Nos. 98-1701 & 98-1706

IN THE

Supreme Court of the United States

THE INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS (INTERTANKO), *et al.*,
Petitioners,

v.

GARY LOCKE, GOVERNOR OF THE STATE OF WASHINGTON, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE*, BALTIC AND INTERNATIONAL MARITIME COUNCIL AND CHAMBER OF SHIPPING OF AMERICA, IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICI CURIAE*

In the court below, Petitioners argued that laws and regulations adopted by the State of Washington with regard to the design, construction, equipment, operation, and manning of oil tankers were preempted by comparable federal legislation and regulations under the Supremacy Clause and other provisions of the United States Constitution. The Baltic and International Maritime Council and the Chamber of Shipping of America as *amici* are uniquely able to describe the significant effect on the maritime industry's operations if the decision of the court below is allowed to stand. The Court has consistently allowed industry associations, including, *e.g.*, the predecessor to the Chamber of Shipping of America, to file briefs as *amicus curiae*. *See Exxon Shipping v. Ellenwood*, 508 U.S. 981 (1993); *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 810 (1988).[1]

Founded in 1905, the Baltic and International Maritime Council (BIMCO) is the world's oldest and largest association of ship owners and operators. It represents over 1,000 owners and operators of approximately 12,500 vessels from over 100 countries, constituting about 60 percent of the world's merchant shipping capacity or about 460 million deadweight tons. BIMCO also represents approximately 1,600 ship brokers and has about 100 other members who

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[1] Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3. Pursuant to Rule 37.6, counsel for *amici* states that no counsel for a party authored the brief in whole or in part and no person or entity, other than the *amici curiae* and their counsel made a monetary contribution to the preparation or submission of the brief.

share the group's interest in maritime issues. A major goal of the organization is the development of uniform worldwide standards with regard to the design, construction, equipment, operation, and manning of merchant vessels. To this end, BIMCO works closely with the International Maritime Organization (IMO) and numerous flag administrations. BIMCO is also the principal organization responsible for the development of standard charter parties, bills of lading, individual clauses, and other shipping forms.

The Chamber of Shipping of America (CSA) is a non-profit incorporated association. It represents sixteen U.S.-based companies which own, operate, or charter oceangoing tankers, container ships, and other merchant vessels engaged in both the domestic and international trades. The Chamber also represents other entities which maintain a commercial interest in the operation of such oceangoing vessels. CSA's principal function is to represent the interests of the U.S. merchant marine industry before the United States Congress, federal agencies, state legislatures, and before federal and state courts. CSA works closely with federal agencies concerned with maritime safety and marine environmental protection and provides a forum in which marine carriers can discuss and encourage maritime safety and marine environmental protection initiatives through industry working groups. The American Institute of Merchant Shipping, the predecessor group to the Chamber of Shipping of America, has filed numerous *amicus* briefs in federal and state court proceedings concerning a wide variety of issues of interest to its members.

STATEMENT OF THE CASE

The vast majority (approximately 95% by weight) of United States imports and exports travel via commercial vessels. The same is true of much of the rest of the world. The safety of the mariners operating commercial vessels in international commerce, the vessels and their cargoes, and the marine environment depend heavily on international uniformity with regard to the design, construction, equipment, operation, and manning of those vessels. The United States Government has become party to a number of international agreements designed to increase that uniformity. Further, the federal government has enacted numerous laws and promulgated numerous regulations and standards in this regard. State and local governments are preempted from disturbing uniform national standards in this area due to the pervasive impact of the federal system. The decision of the court below ignored the criteria set forth in this Court's decision in *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978).

SUMMARY OF THE ARGUMENT

The Court should reverse the judgment below because Congress has preempted the field by providing for a unified system of federal laws and regulations concerning the design, construction, equipment, operation, and manning of merchant vessels operating on the navigable waters of the United States and the general superintendence of the merchant marine by the U.S. Coast Guard. Congress, intentionally, has left no room for state and local governments to supplement this field.

