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Parker Drilling Mgmt. Servs., Ltd. v. Newton: Drilling Down on the Law of the Outer Continental Shelf

William Dakil

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ONE J

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PARKER DRILLING MGMT. SERVS., LTD.
v. *NEWTON*: DRILLING DOWN ON THE LAW
OF THE OUTER CONTINENTAL SHELF

WILLIAM DAKIL*

I. Introduction

In the United States, oil and natural gas are the two largest sources of energy consumed, fueling huge portions of the Country's transportation, industrial, and residential needs.¹ When one imagines the production of oil and gas, images of swinging pump-jacks or a network of pipelines often come to mind. However, so do images of offshore oilrigs operating on top of the vast blue expanse of the ocean. Generally, offshore oilrigs operate off of the coast of a country on what is known as the Outer Continental Shelf ("OCS"). Oil and gas production from the OCS makes up a significant portion of the United States' energy supply.² In 2019, Offshore Federal production produced roughly 683 million barrels of oil and around 1.03 trillion cubic feet of gas, almost exclusively from just the Gulf of Mexico.³ Energy sourced from the OCS "accounts for about [sixteen] percent of the United States' domestic oil production and [three] percent of domestic

* I would like to thank my wife, Connelly, and the editorial board of ONE-J for all of their help and support with this work.

1. *What are the major sources and users of energy in the United States?*, AM. GEOSCIENCES INST., <https://www.americangeosciences.org/critical-issues/faq/what-are-major-sources-and-users-energy-united-states> (last visited Jan. 25, 2020).

2. *Oil and Gas Energy*, BUREAU OF OCEAN ENERGY MGMT., <https://www.boem.gov/oil-gas-energy> (last visited Jan. 26, 2020).

3. *Id.*

natural gas production.”⁴ Despite the vast amount of production the OCS is currently yielding, much of the energy on the United States’ OCS remains untapped. Based on a 2016 National Assessment by the Bureau of Ocean Energy Management, undiscovered fields on the OCS are estimated to contain about ninety billion barrels of oil and 327 trillion cubic feet of natural gas.⁵ As such, OCS mining activities are an essential part of the Trump Administration’s America First Energy Agenda, which is focused on domestic energy production, revenue generation, and creating new employment opportunities.⁶

Accessing all of the current and potential resources on the OCS requires a concerted effort between industry players from the private sector operating under the regulatory ambit of the United States federal government. However, confusion can arise when the regulations of the federal government differ from those imposed by the coastal state off of which an OCS oilrig is operating. This note reviews how the Supreme Court of the United States recently addressed that confusion and looks at potential effects the Court’s decision might have for oil and gas employers and employees working on the OCS moving forward.

II. Law Before the Case

In 1953 Congress passed the Outer Continental Shelf Lands Act (“OCSLA”) which granted the federal government exclusive control and jurisdiction over the OCS.⁷ “Before the OCSLA, coastal States and the Federal Government disputed who had the right to lease submerged lands on the continental shelf.”⁸ The Act “defines the OCS as all submerged lands lying seaward of state coastal waters (3 miles off shore), which are under U.S. jurisdiction.”⁹ Pursuant to the OCSLA, the Secretary of the Interior oversees the energy exploration and development of the OCS by granting

4. *Id.*

5. Matt Frye, *Assessment of Undiscovered Oil and Gas Resources of the Nation’s Outer Continental Shelf, 2016a*, BUREAU OF OCEAN ENERGY MGMT., <https://www.boem.gov/sites/default/files/documents/oil-gas-energy/resource-evaluation/resource-assessment/2016a.pdf> (last visited Jan. 24, 2019).

6. Katharine S. Macgregor, *OCS Oil/Gas Development*, DEP’T. OF THE INTERIOR (July 12, 2007), <https://www.doi.gov/ocl/ocs-oilgas-development>.

7. *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881, 1887 (2019) (citing 43 U.S.C.A. § 1331(a) (Westlaw current through Pub. L. 116-138)).

