No. 22-500

IN THE

Supreme Court of the United States

GREAT LAKES INSURANCE SE,

Petitioner,

v.

RAIDERS RETREAT REALTY CO., LLC,

Respondent.

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF AMICUS CURIAE NEW ENGLAND LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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BATEMAN & SLADE, INC. STONEHAM, MASSACHUSETTS

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INTEREST OF AMICUS CURIAE

Amicus curiae New England Legal Foundation (NELF) is a nonprofit, public interest law firm, incorporated in Massachusetts in 1977 and headquartered in Boston.[1] NELF's membership consists of corporations, law firms, individuals, and others who believe in its mission of promoting inclusive economic growth in New England, protecting the free enterprise system, and defending economic rights. NELF's members and supporters include a cross-section of large and small businesses and other organizations from all parts of the Commonwealth, New England, and the United States.

NELF is committed to the time-honored principles of freedom of contract and party autonomy in the structuring of commercial and legal relationships, subject to limited judicial review to ensure basic fairness. Judicial enforcement of parties' contractual expectations provides certainty and predictability in the private ordering of affairs. Amicus is also committed to the goal of national uniformity in the regulation of interstate business relationships, especially when, as here, a compelling federal interest should override competing state interests.

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[1] Pursuant to Supreme Court Rule 37.6, amicus states that no counsel for a party authored this amicus brief in whole or in part, and no person or entity, other than amicus, made a monetary contribution to the preparation or submission of the brief.

For these and other reasons discussed below, NELF believes that its brief will assist the Court in deciding the issue of federal maritime law that this case presents.

SUMMARY OF ARGUMENT

A federal court sitting in admiralty should enforce a choice-of-law clause contained in a maritime contract without considering the competing public policy concerns of another state interested in applying its law to the dispute. The federal interest in a harmonious system of maritime commerce, advanced through the uniform enforcement of parties' pre-dispute contract clauses, should outweigh the local interests of third-party states with connections to the parties' dispute.

This case involves a marine insurance policy. While the policy falls under federal maritime law, the Court in *Wilburn Boat Co. v. Firemans Fund Ins. Co.*, 348 U.S. 310 (1955), held that such a policy is governed by state insurance law, in the absence of an established rule of admiralty law governing the underlying dispute. In essence, the Court in *Wilburn Boat* concluded that the federal interest in the uniform interpretation of maritime contracts must yield to the states' traditional regulation of the insurance industry. The Court also concluded that it lacked the institutional competence to regulate marine insurance, by issuing rules of decision on a case-by-case basis.

However, *Wilburn Boat*'s twin concerns of federalism and institutional competence do not apply to a choice-of-law clause contained in a marine

insurance contract. First, the clause is not part of substantive insurance law. Instead, it resolves the threshold issue, created by *Wilburn Boat* itself, as to which state's law will apply to parties' insurance disputes. Second, the enforcement of choice-of-law clauses has long been the subject of judicial rule-making. Therefore, *Wilburn Boat* should not impede the fashioning of a rule of admiralty law to ensure the uniform enforcement of choice-of-law clauses contained in marine insurance policies.

Wilburn Boat did not provide any guidance in how to decide which state's law would apply to future marine insurance disputes. The decision also exposed the marine insurer and insured to the inherent uncertainty of a court's *post hoc* selection of a state's law to apply to the parties' prior conduct that gave rise to their dispute.

Subsequently, in *M/S Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1 (1972), the Court recognized the paramount importance of enforcing a pre-dispute contract clause in a maritime contract, due to the inherent uncertainty concerning where in the world a marine accident and its legal resolution might occur. While *The Bremen* involved a forum selection clause, contained in an international marine towage contract, "the forum clause was also an effort *to obtain certainty as to the applicable substantive law*." *The Bremen*, 407 U.S. at 13 n.15 (emphasis added). Moreover, *The Bremen*'s recognition of the geographical and jurisdictional uncertainty inherent in maritime disputes should apply equally to the international and domestic spheres, especially because *Wilburn Boat* held that an indeterminate

state's law would apply to disputes arising under marine insurance contracts.

Under *The Bremen*, and in response to *Wilburn Boat*, parties to a marine insurance contract should be able to designate a stable and enforceable body of law to govern their contractual rights and duties, from the outset of their commercial relationship. The parties' chosen law is instrumental to the contract's formation, price, and performance. The clause allows the parties to fulfill their contractual obligations in compliance with a known body of law. Admiralty law, in turn, should uphold the parties' legitimate contractual expectations by enforcing their designated law, in order to protect maritime commerce itself.

