No. 11-626

IN THE

Supreme Court of the United States

FANE LOZMAN,

Petitioner,

v.

THE CITY OF RIVIERA BEACH, FLORIDA,

Respondent.

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

BRIEF FOR PETITIONER

EDWARD M. MULLINS
ANNETTE C. ESCOBAR
ASTIGARRAGA DAVIS MULLINS
& GROSSMAN, LLP
701 Brickell Avenue,
16th Floor
Miami, FL 33131

ROBERT TAYLOR BOWLING
COBB COLE
150 Magnolia Avenue
Daytona Beach, FL 32114

JEFFREY L. FISHER
Counsel of Record
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305
(650) 724-7081
jlfisher@law.stanford.edu

KERRI L. BARSH
GREENBERG TRAURIG
333 Avenue of the
Americas, 44th Floor
Miami, FL 33131

QUESTION PRESENTED

Whether a floating structure that is indefinitely moored, receives power and other utilities from shore, and is not intended to be used in maritime transportation or commerce constitutes a "vessel" under 1 U.S.C. § 3, thus triggering federal maritime jurisdiction.

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BRIEF FOR PETITIONER

Petitioner Fane Lozman respectfully requests that this Court reverse the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit (Pet. App. 1a-32a) is published at 649 F.3d 1259. The order of the United States District Court for the Southern District of Florida (Pet. App. 33a-49a) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on August 19, 2011. Pet. App. 1a. Petitioner filed his petition for a writ of certiorari on November 17, 2011. The Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Section 3 of Title 1 of the United States Code provides in relevant part: "The word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."

Section 1333 of Title 28 provides, in relevant part: "The district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) any civil case of admiralty or maritime jurisdiction."

Section 31342 of Title 46 provides, in relevant part: "a person providing necessaries to a vessel on the order of the owner or a person authorized by the owner – (1) has a maritime lien on the vessel; (2) may bring a civil action in rem to enforce the lien."

STATEMENT OF THE CASE

Structures deemed to be "vessels" are subject to the wide assortment of distinctive legal doctrines and remedies that make up admiralty law – doctrines and remedies specially adapted to the unique concerns of maritime transportation and commerce. This case presents the question whether an indefinitely moored floating structure that functions as an extension of land is a vessel, thus triggering federal maritime jurisdiction.

1. In 2002, petitioner Fane Lozman, a former United States Marine Corps officer and financial trader, purchased from a private owner what Florida law calls a "floating residential structure," Pet. App. 12a n.6, and is most commonly referred to as a "floating home."[1] Unlike craft typically called "houseboats," which sometimes have space for living and sleeping but also are used for maritime transportation, the only purpose of floating homes is to provide dwellings in which to reside. *See* Amicus Br. of Seattle Floating Homes Ass'n et al. Accordingly, floating homes are ordinarily financed with conventional mortgages, rather than the RV loans used to purchase houseboats.[2] Likewise, floating homes are subject only to an excise tax at the time of sale, whereas houseboats are subject to state

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[1] Because summary judgment was ultimately granted against petitioner, any disputed issues of fact must be resolved in this Court in his favor.

[2] *See* Polyana da Costa, How to Finance a Houseboat, http://www.bankrate.com/finance/mortgages/finance-houseboat-1.aspx (last visited May 5, 2012).

sales taxes when purchased.[3] Owners of floating homes also generally pay property taxes, just as they would for any other piece of real estate.[4]

Like other floating homes, petitioner's home bore little physical resemblance to any sort of seagoing craft. It was a rectangular structure that looked like a house on land, both in design and construction. It was made of plywood and other land-based building materials, and it was built to meet the standards of the state building code governing land-based dwellings. J.A. 38, 85.[5] Inside, the home consisted only of living quarters. It had a kitchen and dinette, a living room, three bedrooms (including one, upstairs, also used as an office), and a full bathroom. *Id.* at 39. The home also had French doors on three of its four sides, only a few feet above the water line. *Id.* at 12, 44. In addition, the home had internal plumbing for purposes of serving the dishwasher, shower, sink, and other devices. The home was fitted

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[3] *See* Special Agents Realty, http://www.specialagentsrealty.com/news-real-estate-investing-finance/houseboat-floating-home/ (Jan. 23, 2011).