8. *Id.*

9. *OCS Lands Act History*, BUREAU OF OCEAN ENERGY MGMT., <https://www.boem.gov/oil-gas-energy/leasing/ocs-lands-act-history> (last visited Jan. 26, 2019).

the Secretary the power to issue oil and gas leases and promulgate all necessary regulations to further the OCSLA's goals.¹⁰ The purpose of the OCSLA is to make the OCS open for exploration, while protecting the environment and other national concerns.¹¹ The OCSLA enumerates "detailed provisions for the exercise of exclusive jurisdiction in the [OCS] and for the leasing and development of the resources of the seabed."¹² Under the OCSLA "federal law applies 'to the same extent as if the [OCS] were an area of exclusive Federal jurisdiction located within a State.'"¹³ The OCSLA goes on to state the following regarding the application of state law on to the OCS:

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, now in effect or hereafter adopted, amended, or repealed are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf¹⁴

The issue in *Parker Drilling Mgmt. Servs., Ltd. v. Newton* was the interpretation of the OCSLA's language stating that state laws should be adopted as surrogate federal law on the OCS, provided "they are applicable and not inconsistent with" existing federal laws.¹⁵

III. Statement of the Case

A. Facts

The OCSLA establishes that federal law applies to the Outer Continental Shelf ("OCS") and all attachments thereon.¹⁶ Pursuant to the

10. *Id.*

11. *See* 43 U.S.C.A. § 1332 (Westlaw current through Pub. L. 116-138).

12. *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881, 1887 (2019) (citing *United States v. Maine*, 420 U.S. 515, 527 (1975)).

13. *Id.* (quoting 43 U.S.C.A. § 1333(a)(1) (Westlaw current through Pub. L. 116-138)) (bracketing contained in original).

14. 43 U.S.C.A. § 1332(a)(2)(A) (Westlaw current through Pub. L. 116-138).

15. *Parker Drilling*, 139 S. Ct. at 1887-88 (quoting 43 U.S.C. § 1333(a)(2)(A)).

16. *See* 43 U.S.C.A. § 1332(1) (Westlaw current through Pub. L. 116-138).

OCSLA, all law on the OCS is federal law which is to be administered by federal officials.¹⁷ The OCSLA goes on to deem OCS-adjacent State laws to stand-in as federal law “[t]o the extent that they are applicable and not inconsistent with” other federal law.¹⁸

From 2013 to 2015, respondent Brian Newton worked for petitioner Parker Drilling Management Services (“Parker”).¹⁹ Newton worked on a drilling platform operating on the OCS off of the coast of California.²⁰ Newton’s work consisted of fourteen-day shifts on the drilling platform, where he would be on duty for twelve hours a day and on standby for the remaining twelve hours of the day.²¹ While on standby, and at all times during a fourteen-day shift, Newton was required to remain on the drilling platform.²² Newton was paid “an hourly rate well above California and federal minimum wage”²³ for the twelve hours a day he was on duty, however he was not paid for the hours he was on standby.²⁴ Herein lies the controversy. Newton filed a class action suit in California state courts claiming that Parker had violated California minimum wage and overtime laws by refusing to pay him while he was on standby.²⁵

B. Procedural History

In February 2015, Newton filed a putative class action lawsuit in California state court, alleging that Parker violated California’s state wage and overtime laws.²⁶ Parker removed the case to federal court.²⁷ The district court applied precedent from the U.S. Court of Appeals for the Fifth Circuit, holding that under the OCSLA “federal law governs and state law only applies to the extent it is necessary ‘to fill a significant void or gap’ in federal law.”²⁸ Because the Fair Labor Standards Act of 1938 (“FLSA”)

17. 43 U.S.C.A. § 1333(a)(1) (Westlaw current through Pub. L. 116-138).

18. 43 U.S.C.A. § 1333(a)(2)(A) (Westlaw current through Pub. L. 116-138).

19. *Newton v. Parker Drilling Mgmt. Servs., Ltd.*, 881 F.3d 1078, 1082 (9th Cir. 2018), *cert. granted*, 139 S. Ct. 914 (2019).

20. *Parker Drilling*, 139 S. Ct. at 1886.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Newton*, 881 F.3d at 1082.

25. *Parker Drilling*, 139 S. Ct. at 1886.

26. *Newton*, 881 F.3d at 1082.

27. *Parker Drilling*, 139 S. Ct. at 1886.

28. *Newton v. Parker Drilling Mgmt. Servs., Inc.*, No. CV 15-02517-RGK (AGRx), 2015 WL 12645746, at *3 (C.D. Cal. Aug. 1, 2015) (citing *Cont'l Oil Co. v. London Steam-Ship Owners' Mut. Ins. Ass'n*, 417 F.2d 1030, 1036 (5th Cir. 1969)).

constitutes a comprehensive, gapless federal wage-and-hour scheme and Newton's claims relied on state law, the District Court granted Parker judgment on the pleadings.²⁹ Newton appealed to the U.S. Court of Appeals for the Ninth Circuit.³⁰