The federal interest in the uniform enforcement of choice-of-law clauses in marine insurance contracts cannot accommodate a disruptive challenge to the validity of the parties' designated law, potentially in every case, based on the subordinate and variable policy concerns of other states. While this concern for interstate comity is a familiar element of a conflict-of-laws analysis under state law, it should yield to the weightier federal concern for a harmonious system of maritime commerce that underlies Article III's grant of admiralty jurisdiction.

If decided otherwise, this case would allow a federal court to subject the parties, after the fact, to unanticipated liability under the law of a third-party state that the *court* has chosen, based on its assessment of that state's public policies. This result

would undermine the certainty and uniformity of result that are essential to the smooth functioning of maritime commerce.

The Third Circuit has misinterpreted language in *The Bremen* stating that "[a] contractual choice-of-forum clause should be held unenforceable if enforcement would *contravene a strong public policy of the forum* in which suit is brought, whether declared by statute or by judicial decision." *The Bremen*, 407 U.S. at 15 (emphasis added). The lower court has understood this language to refer to a strong public policy of the forum *state* in which a federal admiralty court sits. This is incorrect. The *Bremen* Court was faced with a potential international conflict of laws between two co-equal sovereign nations, England and the forum *nation* of the United States. Nowhere did the *Bremen* Court authorize a federal court to subordinate the national maritime interest in enforcing pre-dispute contract clauses to the local public policy concerns of the forum state.

ARGUMENT

I. A FEDERAL COURT SITTING IN ADMIRALTY SHOULD ENFORCE A CHOICE-OF-LAW CLAUSE CONTAINED IN A MARINE INSURANCE CONTRACT WITHOUT CONSIDERING THE COMPETING PUBLIC POLICY CONCERNS OF ANOTHER STATE INTERESTED IN APPLYING ITS LAW TO THE DISPUTE.

The question in this case is whether a federal court sitting in admiralty can refuse to enforce a

choice-of-law clause contained in a maritime contract, when enforcement would offend a strong public policy of another state with an interest in applying its law to the dispute. The short answer is no, because the federal interest in a harmonious system of maritime commerce, advanced through the uniform enforcement of parties' choice-of-law clauses, should override the competing interests of other states with connections to the parties' dispute. "State law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system." *Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 28 (2004) (cleaned up).

Under Article III of the Constitution, "the fundamental interest giving rise to maritime jurisdiction is the protection of maritime *commerce.*" *Norfolk Southern Ry.*, 543 U.S. at 25 (cleaned up) (emphasis in original).[2] In order to serve this federal interest, "our touchstone is a concern for the *uniform meaning* of maritime contracts. . . Article III's grant of admiralty jurisdiction must have referred to a system of law coextensive with, and operating uniformly in, the whole country." *Id.*, 543 U.S. at 28 (cleaned up) (emphasis added). Accordingly, "[i]n several contexts, we have recognized that vindication of maritime policies demand[s] *uniform adherence* to a federal rule of decision." *Id.*, 543 U.S. at 28 (cleaned up) (emphasis added). This case presents one such context demanding uniform adherence to a federal rule of decision.

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[2] Article III provides, in relevant part, that "The judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction." U.S. Const., art. III, § 2, cl. 1.

A. While *Wilburn Boat Co. v. Firemans Fund Ins. Co.* Applied State Insurance Law To A Marine Insurance Contract, *Wilburn Boat* Should Not Impede The Uniform Federal Enforcement Of A Choice-Of-Law Clause Contained In That Contract.

At issue is a marine insurance policy, which falls under the Court's Article III admiralty jurisdiction. See *New England Mut. Marine Ins. Co. v. Dunham*, 78 U.S. 1, 11 Wall. 1 (1870). However, in *Wilburn Boat Co. v. Firemans Fund Ins. Co.*, 348 U.S. 310 (1955), the Court held that a marine insurance policy is subject to state insurance law, in the absence of "a judicially established federal admiralty rule governing the[] [disputed] warranties." *Wilburn Boat*, 348 U.S. at 314.