[4] *See* Cari Gennarelli, Floating Home Property Taxes Explained, http://www.marinmodern.com/blog/floating-home-property-taxes-explained.html (Sept. 11, 2011).

[5] These facts and various others are documented in a "surveyor's report" that the City commissioned after bringing this lawsuit. The report refers to petitioner's home as a "houseboat" and uses other marine terminology. These characterizations, of course, are no more relevant to the question presented here than the City's assertion in the caption of its complaint that petitioner's home is a "vessel." The question of vessel status is one of actuality, not labeling during litigation.

for a land-based sewer line, just as a land-based home with these devices would have been. *Id.* at 41.

Also like other floating homes, petitioner's home was not designed for use in maritime transportation. It lacked any means of propulsion or steering; it did not have a raked (that is, angled) bow to break and absorb wave action; and it lacked lifeboats and other safety equipment. Pet. App. 18a-19a; J.A. 12. It rested only ten inches underwater. J.A. 37. It had no Hull Identification Number, could not get a vessel registration from the State, and was not eligible for vessel certification by the Coast Guard. Pet. App. 20a, 42a; J.A. 37.

When petitioner purchased the floating home, it apparently had never moved. It had been built by the previous owner and was affixed to that owner's seawall on a canal in the Ft. Myers area. It had no cleats or other devices to enable towing. Petitioner thus installed temporary cleats (mounted on blocks of wood screwed into the home siding) in order to have the home relocated to a floating home community in North Bay Village, Florida. Despite the installation of the cleats, the trip over the Okeechobee Waterway was a difficult one. Waves only three to four feet high could have entered the home through the unsealed French doors and siding and caused it to sink. J.A. 98; *see also* Pet. App. 42a (noting that "moving [the structure] may easily damage it"). The home survived the trip, but according to petitioner, it sustained serious damage as it was pulled along and

required emergency repairs to keep it afloat. Pet. App. 18a.[6]

Petitioner lived in North Bay Village for three years. J.A. 72. He was required to have the home moved twice to neighboring mooring sites within the Village, Pet. App. 3a n.2, but the home otherwise remained fixed in place, and petitioner treated the Village as his indefinite residence.

In 2005, however, Hurricane Wilma struck North Bay Village and destroyed nearly all of the city's floating homes. Although the storm spared petitioner's home, he needed to find a new place to live.

After making arrangements with respondent City of Riviera Beach, petitioner had the structure moved to a slip at the City's municipal marina. J.A. 74-75. This time, the home was towed by means of cleats that a contractor had installed while the home

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[6] Petitioner told the district court in one of his *pro se* legal filings that the home "almost sunk" while being pulled across Lake Okeechobee and that a high-volume pump had to be rushed to the site to pump out water that had entered the home. He also said that the home required "a number of underwater patches" as a result of the tow. He suggested that "[i]f needed, Lozman or someone appointed by the Court could take photographic evidence [of these events and repairs] and provide it to the Court." Claimant's Surreply to Pl.'s Mot. for Part. Sum. J. at 5-6 (Dkt. 127). The district court did not follow up on this suggestion, presumably because – as is elaborated *infra*, at 10-11 – Eleventh Circuit law at the time of the summary judgment proceedings here provided that a floating structure is a vessel even if it can be towed only "to [its] detriment." Pet. App. 42a (quoting *Bd. of Comm'rs of the Orleans Levee Dist. v. M/V Belle of Orleans*, 535 F.3d 1299, 1312 (11th Cir. 2008)).

was in North Bay Village. *Id.* at 86-87. Relocating the home required two boats – one at the front and one in the back – in order to control the home's potentially erratic movement and to prevent it from jackknifing. *Id.* at 103-04. The voyage took about eighteen hours, traveling a few miles per hour – the speed at which an average person walks. *Id.* at 75 (noting time); Pet. App. 19a (noting distance traveled).

