it was presented.²⁹

The *PLT Engineering* decision focused on a pipeline construction job in which a platform owner contracted with an engineering company.³⁰ The engineering firm completed its work successfully, but the platform owner eventually became aware that the contractor had not paid its subcontractors.³¹ The platform owner withheld pay from the contractor and instituted an action based on a contractual provision.³² The Fifth Circuit held that maritime law should not be applied, but instead, OCSLA should apply to the dispute.³³ The court held that three conditions must be met for state law to apply under OCSLA: “(1) The controversy must arise on a situs covered by OCSLA (i.e. the subsoil, seabed, or artificial structures permanently or temporarily attached thereto). (2) Federal maritime law must not apply of its own force. (3) The state law must not be inconsistent with Federal law.”³⁴ The court decided that the conditions were met to adopt state law as surrogate federal law.³⁵

Next, in *Chevron Oil Co. v. Huson*, the Supreme Court of the United States agreed with the Fifth Circuit’s reasoning, noting that state law is meant to fill gaps in federal law.³⁶ That case involved a personal injury suit by an employee of Chevron, and there was a dispute about the statute of limitations for filing suit.³⁷ The Fifth Circuit held that federal law should apply in that situation, but the Supreme Court reversed and held that Louisiana state law should apply to determine the time frame for filing of suit.³⁸ The Court noted that Congress’s intent was to use state law to fill gaps in federal law, not to create federal common law.³⁹

The United States Circuit Court of Appeals for the Ninth Circuit addressed the choice-of-law issue in *Newton v. Parker Drilling*

28. *Id.*, 1969 AMC at 1891.

29. *Id.*

30. *Union Tex. Petrol. Corp. v. PLT Eng’g, Inc.*, 895 F.2d 1043, 1045-46 (5th Cir. 1990).

31. *Id.* at 1046.

32. *Id.*

33. *Id.*

34. *Id.* at 1047.

35. *Id.*

36. *Chevron Oil Co. v. Huson*, 404 U.S. 97, 102, 1972 AMC 20, 24 (1993).

37. *Id.* at 98, 1972 AMC at 21.

38. *Id.* at 99-100, 1972 AMC at 21-22.

39. *Id.* at 102-05, 1972 AMC at 24-25.

*Management Services, Ltd.*⁴⁰ In that case, the court held that there did not need to be a gap in existing federal law in order for state law to apply.⁴¹ It acknowledged that the dispute that the Fifth Circuit had previously addressed and that it needed to address in the case was in determining the meaning of the terms “applicable” and “not inconsistent” within the provision.⁴² The plaintiff-employee argued that the *PLT Engineering* test applied and that there did not need to be a gap in federal law for the adjacent state’s law to apply, and therefore, the defendant-employer should be required to comply with federal and state minimum wage and hour requirements.⁴³ The defendant-employer argued that there needed to be a gap in federal law for state law to apply on the OCS and that the Fair Labor Standards Act (FLSA) is a comprehensive scheme of law; therefore, the state law did not apply, and the employer did not need to comply with California’s minimum wage and hour requirements.⁴⁴ The Ninth Circuit considered Congress’s concern that federal law was not designed to be a complete body of law on its own but also noted that Congress did not agree that the OCS should be incorporated into the states.⁴⁵ The court surveyed the opinions from prior cases interpreting the OCSLA choice-of-law provision, and it concluded that there were three questions to ask to decide whether state law should be applied: whether the situs of the controversy is on the OCS; whether federal law is applicable to the dispute; and if there is applicable federal law, consider the content of the applicable federal and state law and ask whether the state law is inconsistent with the federal law.⁴⁶ The court decided that the California labor standards laws were applicable, and that “inconsistent” could mean incompatible, incongruous, or inharmonious.⁴⁷ It decided that the more generous provisions of the California state labor laws were not inconsistent with the FLSA, and therefore, the district court erred in dismissing the claims brought by the plaintiff-employee.⁴⁸

The Supreme Court granted certiorari.⁴⁹

40. *Newton v. Parker Drilling Mgmt. Servs., Ltd.*, 881 F.3d 1078, 2018 AMC 1030 (9th Cir. 2018).