In essence, the Court in *Wilburn Boat* concluded that the federal interest in the uniform interpretation of maritime contracts must yield to the states' traditional regulation of the insurance industry.[3] The Court also concluded that, when comparing itself to Congress, it lacked the institutional competence to regulate marine

[3] *See Wilburn Boat*, 348 U.S. at 316 ("The whole judicial and legislative history of insurance regulation in the United States warns us against the judicial creation of admiralty rules to govern marine policy terms and warranties. The control of all types of insurance companies and contracts has been primarily a state function since the States came into being.").

insurance, by issuing rules of decision on a case-by-case basis.[4]

However, *Wilburn Boat*'s twin concerns for federalism and institutional competence do not apply to a choice-of-law clause contained in a marine insurance contract. First, the clause is a pre-dispute contract term that is not part of substantive insurance law. *Cf. Nitro-Lift Technologies, L.L.C. v. Howard*, 568 U.S. 17, 21 (2012) ("[A]n arbitration provision is severable from the remainder of the contract[.]") (cleaned up). The clause resolves the threshold legal issue, created by *Wilburn Boat* itself, concerning which state's insurance law will apply to disputes arising under a marine insurance contract. *See Wilburn Boat*, 348 U.S. at 334 (Reed, J., dissenting) ("What law is to govern--that of the State where the insurance contract was issued, the State of the accident, or the State of the forum? It seems an *unreasonable interference with maritime activity* to allow the many States to declare the substantive law of marine insurance.") (emphasis added).

And second, unlike the regulation of the insurance industry, the enforcement of choice-of-law clauses has long been a traditional subject of judicial rule-making. *See, e.g., Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981) (announcing constitutional requirements for enforcement of

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[4] *See id.*, 348 U.S. at 319 ("Congress in passing laws is not limited to the narrow factual situation of a particular controversy as courts are in deciding lawsuits. And Congress could replace the presently functioning State regulations of marine insurance by one comprehensive Act. Courts, however, could only do it piece-meal, on a case-by-case basis. Such a creeping approach would result in leaving marine insurance largely unregulated for years to come.").

choice-of-law clauses); *Knott v. Botany Worsted Mills*, 179 U.S. 69, 77 (1900) (holding that choice-of-law clause contained in international maritime contract that applied "the law of the ship's flag" to enforce contract's exculpatory provisions was void under federal statute prohibiting such provisions). Therefore, *Wilburn Boat* should not impede the fashioning of a rule of admiralty law to ensure the uniform enforcement of choice-of-law clauses contained in marine insurance contracts.[5]

B. Under *M/S Bremen v. Zapata Off-Shore Co.*, And In Response To *Wilburn Boat*, The Parties To A Marine Insurance Contract Should Be Able To Designate A Stable And Enforceable Body Of Law To Govern Their Commercial And Legal Relationship.

Wilburn Boat did not provide any guidance in how to decide which state's law would apply to future marine insurance disputes. *See Wilburn*

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[5] Nor is the enforcement of these choice-of-law clauses an inherently local maritime concern. "When a contract is a maritime one, and the dispute is not inherently local, federal law controls the contract interpretation." *Norfolk Southern Ry. Co.*, 543 U.S. at 22-23 (citing two-step inquiry under *Kossick v. United Fruit Co.,* 365 U.S. 731, 734-35 (1961)). After *Wilburn Boat*, parties to *any* marine insurance contract must include a choice-of-law clause in order to know in advance which state's law will apply to a future dispute. Moreover, other kinds of maritime contracts contain choice-of-law clauses. *See* 14A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3671.3, at n.22 (4th ed.) (gathering marine insurance and other maritime cases involving choice-of-law clauses). Therefore, the enforcement of these clauses is of widespread national importance.

Boat, 348 U.S. at 334 (Reed, J., dissenting) ("What law is to govern--that of the State where the insurance contract was issued, the State of the accident, or the State of the forum?"). The decision also exposed the marine insurer and insured to the inherent uncertainty of a court's *post hoc* selection of a state's law to apply to the parties' prior conduct that gave rise to their dispute. However, "[s]hipmasters must know [in advance] how to handle their vessels to preserve their insurance. Insurers must know [in advance] the risks they are assuming when they fix their premiums." *Id*.

