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Washington State Regulations Imposing Stricter Safety Standards Struck Down as Preempted by Federal Law

In United States v. Locke, 529 U.S. 89 (2000), the Supreme Court unanimously held that four sections of a Washington State regulation designed to help prevent oil spills were preempted by federal law. The ruling calls into doubt the ability of states to promulgate stricter marine regulations to protect environmental values.

In 1994, responding to public concern arising from the Exxon Valdez oil spill, the state of Washington created the Office of Marine Safety and directed it to promulgate regulations on tanker design, operation, and safety. The goal of the regulation was to provide "the best achievable protection from damages caused by the discharge of oil." 1

Intertanko, a tanker trade association, challenged several provisions of the regulations governing tanker design, English language proficiency, crew training, navigation lookouts, and the reporting of maritime accidents such as oil spills or whale collisions as costly, unnecessary, and outside the reach of state law.

The United States District Court for the Western District of Washington and the Ninth Circuit Court of Appeals upheld the regulations and attempted to distinguish the Supreme Court's 1978 decision in Ray v. Atlantic Richfield Co., 435 U.S. 151, 171 (1978), which held that the Ports and Waterways Safety Act (PWSA) of 1972 set national standards for tanker safety and only allowed states to set different regulations if they were based on "the peculiarities of local waters that call for special precautionary measures." The Ninth Circuit specifically attempted to narrow the pre-emptive effect given the PWSA in Ray by pointing to a later act, the Oil Protection Act (OPA) of 1990. Although the OPA generated substantial new rules and regulations regarding oil transport, it also contained two "saving clauses" preserving state authority to implement additional liability requirements relating to the discharge of oil pollution

1. WASH. REV. CODE § 88.46.070, 080, 090 (1994).
within the states. The Ninth Circuit held that the OPA left Ray with "little validity," and interpreted the savings clauses to empower states to set higher standards on tanker operation and safety.

The Supreme Court unanimously overturned the Ninth Circuit's decision. The Court noted that since the federal government had been involved in establishing national maritime standards from the early days of the Republic, this was not an area where the Court could presume that states had a sphere of reserved power or rights not subject to federal preemption. The overriding government interest in setting nationally uniform standards for shipping and implementing international shipping agreements meant that federal pronouncements such as the PWSA and the OPA preempted state laws.

The Court further ruled that the Ninth Circuit placed too much weight on the OPA's savings clauses. Since Congress placed the clauses in Title I of the OPA, captioned "Oil Pollution Liability and Compensation," the Court held the clauses only preserve state laws establishing liability rules and financial requirements relating to oil spills—not substantive regulations of a vessel's primary conduct. Since the state's regulations addressing tanker design, English-language proficiency, crew training, and reporting of maritime accidents were not related to either financial liability or "the peculiarities" of the local waterways, the Court stated that all four should be struck as preempted by PWSA. The Court remanded to the lower courts the question of whether the remaining state requirements were indeed based on the peculiarities of Puget Sound.

The states now have little leeway in strengthening measures to prevent oil discharges. Under Locke, the states only have authority to enact laws to recover damages after the fact, that is, where oil has already spilled. States can only seek anticipatory/preventative protections against industrial marine pollution caused by tanker traffic through federal legislation, a much more time consuming and cumbersome process. In addition, any resulting national measures are unlikely to be as forceful or specific as those designed locally. This holding also increases the likelihood that new state laws enacted to govern the marine transport of industrial products or contaminants—in areas the states believe are not addressed by federal statutes or regulations—will be struck down as either conflicting with

similar federal laws or as preempted under the PWSA or the OPA.

Matthew Chapman