Reviewing the district court's decision de novo,³¹ the Ninth Circuit vacated and remanded.³² The Ninth Circuit found that under the OCSLA state law did not have to fill a gap in federal law to be adopted as surrogate federal law, as the district court had concluded.³³ Rather, the Ninth Circuit held that state law was "applicable" under the OCSLA when it "pertained to the subject matter at hand."³⁴ The appellate court found that the California wage-and-hour law satisfied this standard and was therefore applicable.³⁵ The Ninth Circuit explained that state laws were inconsistent with federal laws only where they were "incompatible, incongruous, [or] inharmonious."³⁶ Based on this, the Ninth Circuit held that the California state wage-and-hour laws were not inconsistent with the FLSA scheme, and as such the California state laws could be applied.³⁷ In order to resolve the disagreements between the Fifth and Ninth Circuits the Supreme Court granted certiorari.³⁸

IV. Supreme Court Decision

The Supreme Court held that where federal law addresses the relevant issue, state law does not constitute surrogate federal law on the OCS, pursuant to the OCSLA. The Court reasoned that based on statutory interpretation of the OCSLA, state laws may be adopted as surrogate federal laws only if federal law does not address the issue. The Court found that this interpretation was consistent with the federal enclave model, which the OCSLA has a textual connection to, as well as the historical development of the statute. The Court also reasoned that this interpretation was more consistent with the Court's previous cases construing the OCSLA. For these reasons, the Court held that California wage-and-hour

29. *Parker Drilling*, 139 S. Ct. at 1886.

30. *Newton*, 881 F.3d at 1083.

31. *Id.*

32. *Id.* at 1081–82.

33. *Id.* at 1081.

34. *Id.* at 1090.

35. *Parker Drilling*, 139 S. Ct. at 1886.

36. *Newton*, 881 F.3d at 1093 (internal citations omitted).

37. *Parker Drilling*, 139 S. Ct. at 1886.

38. *Id.* (internal citation omitted).

law did not provide the rule for decision on the OCS. Therefore, the Court decided that Newton's OCS-based claims which relied on state law failed, and that California's minimum wage laws did not apply on the OCS because the FLSA already addressed the issue.

A. *The Circuit Split*

In *Parker Drilling*, the Supreme Court vacated and remanded the Ninth Circuit's holding that the OCSLA allows for the use of state laws on the OCS, so long as they are "applicable and not inconsistent" with other federal laws.³⁹ Prior to being vacated, the Ninth Circuit's decision created a circuit split with the Fifth Circuit (where most OCS litigation occurs). An understanding of this circuit split helps to shed light on the issues and competing arguments adjudicated by the Supreme Court in this case.

In *Continental Oil Co. v. Steam-Ship Owner's Mutual Insurance Association* ("*Continental*"), the Fifth Circuit held that in order for state law to be applicable on the OCS, pursuant to the OCSLA, there was a requirement that the state law be "necess[ary] to fill a significant void or gap" in federal law.⁴⁰ In *Continental*, a ship collided with and caused damage to an offshore drilling platform operating on the OCS off of the coast of Louisiana.⁴¹ The platform owner filed suit against the shipowner's underwriter in Louisiana District Court, attempting to utilize the Louisiana Direct Action Statute, a state law.⁴² The Direct Action Statute would have permitted the platform owner, who argued that for legal purposes the damages occurred in Louisiana, to sue the ship's liability insurer directly without going through the process of suit and judgment against the shipowner first.⁴³ The platform owner was attempting to apply Louisiana state law despite the fact that the collision was a maritime one, and therefore ample rights and remedies under federal Admiralty law existed.⁴⁴ Based on the purpose and the legislative history of the OCSLA, the Fifth Circuit held that in order for Louisiana's Direct Action statute to be "applicable" pursuant to Section 1333(a)(2)(A), there would necessarily have to be a gap or void in federal law for the state law to fill. Because the court found that no gap existed in federal law, the Fifth Circuit concluded

39. *See id.* at 1893.

40. *Cont'l Oil Co. v. London S.S. Owners' Mut. Ins. Ass'n*, 417 F.2d 1030, 1036 (5th Cir. 1969).

41. *Id.* at 1031.

42. *Id.* at 1033.

43. *See id.* at 1031–33.

44. *Id.* at 1036.

that the Direct Action Statute was not applicable pursuant to the OCSLA, and therefore the court affirmed the District Court's dismissal of the platform owner's case.⁴⁵

Despite the legislative history and purpose surrounding the OCSLA discussed in the Fifth Circuit's *Continental* decision, the Ninth Circuit interpreted the "applicable and not inconsistent" language of Section 1333(a)(2)(A) differently.⁴⁶ In vacating the trial court's decision, which relied on *Continental*,⁴⁷ the Ninth Circuit held that the absence of federal law was not a prerequisite to adopting state law as a federal law surrogate under the OCSLA.⁴⁸ Therefore, the Ninth Circuit rejected the Fifth Circuit's proposition that a void or gap in federal law must necessarily exist in order for state law to be "applicable and not inconsistent" pursuant to Section 1333(a)(2)(A).⁴⁹