Subsequently, in *M/S Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1 (1972), the Court recognized the paramount importance of enforcing a pre-dispute contract clause in a maritime contract, due to the inherent uncertainty concerning where in the world a marine accident and its legal resolution might occur. "In the course of its voyage, [the vessel] was to traverse the waters of *many jurisdictions*. The [vessel] could have been damaged at any point along the route, and there were countless possible ports of refuge." *The Bremen*, 407 U.S. at 13 (emphasis added). As a result, the *Bremen* Court held that "such [pre-contract] clauses are prima facie valid and should be enforced," *id*. at 10, to "give effect to the legitimate expectations of the parties," *id*. at 12, and to avoid "the mere fortuities" concerning where a marine accident may occur and where an aggrieved party may sue. *Id*. at 13.

While *The Bremen* involved a forum selection clause (designating the High Court of Justice in London) that was contained in an international

marine towage contract, the *Bremen* Court noted that "the forum clause was also an effort *to obtain certainty as to the applicable substantive law,*" i.e., the law of the designated forum nation (England). *The Bremen*, 407 U.S. at 13 n.15 (emphasis added).[6] *See also Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 629 (1985) (describing pre-dispute contract clause in *The Bremen* as "a contractual choice of an English forum and, by implication, English law"); *Milanovich v. Costa Crociere, S.p.A.*, 954 F.2d 763 (D.C. Cir. 1992) (applying *The Bremen* to enforce choice-of-law clause contained in international passenger cruise ticket).

Moreover, *The Bremen*'s recognition of the geographical and jurisdictional uncertainty inherent in maritime disputes should apply equally to the international and domestic spheres, especially because *Wilburn Boat* held that an indeterminate state's law would apply to disputes arising under marine insurance contracts. "A vessel moves from State to State along our coasts or rivers. State lines may run with the channel or across it. Under maritime custom an insurance policy usually covers the vessel wherever it may go. If uniformity is needed anywhere, it is needed in marine insurance." *Wilburn Boat*, 348 U.S. at 333 (Reed, J., dissenting). *See also Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991) (applying *The Bremen* to enforce

[6] In particular, the *Bremen* Court explained that, "while the contract here did not specifically provide that the substantive law of England should be applied, it is the general rule in English courts that the parties are assumed, absent contrary indication, to have designated the forum with the view that it should apply its own law." *The Bremen*, 407 U.S. at 13 n.15.

forum selection clause contained in domestic passenger cruise ticket).

Under *The Bremen* and its progeny, and in response to *Wilburn Boat*, the parties to a marine insurance contract should be able to designate a stable and enforceable body of law to govern their contractual rights and duties, from the outset of their commercial relationship. "The threshold question is whether [a federal admiralty] court should have exercised its jurisdiction to do [any] more than give effect to the legitimate expectations of the parties, manifested in their freely negotiated agreement, by specifically enforcing the [pre-dispute contract] clause." *The Bremen*, 407 U.S. at 12.

The parties' chosen law is instrumental to the contract's formation, price, and performance. *See The Bremen*, 407 U.S. at 14 ("There is strong evidence that the forum clause was a vital part of the agreement, and it would be unrealistic to think that the parties did not conduct their negotiations, including fixing the monetary terms, with the consequences of the forum clause figuring prominently in their calculations."). Perhaps most importantly, the clause allows the parties to fulfill their contractual obligations in compliance with a known body of law. "Not only do judges and litigants need to know what law governs the resolution of disputes, but people and businesses need to know *what law applies at the time they act*." Erin A. O'Hara & Larry E. Ribstein, *The Law Market* 4-5 (2009) (emphasis added).

Admiralty law, in turn, should uphold the parties' legitimate expectations by enforcing their designated law. *See The Bremen*, 407 U.S. at 13-14 ("The elimination of all such uncertainties [inherent in maritime commerce] by agreeing in advance on a forum [and body of law] acceptable to both parties is an indispensable element in [national and] international trade, commerce, and contracting."). In so doing, admiralty law will serve "the fundamental interest giving rise to maritime jurisdiction[, which] is the protection of maritime *commerce*." *Norfolk Southern Ry.*, 543 U.S. at 25 (emphasis in original) (cleaned up).

C. The Federal Interest In A Harmonious System of Maritime Commerce, Advanced Through The Uniform Enforcement of Pre-Dispute Contract Clauses, Should Preclude Consideration Of The Variable Public Policy Concerns Of Third-Party States.