41. *Id.* at 1081-82, 2018 AMC at 1031.

42. *Id.* at 1084, 2018 AMC at 1035.

43. *Id.*

44. *Id.*

45. *Id.* at 1085, 2018 AMC at 1036.

46. *Id.* at 1088-89, 2018 AMC at 1041.

47. *Id.* at 1093, 2018 AMC at 1050.

48. *Id.* at 1097, 2019 AMC at 1056.

49. *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881, 1886-87, 2019 AMC 1548, 1550 (2019).

III. COURT'S DECISION

In the noted case, the Supreme Court of the United States resolved the circuit split by holding that state law is only applied on the OCS when federal law does not address the issue at hand.⁵⁰ The Court interpreted the OCSLA provision stating that state laws should be adopted as federal law as long as they are “applicable and not inconsistent” with federal law.⁵¹ First, it considered the context in which the language is placed.⁵² Next, the language of the provision was examined in context with the rest of the statute and the purpose for which it was enacted.⁵³ Last, the Court further established its position by noting that Newton’s interpretation of the choice-of-law provision would render much of OCSLA unnecessary, that the interpretation by the Court is consistent with the federal enclave model that OCSLA expressly invokes, and that precedent has treated this provision of OCSLA in accord with the Court’s interpretation.⁵⁴

First, the Supreme Court looked to the statutory scheme in which the choice-of-law provision was enacted to read it in context.⁵⁵ Newton’s interpretation of the statute asserted that the requirement that the law be “applicable” simply meant that the law was relevant to the subject matter.⁵⁶ However, the Court was not persuaded by this interpretation, reasoning that if the term “applicable” just meant relevant to the subject matter, the term would add nothing because an irrelevant law would never be applicable.⁵⁷ Parker’s interpretation asserted that the word “applicable” meant “necessary to fill a gap in the law.”⁵⁸ The Court reasoned that this would create difficulty because if the state law is necessary to fill a gap in the federal scheme, the requirement that the state law is “not inconsistent” with federal law could be rendered meaningless.⁵⁹ The Court noted that at the time OCSLA was enacted, the term “inconsistent” could have meant either “incompatible” or “inharmonious.”⁶⁰ Therefore, the Court was convinced that the terms standing alone could not resolve the issue, and instead, the terms should be considered in conjunction with each other and

50. *Id.* at 1892, 2019 AMC at 1559.

51. *Id.* at 1887-88, 2019 AMC at 1551-52.

52. *Id.* at 1888, 2019 AMC at 1552.

53. *Id.* at 1888-89, 2019 AMC at 1552-53.

54. *Id.* at 1889-92, 2019 AMC at 1553-59.

55. *Id.* at 1888, 2019 AMC at 1552.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*, 2019 AMC at 1552-53.

the rest of the statute.⁶¹ Parker argued that “applicable” together with “not inconsistent” meant that a state law has bearing on a situation when federal law does not address the subject matter, and that interpretation was convincing to the Court.⁶²

The Court next stated that the decisions it made before the enactment of OCSLA showed that federal law is applied on the OCS.⁶³ It also noted that OCSLA gives complete “jurisdiction, control, and power of disposition” of the OCS to the federal government but does not give the states any “interest in or jurisdiction over it.”⁶⁴ The Court explained that OCSLA regards the OCS as if it were an area of exclusive federal jurisdiction located within a particular state; therefore, federal law applies on the OCS with state law acting as surrogate federal law only if the state law is “applicable” and “not inconsistent” with the federal law.⁶⁵