ARGUMENT

I. CONGRESS HAS PLENARY AUTHORITY TO PREEMPT STATE AND LOCAL LAWS AFFECTING FOREIGN OR INTERSTATE COMMERCE

Congress has plenary authority to preempt state and local law in any field in which Congress is empowered to act. United States Constitution, article VI, clause 2. Federal authority is particularly pervasive with regard to foreign and interstate commerce. United States Constitution, article I, section 8, clause 2. Nevertheless, the historic police powers of the states are not to be deemed to be superseded by federal law unless that is the clear and manifest purpose of Congress. Congressional intent is the ultimate touchstone of preemption analysis. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992).

Such Congressional intent to preempt state and local law may be evidenced in several ways. The scheme of federal law and regulation may be so persuasive as to make reasonable the inference that Congress left no room for states and local governments to supplement it. Alternatively the federal laws and regulations may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state or local laws on the same subject. Likewise, the object sought to be obtained by the federal law and regulations and the character of obligations imposed by them may reveal the same purpose. Finally, the state or local policy may produce a result inconsistent with the objective of the federal statute. "It is often a perplexing question whether Congress has precluded

state action or by the choice of selective regulatory measures has left the police power of the States undisturbed except as the state and federal regulations collide." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 231 (1947).

With respect to the power of the federal government as regards foreign and interstate commerce, this Court has stated: "Our basic responsibility in interpreting the Commerce Clause is to make certain that the power to govern intercourse among the states remains where the Constitution placed it." *United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533, 552 (1944). The federal preeminence with regard to commerce in general and maritime navigation in particular dates from the founding of our country and was eloquently summarized by Chief Justice Marshall in 1824:

> If commerce does not include navigation, the government of the Union has no direct power over that subject, and can make no law prescribing what shall constitute American vessels, or requiring that they shall be navigated by American seamen. Yet this power has been exercised from the commencement of the government, has been exercised with the consent of all, and has been understood by all to be a commercial regulation. All America understands, and has uniformly understood, the word 'commerce' to comprehend navigation. It was so understood, and must have been so understood, when the constitution was framed. The power over commerce, including navigation, was one of the primary objects for which the people of

> America adopted their government, and must have been contemplated in forming it.

Gibbons v. Ogden, 22 U.S. 1, 190 (1824)

Justice Johnson, concurring in *Gibbons*, stated:

> [F]or, although one grant of power over commerce should not be deemed a total relinquishment of power over the subject, but amounting only to a power to assume, still the power of the states must be at an end, so far as the United States have, by their legislative act, taken the subject under their immediate superintendence.

22 U.S. at 234.

The difficulty in parsing between where the federal government had sole authority to regulate with regard to commerce and navigation and where authority was shared with state and local governments was recognized by this Court as early as 1851. At that time, the issue was state authority to require certain vessels to utilize (or at least pay for) local pilots. The Court, recognizing that, in accordance with a federal law, local pilotage was largely a local as opposed to a national issue, stated:

> Now, the power to regulate commerce embraces a vast field, containing not only many, but exceedingly various subjects, quite unlike in their nature; some imperatively demanding a single uniform rule, operating equally on the commerce of the United States in every port; and some, like the subject now in

> question [pilotage], as imperatively demanding that diversity, which alone can meet the local necessities of navigation. . . . Whatever subjects of this power are in their nature national, or admit only of one uniform system, or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress.

Cooley v. Board of Wardens of the Port of Philadelphia, 53 U.S. 299, 319 (1851).

In 1937, this Court noted that the federal acts and regulations with respect to federally inspected vessels on the navigable waters of the United States are elaborate. *Kelly v. State of Washington*, 302 U.S. 1, 4 (1937). In that case, the issue before the Court was whether a state was preempted from regulating a limited group of commercial vessels that were not subject to the usual federal inspection laws. This Court sustained the state regulatory scheme, but with strong caveats, stating:

> A vessel which is actually unsafe and unseaworthy in the primary and commonly understood sense is not within the protection of that principle [uniformity of regulation]. The state may treat it as it may treat a diseased animal or unwholesome food. In such a matter, the state may protect its people without waiting for federal action providing the state action does not come into conflict with federal rules. If, however, the state goes further and attempts to impose particular standards as to structure, design, equipment, and operation, which in the judgment of its authorities may be desirable, but pass beyond what

> is plainly essential to safety and seaworthiness, the state will encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule. Whether a state in a particular matter goes too far must be left to be determined when the precise question arises.