The federal interest in the uniform enforcement of choice-of-law clauses in marine insurance contracts should preclude a disruptive challenge to the validity of the parties' designated law, potentially in every case, based on the subordinate and variable policy concerns of other states. "[W]hen state interests cannot be accommodated without defeating a federal interest, as is the case here, then federal substantive law should govern. . . . Applying state law to [issues] like this one would undermine the uniformity of general maritime law." *Norfolk Southern Ry.*, 543 U.S. at 27-28. *See also Kossick v. United Fruit Co.,* 365 U.S.

731, 741 (1961) (forum state's interest in enforcing statute of frauds was "insufficient to overcome the countervailing considerations" under federal maritime law for the uniform enforcement of oral employment agreements between shipowners and seamen).

While the concern for interstate comity is a familiar element of a conflict-of-laws analysis under state law,[7] it should yield to the weightier federal concern for a harmonious system of maritime commerce that underlies "Article III's grant of admiralty jurisdiction. [The framers] must have referred to a system of law coextensive with, and operating uniformly in, the whole country." *Norfolk Southern Ry.*, 543 U.S. at 28 (cleaned up).

If decided otherwise, this case would allow a federal court to subject the parties, after the fact, to

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[7] *See* Restatement (Second) of Conflict of Laws § 187(2)(b) (2d ed. 1971) (invalidating choice-of-law clause when "application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.").

Section 188 of the Restatement, in turn, enumerates the relevant contacts between a state and a dispute (such as the place of contracting and the place of performance), in order to determine which state has the most significant relationship to the dispute, in light of the choice-of-law principles listed under § 6 (such as the needs of the interstate system, the reasonable expectations of the parties, and the relevant policies of interested states).

unanticipated liability under the law of a third-party state that the *court* has chosen, based on its assessment of that state's public policies. However, "[t]he main reason the parties include a choice-of-law clause in their contract is to avoid the uncertainty that, at least in the United States, is *inherent in the judicial choice-of-law process*." Symeon C. Symeonides, *Choice of Law in the American Courts in* 2015*: Twenty-Ninth Annual Survey*, 64 Am. J. Comp. L. 221, 247 (2016) (emphasis added). *See also* Richard J. Bauerfeld, *Effectiveness Of Choice-Of-Law Clauses In Contract Conflicts Of Law: Party Autonomy Or Objective Determination?,* 82 Colum. L. Rev. 1659, 1673 (1982) ("[T]he fundamental policy exception to the [party] autonomy rule[, under the widely followed § 187(2)(b) of the Restatement (Second) of Conflict of Laws,][8] provides an escape valve out of which all of the predictability and certainty of the autonomy rule flows.").

This inherent judicial uncertainty is only exacerbated by the inherent geographical uncertainty surrounding maritime accidents, and by *Wilburn Boat*'s application of an indeterminate state's insurance law to marine insurance disputes. *See The Bremen*, 407 U.S. at 13 ("In the course of its voyage, [the vessel] was to traverse the waters of many jurisdictions. The [vessel] could have been damaged at any point along the route, and there were countless possible ports of refuge."); *Wilburn Boat*, 348 U.S. at 333 (Reed, J., dissenting) ("A vessel moves from State to State along our coasts or rivers. State lines may run with the channel or across it. Under maritime custom an insurance policy usually

[8] *See* n.7, above.

covers the vessel wherever it may go. If uniformity is needed anywhere, it is needed in marine insurance.").

In the end, these multiples sources of uncertainty would only defeat Article III's goal of protecting maritime commerce by ensuring the development of "a system of law coextensive with, and operating uniformly in, the whole country." *Norfolk S. Ry.*, 543 U.S. at 28 (cleaned up). Put otherwise, the overriding federal interest in maintaining a harmonious system of maritime commerce cannot accommodate a consideration of the variable public policy concerns of states that have an interest in applying their law to parties' marine disputes. "State law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system." *Id.* (cleaned up).

II. NOWHERE IN *THE BREMEN* DID THE COURT AUTHORIZE A FEDERAL ADMIRALTY COURT TO SUBORDINATE THE NATIONAL INTEREST IN ENFORCING PRE-DISPUTE CONTRACT CLAUSES TO THE LOCAL PUBLIC POLICY CONCERNS OF THE FORUM STATE.