The Court decided that interpretation of the provision in context with the rest of OCSLA confirms that state laws are “applicable and not inconsistent” with federal law only if there is a gap in the federal law.⁶⁶ Thus, only certain state laws are applied on the OCS; those state laws are adopted as federal law and enforced by federal officials.⁶⁷ The Court reasoned that because federal law is so prevalent and state law merely plays a secondary role in the federal scheme, the OCS should not be treated as an extension of the state.⁶⁸ Furthermore, as the OCS is not an extension of a state, a different preemption analysis is required to decide whether state law applies than the preemption analysis that is performed to decide whether a state law is preempted by a federal law within a state.⁶⁹ The Court decided that the choice-of-law analysis on the OCS should ask whether federal law has addressed the issue at hand, and if it has, state law should not apply.⁷⁰ In other words, state law should only apply as federal law on the OCS when federal law presents a gap such that the particular issue at hand has not been addressed.⁷¹

After interpreting the choice-of-law provision of the OCSLA, the Court further supported its holding that state law should only apply on the

61. *Id.*, 2019 AMC at 1553.

62. *Id.*

63. *Id.*

64. *Id.* at 1888-89, 2019 AMC at 1553 (citing 43 U.S.C. §§ 1332(1), 1333(a)(3) (2012)).

65. *Id.* at 1889, 2019 AMC at 1553 (citing 43 U.S.C. §§ 1333(a)(1), 1333(a)(2)(A)).

66. *Id.*, 2019 AMC at 1553-54.

67. *Id.*

68. *Id.*, 2019 AMC at 1554.

69. *Id.*

70. *Id.*

71. *Id.*

OCS in the event of a gap in federal law.⁷² First, the Court asserted that if Newton's interpretation were accepted, the OCS would be treated no differently than the adjacent state, making much of OCSLA purposeless.⁷³ The Court reasoned that if the OCS were an extension of the adjacent state, Congress would not have needed to include a provision limiting pertinent state law to that which is "applicable and not inconsistent" with federal law because state law would apply automatically.⁷⁴

Next, the Court noted that its interpretation of the choice-of-law provision of OCSLA is consistent with the federal enclave model and the development of the statute.⁷⁵ The Court mentioned that the statute "expressly invokes" the federal enclave model.⁷⁶ It explained that in a traditional enclave, the only state law applied is the state law that was "in effect at the time of the transfer" of the land to enclave status.⁷⁷ However, that state law must not be in conflict with federal law; after the area becomes a federal enclave, there is a presumption that newly enacted state law does not apply to the enclave.⁷⁸ The Court also considered that the original form of OCSLA "treated the OCS as a federal enclave and adopted only the 'applicable and not inconsistent' laws of the adjacent State that were in effect as of the effective date of the Act."⁷⁹ The Court reasoned that this suggests that in enacting OCSLA, Congress intended to provide a detailed legal framework. After that framework was available to govern activities on the OCS, Congress did not intend for state law to be applied unless there is a gap in federal law.⁸⁰ The Court further explained that by amending OCSLA to adopt state law continually, Congress intended to mirror the Assimilative Crimes Act in allowing state law to fill gaps in federal law, confirming that Congress intended for the OCS to be a federal enclave.⁸¹

Last, the Court reviewed its precedent to confirm its position that federal law applies on the OCS unless state law acts in its gap-filling capacity.⁸² First, the Court considered *Rodrigue*, in which it determined

72. *Id.*

73. *Id.*, 2019 AMC at 1554-55.

74. *Id.* at 1889-90, 2019 AMC at 1555.

75. *Id.* at 1889, 2019 AMC at 1554.

76. *Id.*

77. *Id.* at 1890, 2019 AMC at 1555 (quoting *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 100 (1940)).

78. *Id.*

79. *Id.*, 2019 AMC at 1555-56.

80. *Id.* at 1890-91, 2019 AMC at 1556.

81. *Id.* at 1891, 2019 AMC at 1556-57.