In reaching its conclusion, the Ninth Circuit analyzed the words "applicable" and "inconsistent," from Section 1333(a)(2)(A), separately and under the tenants of statutory interpretation. The Ninth Circuit noted that based on the ordinary meaning of the word "applicable," and the lack of any qualification of the word "applicable" with the word "necessary," which is used as a qualifier in other federal statutes, the OCSLA did not appear to require a void or gap in federal law for state law to be applicable.⁵⁰ The Ninth Circuit also reasoned that the Fifth Circuit's *Continental* decision relied too heavily on unclear legislative history in concluding that state law was only applicable under the OCSLA if it was necessary to fill a void in federal law, thereby bolstering their reasoning for rejecting this position.⁵¹ For these reasons, the Ninth Circuit held that California wage and hour law was in fact applicable on the OCS, under Section 1333(a)(2)(A).⁵²

45. *Id.* at 1040.

46. *See* *Newton v. Parker Drilling Mgmt. Servs., Ltd.*, 881 F.3d 1078, 1081–92 (9th Cir. 2018), *cert. granted*, 139 S. Ct. 914 (2019).

47. *Newton v. Parker Drilling Mgmt. Servs., Inc.*, No. CV 15-02517-RGK (AGRx), 2015 WL 12645746, at *3 (C.D. Cal. Aug. 1, 2015).

48. *Newton v. Parker Drilling Mgmt. Servs., Ltd.*, 881 F.3d 1078, 1081–82 (9th Cir. 2018), *cert. granted*, 139 S. Ct. 914 (2019).

49. *Id.* (citing 43 U.S.C.A. § 1333(a)(2)(A) (Westlaw current through Pub. L. 116-138)).

50. *Id.* at 1090–91.

51. *Id.* at 1091.

52. *Id.* at 1093.

The Ninth Circuit then held that California wage and hour law was also not inconsistent with federal law.⁵³ The court started by reasoning that, based on the plain meaning of the word “inconsistent,” laws are inconsistent when they are “mutually incompatible.”⁵⁴ The court then went on to note that, because the FLSA has a provision expressly permitting more protective state wage and hour laws, California’s wage and hour laws were not “inconsistent” with FLSA.⁵⁵ Based on this, and the applicability analysis discussed above, the Ninth Circuit held that California’s wage and hour laws could apply on the OCS pursuant to OCSLA §1333(a)(2)(A).⁵⁶

Understanding this circuit split, and the different lines of reasoning employed by the Fifth and Ninth Circuits in *Continental* and *Parker Drilling*, serves to elucidate the arguments made by Newton and Parker in the later Supreme Court case. Newton, attempting to apply California wage and hour law to the work he did on the OCS, argues in congruence with the Ninth Circuit’s holding. Newton’s arguments largely focused on the plain meaning of the words “applicable” and “inconsistent” from Section 1333(a)(2)(A). Further, and similar to the Ninth Circuit’s reasoning, Newton makes the argument that Congress could have expressly limited the applicability of state law to gap filling voids in federal law, but because they did not do so this limitation should not be read in. On the other hand, Parker Drilling’s arguments more closely match those of the Fifth Circuit’s *Continental* line of reasoning. Parker Drilling’s arguments before the Supreme Court more intently focus on the purpose and legislative history of the OCSLA, mirroring the reasoning employed by the Fifth Circuit in an effort to prevent California’s state laws from applying over FLSA on the OCS.

B. The Court’s Statutory Interpretation of the OCSLA

As much of the parties’ arguments centered on the interpretation of the “applicable” and “not inconsistent with” language of Section 1332, the Court began its interpretation of the statute with an analysis of those two words. The Court reasoned that both words were subject to multiple interpretations when standing alone.⁵⁷ Therefore, the Court applied the rule of statutory interpretation, whereby the words of the statute must be read in context and with an understanding of the words placement in the overall

53. *Id.* at 1099.

54. *Id.* at 1093 (internal citations omitted).

55. *Id.* at 1097–98.

56. *Id.* at 1099.