302 U.S. at 15.

II. THIS COURT'S HOLDING IN *RAY V. ATLANTIC RICHFIELD CO.* IS FULLY DISPOSITIVE OF THIS CASE

This Court has drawn a clear distinction between regulation of maritime pollution, where the authority of state and local governments to take action is not *per se* preempted by the federal government, *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973); *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440 (1960), and regulation of the design and construction of inspected commercial vessels operating on the navigable waters of the United States, where the pervasive federal regulatory scheme does not admit of state or local government participation. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978).

In the *Ray* case, this Court drew a distinction between the mandatory provisions of Title II of the Ports and Waterways Act of 1972, which directed the Secretary of Transportation to promulgate certain marine safety regulations, and Title I of the Act, which authorized (but did not mandate) the Secretary to promulgate additional marine safety regulations. Basically, this Court held that the State of

Washington was preempted from regulating vessel design and construction standards because those standards came under Title II, the mandatory portion of the Act. 435 U.S. at 165. The State of Washington was not preempted from regulating in areas covered by Title I of the Act when the federal government had not prescribed regulations or standards under that authority. 435 U.S. at 171.

As this Court stated in another Commerce Clause case: "The fact that there is no express provision of pre-emption in the . . . Act . . . is not decisive. . . . It is the pervasive nature of the scheme of federal regulation . . . that leads us to conclude that there is pre-emption." *City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 633 (1973).[2]

In its ruling on the *Ray* case, this Court limited its preemption discussion to design and construction because those were the issues before the Court. Title II of the Ports and Waterways Safety Act of 1972 (which amended the Tank Vessel Act of 1936) though, was broader in its reach. Since the issue in the instant litigation involves the authority to regulate the operation and manning of vessels on the navigable waters of the United States, it is enlightening to review other pertinent provisions of the 1972 Act. There, Congress directed the Secretary,

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[2] In that case, the municipality's attempt to regulate aircraft noise at the local airport was held to be incompatible with the federal scheme even though the federal statute, at the time of the litigation, contained no preemption provision.

> [i]n order to secure effective provision (A) for vessel safety and (B) for protection of the marine environment, [to] establish . . . such additional rules and regulations as may be necessary with respect to . . . the maintenance of such vessels, . . . the handling and stowage of cargo, equipment and appliances for . . . prevention and mitigation of damage to the marine environment, . . . the operation of the vessel, . . . the requirements for manning, . . . the duties and qualifications of the officers and crew thereof, and . . . the inspection of all of the foregoing.

Pub. L. No. 92-340, § 201, 86 Stat. 427 (July 10, 1972).[3]

Thus, the statutory references to "design," "construction," and "equipment" found to be preemptive in *Ray* are separated by only a few words in the same sentence from the very subject matter of "operation" and "manning" at issue here. In light of this, the following excerpts from the *Ray* decision, which are logically applicable to the other subjects addressed in Title II of the Ports and Waterways Safety Act of 1972 in addition to design, construction, and equipment, ought to be fully dispositive of this case:

> Title II [of the Ports and Waterways Safety Act of 1972, now codified at 46 U.S. Code, Chapter 37] aims at insuring vessel safety and protecting the marine environment; and the Secretary must issue all

[3] This provision was originally codified at 46 U.S.C. § 391a. It has been amended at various times subsequently, and is now located at 46 U.S.C. § 3703.

> . . . regulations that he deems necessary for these ends, after considering the specified statutory standards. The federal scheme thus aims precisely at the same ends as does [the Washington State Tanker Law]. Furthermore, under the PWSA, after considering the statutory standards and issuing all . . . requirements that in his judgment are necessary, the Secretary inspects and certifies each vessel as sufficiently safe to protect the marine environment and issues a permit or its equivalent to carry tank-vessel cargoes. Refusing to accept the federal judgment, however, the State now seeks to exclude from Puget Sound vessels certified as having acceptable . . . characteristics, unless they satisfy the different and higher . . . requirements imposed by state law. The Supremacy Clause dictates that the federal judgment that a vessel is safe to navigate United States waters prevail over the contrary state judgment.

Ray v. Atlantic Richfield Co., 435 U.S. 151, 165 (1978).