82. *Id.*, 2019 AMC at 1557.

whether plaintiffs affected by the death of a family member on the OCS could pursue lawsuits under both federal and state law.⁸³ The Court noted that it held that in the event that federal law is inadequate, state law would apply to fill in the gaps.⁸⁴ Next, the Court examined *Huson*, in which again, it held that when state law was needed under OCSLA to fill in gaps in federal law, state law should be applied.⁸⁵ Last, it reflected on its decision in *Gulf Offshore Co. v. Mobil Oil Corp.*, in which it held that exclusive control over the OCS belonged to the federal government, and state law is only effective to the extent that it fills in gaps in the federal law.⁸⁶ The Court emphasized that these prior opinions would not make sense if the OCS was treated as an extension of the adjacent state.⁸⁷ The Court reiterated its holding: “All law on the OCS is federal, and state law serves a supporting role, to be adopted only where there is a gap in federal law’s coverage.”⁸⁸

Finally, Newton’s claims were resolved by the Court.⁸⁹ Newton’s claims related to payment for standby time under California law failed because the area of payment for standby time is governed by federal law.⁹⁰ Similarly, his claims under California wage laws were not viable because the FLSA provided a minimum wage provision.⁹¹ Because federal law addressed the issues within Newton’s claims, state law did not apply, and Newton could not recover based on the California law.⁹² The holding was vacated and the case was remanded for the trial court to revisit other claims presented at that level.⁹³

IV. ANALYSIS

The Court’s decision in the noted case is consistent with prior Fifth Circuit jurisprudence.⁹⁴ Because of the circuit split, the Court undertook interpretation of the OCSLA choice-of-law provision.⁹⁵ The Court

83. *Id.*

84. *Id.*, 2019 AMC at 1557-58.

85. *Id.* at 1892, 2019 AMC at 1558.

86. *Id.*, 2019 AMC at 1558-59.

87. *Id.*, 2019 AMC at 1559.

88. *Id.*

89. *Id.* at 1893, 2019 AMC at 1559.

90. *Id.*, 2019 AMC at 1559-60.

91. *Id.*, 2019 AMC at 1560.

92. *Id.*

93. *Id.*

94. *See* *Cont’l Oil Co. v. London S.S. Owners’ Mut. Ins. Ass’n*, 417 F.2d 1030, 1969 AMC 1882 (5th Cir. 1969).

95. *Parker*, 139 S. Ct. at 1886, 2019 AMC at 1549-50.

specifically focused on determining which state laws meet the requirements to be adopted as federal law applicable to the OCS under the provision.⁹⁶ The Court determined that state law should be applied as surrogate federal law when there is a gap in the federal law.⁹⁷ The decision echoed the ideas of the line of Fifth Circuit jurisprudence, which stemmed from *Rodrigue* and moved forward to *Continental Oil*.⁹⁸

The Court's decision supported its prior decision in *Rodrigue* in several ways. The Court's decisions both in the noted case and in the *Rodrigue* case established that the OCS is under the federal enclave model, which only applies state law "in effect at the time of the transfer of jurisdiction" unless that state law conflicts with federal policy.⁹⁹ Additionally, both decisions explicitly stated that state law should be applied as surrogate federal law under OCSLA when federal law does not address the issue at hand.¹⁰⁰ However, the Court's decision in the noted case was necessary to aid in understanding the choice-of-law provision for legal issues on the OCS, specifically what is needed to satisfy the requirement that federal law does not address the issue.

When interpreting OCSLA to decide what is needed to satisfy this requirement, the Court agreed with the Fifth Circuit's prior holding in *Continental Oil*, resolving the circuit split between the Fifth and Ninth Circuits.¹⁰¹ The Fifth Circuit in *Continental Oil*, similar to the Supreme Court in *Rodrigue*, noted that state law applied only as surrogate law when federal law is not available.¹⁰² The court's holding in *Continental Oil* is more specific than the holding in *Rodrigue*, although it uses the language from the *Rodrigue* decision to support the position that state law should only apply under OCSLA when there is a gap or void in federal law such that the issue is not able to be resolved with federal law alone.¹⁰³ The Court's decision in the noted case is consistent with the *Continental Oil* holding, stating that "state law serves a supporting role [to federal law], to

96. *Id.*, 2019 AMC at 1548-49.

97. *Id.*, 2019 AMC at 1549.