57. *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881, 1889 (2019).

statutory scheme.⁵⁸ In *Parker Drilling*, the Court applied this principle to decide when state law was “applicable” and “not inconsistent with” federal law, such that it could be applied on the OCS as surrogate federal law pursuant to the OCSLA.⁵⁹ The Court noted that the OCSLA gives the federal government complete jurisdiction over the OCS without reserving any jurisdiction for the states, and commands that federal law applies to the OCS as if the OCS were an area of exclusive federal jurisdiction within a state.⁶⁰ Based on these provisions, the Court held that state law could be “applicable” and “not inconsistent with” federal law under the OCSLA only where federal law did not address the relevant issue.⁶¹

The Court reasoned that the OCSLA makes it clear that “federal law is ‘exclusive’ in its regulation of [the OCS], and that state law is adopted only as surrogate federal law,” thereby extending all federal law to the OCS while only adopting some state laws which are then declared to be federal laws and are administered by federal officials.⁶² Because of this, the Court stated that it would make “little sense to treat the OCS as a mere extension of the adjacent State, where state law applies unless it conflicts with federal law.”⁶³ The Court went on to note that this type of preemption analysis would only make sense where overlapping jurisdiction between federal and state governments “makes it necessary to decide which law has precedence.”⁶⁴ Because the only law on the OCS is federal law, there is no need to conduct a preemption analysis, and therefore if federal law has addressed the relevant issue then state law is necessarily inconsistent with the existing federal law and cannot be adopted as a surrogate.⁶⁵

C. Further Support for the Court’s Interpretation

The Court further explained their interpretation, congruent with that of the Fifth Circuit and the trial court, based on three other lines of reasoning: (1) the Ninth Circuit’s interpretation allowing adjacent state law to govern on the OCS, would make much of the OCSLA irrelevant; (2) the Court’s

58. *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012).

59. *Parker Drilling*, 139 S. Ct. at 1888 (quoting 43 U.S.C.A. § 1333(a)(2)(A) (Westlaw current through Pub. L. 116-138)).

60. *Id.*, at 1888–89 (citing 43 U.S.C.A. §§ 1332(1), 1333(a)(3) & 1333(a)(2)(A) (Westlaw current through Pub. L. 116-138)).

61. *Id.* at 1889.

62. *Id.* (internal citations omitted).

63. *Id.* (internal citations omitted).

64. *Id.*

65. *Id.*

“interpretation was consistent with the federal-enclave model[, which] the OCSLA expressly invokes”; and (3) the Court’s interpretation is consistent with past Supreme Court OCSLA interpretation precedents.⁶⁶

A main tenant of statutory interpretation is that courts must give effect to every clause and word of a statute, if possible.⁶⁷ The Court held that under Newton’s interpretation, whereby the OCS would be treated essentially as the adjacent state and state law would apply unless preempted, much of the OCSLA would be rendered superfluous.⁶⁸ The Court noted that under Newton’s interpretation, the OCSLA’s limitation of state laws applying on the OCS to only those which are “applicable and not inconsistent” becomes unnecessary, as does the statutes command to adopt state law as federal law on the OCS.⁶⁹

The Court also reasoned that the OCSLA’s treatment of the OCS as a federal enclave further supported their interpretation. The statute’s characterization of the OCS as similar to that of “an area of exclusive federal jurisdiction within a state” is a direct textual reference to the OCS being considered a federal enclave.⁷⁰ Generally, when an area in a state becomes a federal enclave, there is a transfer of jurisdiction whereby state law in existence at the time of the transfer remains in force as surrogate federal law.⁷¹ However, state law that conflicts with federal policy at the time of the transfer does not continue in force, and state law moving forward generally does not apply to the federal enclave.⁷²

The Court reasoned that the statutes treatment of the OCS as a federal enclave, through the textual connection discussed above, and the “applicable and not inconsistent” limitation placed on OCS-adjacent state’s laws, was evidence that the drafters of the OCSLA intended to make the law of the OCS federal but with a legal framework that could govern all aspects of life on the OCS.⁷³ This legal framework consists of federal law and previously adopted state law obviating the need to adopt new state laws. The Court reasoned that this federal-enclave-type legal framework

66. *Id.*

67. *Id.* (citing *Loughrin v. U.S.*, 573 U.S. 351, 358 (2014)).

68. *Id.*

69. *Id.*

70. *Id.* at 1890 (citing 43 U.S.C.A. § 1333(a)(1) (Westlaw current through Pub. L. 116-138); *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 366 (1969)).

71. *Parker Drilling*, 139 S. Ct. at 1890 (internal citations omitted).

72. *Id.* (internal citations omitted).