III. LEGISLATIVE AND REGULATORY ACTIVITY SINCE THE *RAY* DECISION PROVIDE ADDITIONAL EVIDENCE THAT THE FEDERAL GOVERNMENT HAS PREEMPTED THE FIELD WITH RESPECT TO THE "OPERATION, EQUIPPING, PERSONNEL QUALIFICATION, AND MANNING" OF VESSELS

Even though the above analysis should be dispositive in this case, there is additional evidence of Congressional preemption to be considered, based on federal legislative and regulatory developments in the intervening years since *Ray*. While this Court acknowledged the elaborate level of federal regulation of inspected vessels in 1937 and again in 1978, numerous federal statutes and a plethora of U.S. Coast Guard regulations have been promulgated since the *Ray* decision resulting in even more intense federal oversight of the marine industry. The more significant post-*Ray* statutes and regulations are summarized below.

Even before the ink was dry on the *Ray* decision, Congress enacted the Port and Tanker Safety Act of 1978, Pub. L. No. 95-474, 92 Stat. 1471 (October 17, 1978); codified at 33 U.S.C. § 1221, *et seq.* As stated in the legislative history: "[This bill] expands the provisions now found in title I of the Ports and Waterways Safety Act of 1972. In addition, it amends the Tank Vessel Act of 1936 [Title II of the PWSA] to include additional authority over the construction, operation, and manning of tank vessels. Finally, it includes provisions for addressing the problem of vessels operating near our coastlines and provides for the

supervision of lightering operations in offshore waters." H.R. Rep. No. 95-1384 – Part I, pages 2-3 (as contained at 1978 U.S. Code Cong. & Admin. News 3271).

Two years later, Congress enacted the Act to Prevent Pollution from Ships, Pub. L. No. 96-478, 94 Stat. 2297 (October 21, 1980); codified at 33 U.S.C. § 1901, *et seq.* The legislative history of this enactment notes: "The purpose of this legislation is to implement the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 [MARPOL 73/78]." H.R. Rep. No. 96-1224, page 2 (as contained at 1980 U.S. Code Cong. & Admin. News 4849). MARPOL 73/78 established international standards for the design and operation of tankships and other vessels. It also established detailed controls on the discharge of oil from ships. The federal law not only made MARPOL 73/78 applicable in United States waters, it created criminal and civil penalties for failure to comply with those provisions while in U.S. waters and authorized the U.S. Coast Guard to enforce the requirements.

Following the oil spill from the EXXON VALDEZ, Congress enacted the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (August 18, 1990) ("OPA 90"). Title I of OPA 90 is codified at 33 U.S.C. § 2701, *et seq.* The remainder of OPA 90 consisted mostly of amendments to existing federal laws, primarily in Title 46, U.S. Code, Shipping, and Title 33, U.S. Code, Navigation and Navigable Waters. The legislative history of OPA 90 is extensively reported in S. Rpt. No. 101-94, as found at 1990 U.S. Code Cong. & Admin. News 722.

Most recently, Congress authorized the Coast Guard for the first time to regulate the shoreside activities of ship owners and operators by enacting the Coast Guard Regulatory Reform Act of 1996, Pub. L. No. 104-324, Title VI, 110 Stat. 3927 (October 19, 1996); codified at 46 U.S.C., Chapter 32. The purpose of this new authority was:

> to authorize the Secretary to prescribe regulations regarding shipboard and shore-based management of vessels and personnel. This authority would include conducting examinations and requiring the maintenance of records. The purpose of this section is to implement the International Safety Management [ISM] Code. This agreement, which the U.S. Government has signed, requires owners of vessels engaged in foreign commerce to manage their vessels in a safe manner. This initiative recognizes that many of the decisions directly affecting the safety and environmental conditions on vessels are made on shore. The Secretary currently lacks legal authority to require adoption and use of the ISM Code by owners and operators of U.S.-flag vessels. Neither the International Convention for the Safety of Life at Sea [SOLAS] in general, nor the ISM Code in particular, derogate any of the pollution prevention measures contained in current U.S. law. SOLAS, including the ISM Code, augments safety and pollution prevention measures already enacted in the United States.