98. *Id.*

99. *Id.* at 1890, 2019 AMC at 1555 (quoting *Paul v. United States*, 371 U.S. 245, 269 (1963)); see also *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 355, 1969 AMC 1082, 1084 (1969).

100. *Parker*, 139 S. Ct. at 1886, 2019 AMC at 1549; *Rodrigue*, 395 U.S. at 357, 1969 AMC at 1086.

101. *Parker*, 139 S. Ct. at 1886, 2019 AMC at 1549-50.

102. *Rodrigue*, 395 U.S. at 357, 1969 AMC at 1086; *Cont'l Oil Co. v. London S.S. Owners' Mut. Ins. Ass'n*, 417 F.2d 1030, 1035, 1969 AMC 1882, 1888 (5th Cir. 1969).

103. *Cont'l Oil*, 417 F.2d at 1036, 1969 AMC at 1890-91 (citing *Rodrigue*, 395 U.S. at 357, 1969 AMC at 1086).

be adopted only where there is a gap in federal law's coverage."¹⁰⁴ Therefore, the Court resolved the circuit split in favor of the Fifth Circuit's interpretation of OCSLA's choice-of-law provision.

The interpretation of the statute by the Court in the noted case does, however, present some challenges. As the Ninth Circuit in *Newton* pointed out, Congress could have used the word "necessary" instead of "applicable" if it intended for state law to be applied only in times of need for a gap-filling mechanism.¹⁰⁵ However, Congress did not choose to use the word "necessary," so arguably, it did not intend for a gap or void in federal law to be a requirement when determining whether state law applies on the OCS.¹⁰⁶ Additionally, the Ninth Circuit noted that the FLSA allows for more generous labor and employment regulatory schemes, so the California wage and hour laws might not be "antagonistic" or "inconsistent" with the federal scheme.¹⁰⁷ However, while the Court's holding might not explain these inconsistencies, the decision is consistent with the Fifth Circuit's jurisprudence and the Supreme Court's prior holdings considering the choice-of-law provision of OCSLA.¹⁰⁸

V. CONCLUSION

The Court's interpretation of the provision is likely the correct one for three reasons. First, throughout the jurisprudence concerning the choice-of-law provision of OCSLA, Congress has failed to amend the Act or more clearly state the requirements for applying state law to the OCS. Because of Congress's lack of objection to prior interpretations suggesting that a gap in federal law is necessary to apply state law, Congress seems to have tacitly accepted the interpretations set forth in the decisions made before the Ninth Circuit created the split.¹⁰⁹ Furthermore, the Act's express invocation of the federal enclave model supports the Court's interpretation because federal enclaves are "land over which the United States government exercises exclusive federal legislative jurisdiction."¹¹⁰ Last,

104. *Parker*, 139 S. Ct. at 1892, 2019 AMC at 1559.

105. *Newton v. Parker Drilling Mgmt. Servs., Ltd.*, 881 F.3d 1078, 1091, 2018 AMC 1030, 1045-46 (9th Cir. 2018).

106. *See id.*

107. *Id.* at 1097, 2018 AMC at 1055-56.

108. *Parker*, 139 S. Ct. at 1892, 2019 AMC at 1559; *see also Cont'l Oil*, 417 F.2d 1030, 1969 AMC 1882.

109. *See Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 1969 AMC 1082 (1969); *Cont'l Oil Co. v. London S.S. Owners' Mut. Ins. Ass'n*, 417 F.2d 1030, 1969 AMC 1882 (5th Cir. 1969).

110. *Rodrigue*, 395 U.S. at 355, 357, 1969 AMC at 1084, 1086; *Kelly v. Lockheed Martin Servs. Grp.*, 25 F. Supp. 2d 1, 3 (D.P.R. 1998) (defining a federal enclave).

the Act states that “the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition,” further supporting that Congress intended for the primary law on the OCS to be federal law, and state law should only be applied when there is a gap in federal law.¹¹¹

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111. 43 U.S.C. § 1332(1) (2012).

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