73. *Id.* (citing *Shell Oil Co. v. Iowa Dep’t of Revenue*, 488 U.S. 19, 27 (1988)).

suggested that, pursuant to the OCSLA, state law was not intended to be adopted on the OCS where federal law addressed the relevant issue.⁷⁴

In the final part of its analysis, the Court concluded that its interpretation of the OCSLA was more consistent with its precedential interpretation construing the statute. In *Rodrigue v. Aetna Cas. & Sur. Co.* the Court considered the OCSLA's choice of laws provision, considering "whether people killed on OCS oilrigs could proceed under" federal law as well as state law.⁷⁵ In *Rodrigue* the Court explained that the OCSLA made it clear that federal law was exclusive on the OCS, but that state law could be adopted as federal law to supplement gaps, or fill federal voids, on the OCS.⁷⁶ In *Rodrigue* the Court concluded that because the relevant federal law left gaps related to wrongful deaths on the OCS, state law could provide the rule for decision.⁷⁷ In *Parker Drilling* the Court concluded that, based on the analysis in *Rodrigue* and other previously decided cases, a consistent interpretation of the OCSLA had emerged: "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."⁷⁸

V. Analysis: Potential Effects of the Decision

In practice, the Court's holding in *Parker Drilling* will favor entities doing business on the OCS over employees, providing for a clearer standard by which to govern operators of offshore oil rigs, or any entity engaged in operations on the OCS. This clearer standard will maintain the status quo of employer-employee relations on the OCS, preventing a large increase in operating costs from impacting employers who would otherwise have been forced to contend with the state laws of every coastal state off of which they operate. Overall, this will foster the achievement of U.S. energy goals, allowing operators on the OCS to more efficiently work towards the domestic exploitation of OCS resources in an effort to further U.S. energy independence and revenue generation. The Supreme Court agreed with *Parker Drilling's* argument, and Fifth Circuit precedent, holding that state law is only "applicable" as a gap-filler for federal law.⁷⁹ In agreeing with

74. *Id.* at 1890–91.

75. *Id.* at 1891 (citing *Rodrigue*, 395 U.S. 352 (1969)).

76. *Id.* (citing 43 U.S.C.A. 1333(a)(3) (Westlaw current through Pub. L. 116-138); *Rodrigue* 395 U.S. at 357).

77. *Id.* (internal citations omitted).

78. *Id.* at 1892.

79. *Id.* at 1888.

Parker Drilling's position, the Court extended the Fifth Circuit's line of reasoning by holding that, even where a party can satisfy both state and federal laws, state law can still be "inconsistent" with federal law under 43 U.S.C. § 1333(a)(2)(A).⁸⁰ This holding answered the novel question of which law may be applied on the OCS, when a state statutory scheme and an existing federal statutory scheme are both potentially applicable under the OCSLA.⁸¹

Although it may remain unclear what constitutes a "gap" in a federal statutory scheme, whereby state law may be adopted as surrogate federal law under the OCSLA, the Court's holding creates a clearer standard under which entities operating offshore oil rigs may operate. Previously, the circuit split between the Fifth and Ninth circuits made it uncertain for those doing business on the OCS whether or not a gap in federal law must necessarily exist before state law could be adopted as surrogate federal. The Court's holding now makes it clear for entities operating on the OCS, that state law may only be adopted as a gap filler. This holding prevents a substantial increase in costs to employers operating on the OCS for several reasons. If the Court were to have agreed with Newton's position, that California's state wage and hour laws applied on the OCS, a major restructuring of the legal considerations required to operate an oil rig on the OCS would have been necessitated. A holding for Newton's position would have required employers operating on the OCS to contend with the diverse state statutory schemes governing wage and hour laws for all of the coastal states off of which they operate. Rather than being able to simply worry about compliance with one federal wage and hour scheme, entities would have been faced with the burden of complying with a different statutory scheme for every oil rig they operate off of the coast of different states. This would have resulted in these entities incurring huge legal and operating costs over night. For every oilrig and entity operated off of the coast of a different state, that entity would be forced to review the states wage and hour statutes in order to determine what the minimum wage was, whether it was higher or lower than that provided for in FLSA, and what activities count as hours worked. These costs would have been compounded by the fact that state wage and hour laws typically are more favorable to employees rather than employers, when compared to the FLSA.⁸² Further,

80. *Id.* at 1888.

81. *Newton v. Parker Drilling Mgmt. Servs., Ltd.*, 881 F.3d 1078, 1093(9th Cir. 2018), *cert. granted*, 139 S. Ct. 914 (2019).

82. Christopher Ulfers, *US Supreme Court Adopts Fifth Circuit Approach in Finding State Wage-and-Hour Laws Inapplicable to OCS Workers*, NAT'L L. REV. (July 31, 2019),

for any differences between FLSA and the state's wage and hour scheme, employers would have been forced to renegotiate all of their employment contracts with employees. The Court's decision preventing these costs being incurred is a win for the end-consumer, as it is likely that any necessitated costs would have been passed on to the consumer, had they been incurred.