The Third Circuit has misinterpreted language in *The Bremen* stating that "[a] contractual choice-of-forum clause should be held unenforceable if enforcement would *contravene a strong public policy of the forum* in which suit is brought, whether declared by statute or by judicial decision." *The Bremen*, 407 U.S. at 15 (emphasis added). The lower

court has understood this language to refer to a strong public policy of the forum *state* in which a federal admiralty court sits. *See* Petition for Certiorari, Appendix A at 15a. This is incorrect. The *Bremen* Court was faced with a potential international conflict of laws between two co-equal sovereign nations, England and the forum *nation* of the United States.

At issue in *The Bremen* was the enforceability of exculpatory clauses contained in a German company's contract to tow an American oil company's ocean-based oil rig from Louisiana to the Adriatic Sea. *See id.* at 2-3. The contract designated the London High Court of Justice, and by implication English law, as the chosen forum and the chosen body of law for the resolution of disputes. *See id.* at 4, 13 n.15. After the oil rig was damaged en route, during a storm in international waters, the American company sued in admiralty in a United States District Court, in disregard of the parties' forum clause. *See id.*, 407 U.S. at 3-4.

In deciding to enforce the parties' forum selection clause (and with it, their implied choice-of-law clause), the *Bremen* Court confronted a potential international conflict between the maritime law of England and the United States. While English maritime law would most likely enforce the contract's exculpatory clauses, this Court had previously declined to enforce such clauses in a domestic marine contract. *See The Bremen*, 407 U.S. at 15 (citing *Bisso v. Inland Waterways Corp.,* 349 U.S. 85 (1955)). Accordingly, the Court had to

decide, as a matter of international comity,[9] whether the enforcement of the forum clause could offend a strong public policy of the forum nation of the United States.[10] The *Bremen* Court ultimately decided that there was no international conflict of laws, because it restricted the application of *Bisso* to domestic maritime contracts. *See The Bremen*, 407 U.S. at 15-16. *See also Mitsubishi Motors Corp.*, 473 U.S. at 629 (enforcing international arbitration agreement with respect to federal antitrust claims, even though such claims were not then arbitrable in certain lower federal courts, out of "concerns of international comity, respect for the capacities of foreign and transnational tribunals, and sensitivity to the need

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[9] *See Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 817 (2014) (defining international comity as "respecting the dignity of *other sovereigns* so as not to imperil the amicable relations between governments and vex the peace of nations.") (cleaned up) (emphasis added).

[10] To underscore the exclusively federal meaning of the word "forum" in *The Bremen*, the Court also cited to *Boyd v. Grand Trunk W.R. Co.*, 338 U.S. 263 (1949). *See The Bremen*, 407 U.S. at 15. In *Boyd*, the Court held that the venue provision of a federal statute (the FELA), along with another provision in that statute, invalidated a more restrictive forum selection clause contained in a railway worker's employment agreement. *See Boyd*, 338 U.S. at 264-65. As with the Court's admiralty decision in *Bisso*, *Boyd* concerned the invalidation of a contract clause based on a strong *federal* public policy, "whether declared by statute or by judicial decision." *The Bremen*, 407 U.S. at 15.

The *Bremen* Court ultimately decided that there was no international conflict between English and American maritime law, because the Court restricted the application of *Bisso* to domestic maritime contracts. *See The Bremen*, 407 U.S. at 15-16.

of the international commercial system for predictability in the resolution of disputes").

Contrary to the Third Circuit's interpretation, then, *The Bremen* was dealing with a potential clash between the laws of two co-equal sovereign nations. Nowhere was the Court authorizing a federal admiralty court to subordinate the national interest in enforcing pre-dispute contract clauses to the local public policy concerns of the forum state. *See Galilea, LLC v. AGCS Marine Insurance Co.*, 879 F.3d 1052, 1060 (9th Cir. 2018) ("*The Bremen* considered whether the public policy of the forum where suit was brought--there, federal public policy as supplied by federal maritime law--outweighed the application of the law of [an]other countr[y]. . . . But here we encounter an *unequal, hierarchical* relationship between federal maritime law and state law[.]") (emphasis added).

In sum, Article III's grant of admiralty jurisdiction creates a fundamental federal interest in the protection of maritime commerce, which is best served in this case by fashioning a rule of decision with uniform results. To advance that end, a federal court sitting in admiralty should enforce a choice-of-law clause contained in a marine insurance contract without considering the competing public policy concerns of other states interested in applying their laws to the dispute.

CONCLUSION

For the reasons stated above, NELF respectfully requests that this Court reverse the judgment of the Third Circuit and enforce the parties' choice-of-law clause.

Respectfully submitted,

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