Upon arriving at Riviera Beach, petitioner moored the home at the City's marina and – as he had done in North Bay Village – connected it to the municipal water system and several shore-based utilities, including electric power, cable television, and the Internet. J.A. 33; Pet. App. 41a-42a. While petitioner had also connected his home to the land-based sewer system in North Bay Village, Tr. Ex. D31, he was unable to do so in Riviera Beach because the marina's infrastructure was degraded and had not yet been rebuilt.

As in North Bay Village, petitioner planned to live in Riviera Beach indefinitely. He listed the marina as the residence on his driver's license and for voting registration, and received mail there. Lozman Dep. 20-24, 38 (Dkt. 98). Petitioner also filed a designation and declaration of homestead under Florida law, which the state has made available to floating homes because they are "designed for use as residences." *Miami Country Day Sch. v. Bakst*, 641 So. 2d 467, 469 (Fla. App. 1994); *see also* Lozman Aff. ¶ 1 (Dkt. 110 Ex. 5).

The relationship between petitioner and the City soon soured. Upon learning that the City planned to undertake a multi-billion dollar redevelopment plan

that would transform the marina into dockage for large yachts, petitioner sued the City in state court. He alleged that the city council meeting that finalized the deal between the City and the developer violated Florida's Sunshine Law because it failed to give proper advance notice to the public. Pet. App. 4a. "While it is not clear from the record how that lawsuit was resolved, the redevelopment plan was ultimately postponed or abandoned, a result for which Lozman takes credit." *Id.*

Shortly thereafter, the City set out to exact revenge. The City filed suit against petitioner in state court seeking to evict petitioner under Florida landlord-tenant law. The City alleged that petitioner had failed to muzzle his ten-pound dachshund and had hired unlicensed repair persons to work on his floating home. Pet. App. 4a. Petitioner represented himself and took the case to trial, maintaining that the City's actions constituted impermissible retaliation for his protected advocacy concerning the redevelopment dispute. *Id.* at 5a. The jury returned a verdict for petitioner. *Id.*

A few months later, the Riviera Beach City Council revised the Marina Rules and Regulations to require all structures moored there to be registered as vessels; to be "operational and capable of vacating the marina in the case of an emergency"; and to satisfy other rules. Pet. App. 5a-6a. The City then asked all of the marina's residents to sign new dockage agreements reflecting the changes. *Id.* at 6a. The City notified petitioner that it would revoke his permission to remain in the marina unless he complied with the new requirements (something that was impossible in light of the nature of his floating

home), executed the new agreement, and paid allegedly outstanding dockage fees. *Id.* at 6a-7a. Petitioner did not execute the agreement, and his floating home remained at the marina. *Id.*

2. Having failed in its efforts to obtain state-law relief against petitioner, the City turned to federal law. It filed an *in rem* suit in the United States District Court for the Southern District of Florida, alleging trespass and seeking to execute a maritime lien on petitioner's floating home for a purported debt of about $3,000. Pet. App. 2a; J.A. 8-10. The City named petitioner's home as the defendant, *see, e.g.*, *Madruga v. Superior Court*, 346 U.S. 556, 560 (1954), leaving petitioner as the "claimant." As its basis for federal jurisdiction, the City invoked 28 U.S.C. § 1333, which vests original subject matter jurisdiction over admiralty and maritime actions in federal district courts, and the Federal Maritime Lien Act, 46 U.S.C. § 31342, which allows a person who "provid[es] necessaries to a vessel" to collect on that debt through a lien. J.A. 5.