Vacating the Ninth Circuit's decision also prevents operators on the OCS from having to contend with a swath of potential litigation, whereby they would be forced to comply with state law which conflicts with the current nature of the federal statutory schemes they were previously operating under. Instead, the status quo has been maintained for employer-employee relations. This is because the Fifth Circuit's line of reasoning was upheld by the Court, the jurisdiction in which a vast majority of the OCS based litigation occurs.⁸³

This decision is also consistent with international law regarding the exploitation of oil on the OCS and will allow United States based International oil companies to continue to operate consistently throughout the world. This consistency will allow for the continuation of efficient operating practices for these energy companies, furthering the United States' goal of energy source diversification. Most nations have signed on to the United Nations Convention on the Law of the Sea ("UNCLOS").⁸⁴ Although the United States has not ratified the treaty, and is therefore not bound by UNCLOS, in practice the United States has accepted nearly all of the treaty's precepts as customary international law. Thus, the United States substantially complies with UNCLOS in practice. Generally, UNCLOS is a treaty which provides international actors with guidelines on what constitutes a nation's OCS and on how to utilize the natural resources found in the world's seas.⁸⁵ UNCLOS has standardized territorial boundaries, by establishing that a nation's OCS extends 200 nautical miles from the outer edge of its continental margin, or up to 350 nautical miles if the nation's

<https://www.natlawreview.com/article/us-supreme-court-adopts-fifth-circuit-approach-finding-state-wage-and-hour-laws>.

83. Andrew Siegel, *Opinion analysis: Court carves out narrow role for state law on the outer continental shelf*, SCOTUSBLOG (Jun. 11, 2019, 11:26 AM), <https://www.scotusblog.com/2019/06/opinion-analysis-court-carves-out-narrow-role-for-state-law-on-the-outer-continental-shelf>.

84. William Gallo, *Why Hasn't the US Signed the Law of the Sea Treaty?*, VOA NEWS, (Jun. 6, 2016), <https://www.voanews.com/usa/why-hasnt-us-signed-law-sea-treaty>.

85. PATRICIA PARK, *INTERNATIONAL LAW FOR ENERGY AND THE ENVIRONMENT* 6 (2nd ed., CRC Press 2013).

OCS extends beyond the 200 nautical mile limit.⁸⁶ Further, UNCLOS grants nations an Exclusive Economic Zone within its defined OCS, creating an exclusive right to explore and reduce to possession, the resources found within the Nation's OCS. This exclusive jurisdiction over the OCS from the UNCLOS is based on customary international law.⁸⁷ Based on these grants of authority, coastal nations have the power to grant, and international parties must obtain, a license to exploit the resources found on the OCS.⁸⁸ In this way, when an oil company is seeking to exploit resources internationally, they have a uniform body of laws to contend with. The oil company need only comply with the laws of the nation which they have contracted with for the license to exploit energy from the OCS, as well as the uniform body of international law proposed by the UNCLOS. Therefore, international law insulates energy companies operating on the OCS of foreign jurisdictions from having to contend with sub-federal laws.

This is consistent with the Court's decision, insulating energy companies operating off of the coast of states from having to contend with differing state laws, when federal law comprehensively covers the legal issue. The consistency with international law will prevent international energy companies engaged in domestic resource exploitation from having to substantially alter their existing operating procedures for each state off of which they operate. Therefore, the *Parker Drilling* decision will increase the legal and operational efficiency of these companies. This efficiency will allow these international oil companies to continue to exploit resources in foreign jurisdictions, furthering the United States energy policy goal of diversifying energy sources and preventing over reliance on any one energy source.⁸⁹

Further, the Court's analysis in this case may have repercussions beyond those involving the OCS. In *Parker Drilling*, the Supreme Court engages in a "close question of statutory interpretation," focusing on the context of the language within the statute, as opposed to the more textualist based analysis used by the Ninth Circuit.⁹⁰ Based on the Court's analysis, this decision may stand for the proposition that textualism must yield to contextualism in statutory interpretation, as the Court more heavily focused on the overall context of the language within the OCSLA. This is in direct opposition to

86. *Id.* at 49.

87. *Id.*

88. *Id.* at 6.

89. See U.S. DEP'T. OF ENERGY, VALUATION OF ENERGY SECURITY FOR THE UNITED STATES 3 (Jan. 2017).

90. *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881, 1888 (2019).

the more textual analysis done by the Ninth Circuit in *Newton*, which the Court ultimately overturned.

Due to these considerations, the Court's decision is highly favorable to offshore oilrig employers, and in doing so furthers strong policy considerations. The Court's holding promotes legal consistency across the OCS for both employers and employees, keeping the increase in legal costs which would have been necessitated by a holding adverse to Parker Drilling from being passed on to consumers. However, the decision does still raise some practical questions. Namely, the question of what constitutes a "gap" in federal law, such that state law may apply, remains unsettled.