S. Report No. 104-160, page 27 (as contained at 1996 U.S. Code Cong. & Admin. News 4267).

It is also of significance that Congress, in 1983, saw fit to partially recodify Title 46, United States Code. In enacting that recodification, Congress stated:

> The maritime laws of the United States have long been in need of major revision and recodification. They are a confusing collection of individual statutes enacted over a period of nearly two centuries – each enacted to solve some particular problem of the day. Viewed now, as a whole, they are poorly organized, duplicative, often obsolete, and difficult to understand and apply.
>
> Some of the oldest and most frequently amended of our maritime laws are those administered by the Coast Guard. These laws, which are referred to in this Report as maritime laws, are related primarily to the safety of merchant vessels. They also cover, however, the safety [of] recreational vessels, the protection of the merchant seamen, and the protection of the environment.
>
> Many of the maritime safety laws that are related to the safety of merchant vessels and the protection of seamen were codified in 1874 in Titles 52 and 53 of the Revised Statutes. They, along with the maritime laws related to recreational vessels and protection of the environment, are now found primarily in title 46 of the United States Code. A few are also found in title 33.
>
> The purpose of [this legislation] is to revise, consolidate, and enact into positive law as a subtitle

> to title 46 of the United States Code (Shipping) the maritime safety laws administered by the United States Coast Guard. The ultimate aim of this legislation is three-fold: to make maritime safety and seamen protection law easier for the Coast Guard to administer, to make it less cumbersome for the maritime community to use, and to make it more understandable for everyone involved.

H.R. Rep. No. 98-338, page 113 (as contained at 1983 U.S. Code Cong. & Admin. News 925).[4]

Among other provisions in the recodified Subtitle II of Title 46, United States Code is section 2103, which provides:

> The Secretary [of Transportation] has general superintendence over the merchant marine of the United States and of merchant marine personnel insofar as the enforcement of this subtitle is concerned and insofar as those vessels and personnel are not subject, under other law, to the supervision of another official of the United States Government. In the interests of marine safety and seamen's welfare, the Secretary shall enforce this subtitle and shall carry out correctly and uniformly administer this subtitle.

[4] While this measure was largely a recodification of prior laws, substantive changes from that prior law are to be considered intentional. *See* H.R. Rep. No. 98-338, pages 117-120 (as contained at 1983 U.S. Code Cong. & Admin. News 929-932).

> The Secretary may prescribe regulations to carry out this subtitle.

Pub. L. No. 98-89, 97 Stat. 506 (August 26, 1983); codified at 46 U.S.C. § 2103. *See Transportation Institute v. U.S. Coast Guard*, 727 F. Supp. 648 (D.D.C. 1989). With limited exceptions not pertinent here, the Secretary has delegated this authority to the Commandant of the Coast Guard. *See* 49 C.F.R. § 1.46.

Utilizing this virtually plenary authority over commercial vessel operations on the navigable waters of the United States,[5] the U.S. Coast Guard has promulgated a large number of regulations imposing new and more stringent restrictions and requirements on the marine industry in the years subsequent to the *Ray* decision.[6] A significant portion of those regulations were for the purpose of implementing the Oil Pollution Act of 1990 (OPA 90). As Rear Admiral Henn, USCG, stated to Congress in 1993: "OPA 90 is without doubt the single largest tasking which Congress has given [the U.S. Coast Guard]. There are numerous sections most of which are highly interrelated." H.R. Rep. No. 103-8, *The Oil Pollution Act of 1990*, page 5 (1993). *See also* H.R. Rep. No. 102-93, *Vessel Response Plans* (1992).

[5] "[V]essel safety specifications and periodic safety inspection requirements represent an exercise of Congressional power under the commerce clause, which has been delegated to the Coast Guard." *Land and Lake Tours, Inc. v. Lewis*, 738 F.2d 961 (8th Cir. 1984).

[6] Federal regulations have no less preemptive effect than federal statues. *Fidelity Federal Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141 (1982).

Some of the more significant post-*Ray* rulemakings relating to design, construction, operation, and manning of merchant vessels promulgated by the U.S. Coast Guard are listed in the next section of this Brief.[7] A quick perusal, though, of the substantive portions of Titles 33 and 46 of the Code of Federal Regulations will reveal that almost every one of the Coast Guard provisions in those two titles has been totally superseded, or at least amended, since 1978. While not every federal statute or regulation, standing alone, demonstrates that the federal government pervasively regulates a particular field, the sheer number of federal regulations with regard to the marine industry, combined with their broad scope and fine detail, evidence that the federal government is of the view that there is little occurring on merchant vessels that it has not already regulated in one manner or another.[8]

In conclusion, while this Court did not have the occasion to rule in 1937 or in 1978 that the marine industry was pervasively regulated by the United States Government to the exclusion of regulation by state and local governments with regard not only to design, construction, and equipment, but also with regard to operation and manning, the occasion

[7] Omitted from this listing are the numerous Coast Guard regulations relating to documentation of vessels, licensing of merchant mariners, inspection of vessels, investigation of marine casualties, etc.

[8] For a discussion of the similarities between the federal regulation of the maritime and aviation industries, see, Justice Jackson's concurring opinion in the case of *Northwest Airlines v. State of Minnesota*, 322 U.S. 292, 302-303 (1944).

has now arrived. The system of federal laws and regulations concerning these aspects of the marine industry and its operations on the navigable waters of the United States and the general superintendence of the merchant marine by the U.S. Coast Guard is now so pervasive as to make inescapable the inference that Congress has left no room for state and local governments to supplement this field.

List of Significant U.S. Coast Guard Rulemakings Promulgated Subsequent to *Ray v. Atlantic Richfield Co.*

The following is a chronological list of significant rulemakings promulgated by the U.S. Coast Guard subsequent to the decision of the U.S. Supreme Court in *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (March 6, 1978). Significance was based primarily on the general application of the rule to merchant vessels operating on the navigable waters of the United States. Rulemakings focusing on waters that are the subject of the instant litigation also are included. Except as noted, all the rulemakings are either final rules or interim rules. Amendments to rulemakings promulgated subsequent to the first rulemaking on a particular topic following the *Ray* decision are generally omitted from this list.

Vessel Traffic Management; Puget Sound, 43 Fed. Reg. 12,257 (March 23, 1978).

Safety Approval of Cargo Containers, 43 Fed. Reg. 16,946 (April 20, 1978).

Additional Equipment for Vessels of 10,000 Gross Tons or More, 43 Fed. Reg. 32,112 (July 24, 1978).

Safety Standards for Self-Propelled Vessels Carrying Bulk Liquefied Gases, 44 Fed. Reg. 25,986 (May 3, 1979).

Navigation Safety Regulations; Electronic Navigation Equipment, 44 Fed. Reg. 31,592 (May 31, 1979).

Inert Gas and Deck Foam Systems, 44 Fed. Reg. 66,500 (November 19, 1979).

Tank Vessels of 10,000 Gross Tons or More; Improved Steering Gear Requirements, 44 Fed. Reg. 66,528 (November 19, 1979).

Benzene Carriage Requirements, 44 Fed. Reg. 69,299 (December 3, 1979).

Puget Sound Vessel Traffic Service Area, 45 Fed. Reg. 48,822 (July 21, 1980).

Notification of Arrivals, Departures, Hazardous Conditions, and Dangerous Cargoes, 45 Fed. Reg. 57,392 (August 28, 1980).

Casualty Reporting Requirements, 45 Fed. Reg. 77,439 (November 24, 1980).

Disestablishing of COLREGS Demarcation Lines for Puget Sound and Adjacent Waters of Northwest Washington, 46 Fed. Reg. 61,456 (December 17, 1981).

Lifesaving Equipment, 47 Fed. Reg. 10,533 (March 11, 1982).

Electrical Engineering Regulations, 47 Fed. Reg. 15,210 (April 8, 1982).

Tank Vessel Operation; Puget Sound, 47 Fed. Reg. 17,968 (April 26, 1982).

Navigation Safety Regulations; Radar Requirement for Certain Tankers of 10,000 Gross Tons or More, 47 Fed. Reg. 34,388 (August 9, 1982).

Electronic Position Fixing Devices, 47 Fed. Reg. 50,494 (December 30, 1982).

Ports and Waterways Safety; Control of Vessel Operations and Cargo Transfers, 48 Fed. Reg. 35,402 (August 4, 1983).

Freeboards; Load Line Regulations, 48 Fed. Reg. 38,646 (August 25, 1983).

Chart and Publication Requirements, 48 Fed. Reg. 44,534 (September 29, 1983).

Tank Vessels Carrying Oil in Bulk; Cargo Monitors, 48 Fed. Reg. 45,718 (October 6, 1983).

Subdivision and Stability Regulations, 48 Fed. Reg. 50,996 (November 4, 1983).