As discussed above, the Court held that all law on the OCS is federal law, and state law serves only a supporting role of filling in gaps in federal law coverage.⁹¹ However, the Court did not address what constituted a "gap" in federal law. Practically, this could create continued confusion for employers operating on the OCS and allow for employees to continue to bring colorable claims alleging a gap in federal law exists such that employee-friendly state law should apply. The term "gap" can be construed narrowly or broadly, and this construction could give rise to future litigation. It is uncertain if there must be a total absence of relevant federal law in order for state law to apply, or if a gap can exist within an otherwise applicable body of existing federal law, that simply does not address the specifically relevant issue.

Using the Court's own case-examples of previous OCSLA litigation does little to elucidate a definition. In the Court's first example, the *Rodrigue* case, the plaintiffs were attempting to bring suit for wrongful deaths on OCS oil rigs under state law as well as the federal Death on the High Seas Act.⁹² In *Rodrigue*, the Court concluded that the federal Death on the High Seas Act did not apply to the OCS at all, and therefore the rule of decision would be provided by state law.⁹³ In this example, there was not simply a "gap" in applicable federal law, but an absence of applicable federal law. In fact, the Court in *Rodrigue* held that there was no "obstacle to the application of state law."⁹⁴ Thus, in this example, it is obvious that state law should apply, and the term "gap" remains ambiguous. Similarly, in the Court's second example, the alleged applicable federal law was held not to apply on the OCS at all. In *Chevron Oil Co. v. Huson*, the Court

91. *Id.* at 1892.

92. *Id.* at 1891 (citing *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 357 (1969)).

93. *Id.* (citing *Rodrigue*, 395 U.S. at 357).

94. *Id.* at 1892 (citing *Rodrigue*, 395 U.S. at 357).

analyzed whether federal admiralty law or state statutes governed tort actions for injuries which occurred on the OCS.⁹⁵ In *Huson*, the Court reasoned that congress had decided not to apply federal admiralty law on the OCS at all.⁹⁶ Therefore, again, the question remains if a more narrow definition of the term “gap” can encompass a situation where there is an applicable body of federal law, however nothing in the body of law address the relevant issue itself.

On first glance, it may appear that the *Parker Drilling* decision addresses this exact scenario, standing for the proposition that a total absence of federal law must exist, however this is not the case. In this case, the respondent was attempting to apply state law, where federal law specifically addressed the issue in question, and thus California’s wage and hour laws were found to be inapplicable on the OCS due to the applicability of the FLSA pursuant to OCSLA.⁹⁷ The FLSA addresses the specific scenario the respondent was attempting to apply California state law to, the issue of payment for downtime spent at the location of employment. Federal labor regulations govern that “an employee who resides on his employer’s premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises.”⁹⁸ Therefore, here there was federal law specifically addressing the relevant issue. Thus, it remains uncertain if a gap in federal law can exist within a body of otherwise applicable federal law. The *Parker Drilling* decision not only stands for the proposition state law serves a gap filling role on the OCS, but also reaffirms that state law certainly can still apply.⁹⁹ Because the definition of a gap remains uncertain, employers on the OCS must still remain vigilant for applicable state law, even in light of *Newton*’s employer friendly holding.

VI. Conclusion

The OCS is, and will remain, a considerable source of domestic energy which private sector industry actors and the United States federal government have an interest in efficiently developing. Moving forward,

95. *Id.* (citing *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971)).

96. *Id.* (citing *Chevron*, 404 U.S. 97 (1971)).

97. *Id.* at 1893.

98. 29 C.F.R. § 785.23 (2018).

99. David Jordan et al., *Offshore Drilling Companies Can Rest Easy: Supreme Court Holds California Wage and Hour Law Inapplicable to Certain Rig Workers*, LITTLER MENDELSON P.C. (Jun. 11, 2019), <https://www.littler.com/publication-press/publication/offshore-drilling-companies-can-rest-easy-supreme-court-holds>.

employers operating oilrigs on the OCS will have a clearer picture of what laws govern their actions after the Court's decision in *Parker Drilling*. Operators on the OCS can continue to function efficiently with the understanding that, pursuant to the OCSLA, federal law applies on the OCS with state law acting only to fill in any gaps. Although this decision will likely inhibit future claims brought by employees working on the OCS under employee-friendly-state-law, some questions still remain as to when a "gap" in federal law exists. However, the final result in this case heavily leans towards maintenance of the status quo for employers looking to efficiently exploit energy resources on the OCS.