Special Requirements for Cargo Lightering Operations, 49 Fed. Reg. 11,170 (March 26, 1984).

Dangerous Cargoes; Carriage of Solid Hazardous Materials in Bulk, 49 Fed. Reg. 16,794 (April 20, 1984).

Regulated Navigation Area; Puget Sound, WA, 49 Fed. Reg. 32,178 (August 13, 1984).

Navigation Safety Regulations, 49 Fed. Reg. 43,463 (October 29, 1984).

Compliance Procedures for Self-Propelled Foreign Flag Vessels Carrying Hazardous Liquids and Bulk Liquefied Gases, 50 Fed. Reg. 8730 (March 5, 1985).

Segregated Ballast, Dedicated Clean Ballast and Crude Oil Washing on Tankships of 20,000 DWT or More But Less Than 40,000 DWT Carrying Oil in Bulk, 50 Fed. Reg. 11,622 (March 22, 1985).

Safety Rules for Self-Propelled Vessels Carrying Hazardous Liquids, 50 Fed. Reg. 21,166 (May 22, 1985).

Oil and Hazardous Substance Discharge Reporting Requirements, 51 Fed. Reg. 17,962 (May 16, 1986).

Vessel Reporting Requirements, 51 Fed. Reg. 19,338 (May 29, 1986).

Control of Residues and Mixtures Containing Oil or Noxious Liquid Substances, 52 Fed. Reg. 7744 (March 12, 1987).

Pollution Rules for Ships Carrying Hazardous Liquids, 52 Fed. Reg. 7765 (March 12, 1987).

Operating a Vessel While Intoxicated, 52 Fed. Reg. 47,526 (December 14, 1987).

Hazardous Materials Used as Ship's Stores on Board Vessels, 53 Fed. Reg. 7745 (March 10, 1988).

Vital System Automation, 53 Fed. Reg. 17,820 (May 18, 1988).

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel, 53 Fed. Reg. 47,064 (November 21, 1988).

U.S./Canadian Cooperative Vessel Traffic Management System, 54 Fed. Reg. 15,173 (April 17, 1989).

Regulations Implementing the Pollution Prevention Requirements of Annex V of MARPOL 73/78, 54 Fed. Reg. 18,384 (April 28, 1989).

Vessel Piping Systems, 54 Fed. Reg. 40,590 (October 2, 1989).

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Pre-Employment Testing, 55 Fed. Reg. 634 (January 8, 1990).

Cargo Gear Inspection and Testing Requirements, 55 Fed. Reg. 21,548 (May 25, 1990).

Marine Vapor Control Systems, 55 Fed. Reg. 25,396 (June 21, 1990).

Replacement of References to SOLAS 60 with SOLAS 74, 55 Fed. Reg. 30,658 (July 26, 1990).

Navigation Bridge Visibility; Ports and Waterways Safety, 55 Fed. Reg. 32,244 (August 8, 1990).

Hazardous Materials Pollution Prevention, 55 Fed. Reg. 36,248 (September 4, 1990).

Chemical Drug Testing Programs for Commercial Vessel Personnel, 56 Fed. Reg. 31,030 (July 8, 1991).

Puget Sound Vessel Traffic Service, 56 Fed. Reg. 37,475 (August 7, 1991).

Vessel Communications Equipment: Requirement for Vessels Subject to Bridge-to-Bridge Radiotelephone Act to Carry VHF FM Channels 22A and 67, 57 Fed. Reg. 14,483 (April 21, 1992).

Double Hull Standards for Vessels Carrying Oil in Bulk, 57 Fed. Reg. 36,222 (August 12, 1992).

Stability Design and Operational Requirements, 57 Fed. Reg. 41,812 (September 11, 1992).

Vessel Response Plans, 58 Fed. Reg. 7376 (February 5, 1993).

Subdivision and Damage Stability of Dry Cargo Vessels, 58 Fed. Reg. 17,316 (April 1, 1993).

Navigation Underway; Tankers, 58 Fed. Reg. 27,628 (May 10, 1993).

Requirements for Cargo Lightering Operations, 58 Fed. Reg. 48,434 (September 15, 1993).

Requirements for Longitudinal Strength, Plating Thickness, and Periodic Gauging of Certain Tank Vessels, 58 Fed. Reg. 52,598 (October 8, 1993).

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CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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