A maritime lien is an "extraordinary remedy" specially tailored to federal maritime law. *Usher v. M/V Ocean Wave*, 27 F.3d 370, 373 (9th Cir. 1994). It attaches to a vessel "without notice" to the owner and allows an automatic seizure of the vessel without providing an opportunity to be heard. *Id.* at 374. In particular, a maritime lien makes the vessel, rather than its owner, the obligor, permitting the creditor to recover directly against the vessel (the *res*). This highly unusual scheme is necessary to "keep ships moving in commerce while preventing them from escaping their debts by sailing away." Thomas J. Schoenbaum, Admiralty and Maritime Law § 7-1, at

443 (4th ed. 2004). Accordingly, "both the lien and the district court's jurisdiction depend on a ship's status as a 'vessel.'" *Crimson Yachts v. Betty Lyn II Motor Yacht*, 603 F.3d 864, 872 (11th Cir. 2010).

Immediately upon the filing of the City's complaint, the district court issued a warrant for the arrest of petitioner's home. Pet. App. 7a-8a. The U.S. Marshals Service executed the warrant and had the floating home towed to Miami. *Id.* at 8a.

The following day, petitioner filed a *pro se* emergency motion to dismiss the complaint and to have the City return his home to the marina. In his motion, petitioner argued that his home was not a "vessel," which 1 U.S.C. § 3 defines for purposes of the Maritime Lien Act and innumerable other statutes as "includ[ing] every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." Petitioner maintained that his home did not satisfy this definition because its purpose was not maritime transportation, but rather to serve as a stationary residence. The district court denied petitioner's motion and allowed discovery to proceed. J.A. 67-68.

Following discovery, petitioner – who continued to proceed *pro se* throughout the district court proceedings – moved to dismiss the case for lack of subject matter jurisdiction, again arguing that his floating home was not a "vessel." The City responded that, under Section 3, anything that is "capable of being towed" is a vessel, and that petitioner's home had indeed been towed. Resp. to Mot. to Dismiss 6 (Dkt. 68). The City thus not only opposed petitioner's

motion to dismiss but also moved on its own for partial summary judgment on the issue.

The district court granted the City's motion. Pet. App. 48a. The court accepted that petitioner's floating home was indefinitely moored and did not dispute that it lacked any transportation purpose. *Id.* at 40a-42a. But the court deemed the purpose of the home irrelevant in light of the Eleventh Circuit's decision in *Bd. of Comm'rs of the Orleans Levee Dist. v. M/V Belle of Orleans*, 535 F.3d 1299 (11th Cir. 2008). In that case, the Eleventh Circuit held that a floating casino was a vessel, reasoning that anything that can be towed over water, even "to [its] detriment," is a vessel. Pet. App. 40a-42a (quoting *Belle of Orleans*, 535 F.3d at 1312). Petitioner's home satisfied that test.

Following a bench trial, the district court found that petitioner was delinquent in his payments to the City in the amount of $3,039.88. The district court also awarded the City $1 for the trespass claim. To satisfy the judgment, the court ordered that petitioner's floating home be sold at auction by the U.S. Marshals Service. Pet. App. 9a-10a.

Petitioner asked the district court, in an emergency motion, to stay the sale and the court's order and judgment. But the district court denied that motion. Petitioner then sought the same temporary relief in the Eleventh Circuit pending his appeal, but the Eleventh Circuit denied that request as well.

The City itself attended the auction and purchased the floating home as the highest bidder. Pet. App. 9a-10a. The City subsequently destroyed it.

3. The Eleventh Circuit affirmed the district court's vessel determination and overall judgment. Like the district court, the Eleventh Circuit did not dispute that petitioner's floating home was an indefinitely moored floating structure that "was designed as a residence that just happened to float." Pet. App. 18a-19a (quoting petitioner's brief). But also like the district court, the court of appeals deemed that reality irrelevant. The Eleventh Circuit emphasized that its decision in *Belle of Orleans* had held that "the status of 'vessel' does not depend in any way on either the purpose for which the craft was constructed or its intended use." *Id.* at 19a. According to the Eleventh Circuit, so long as a structure is "capable of moving [by tow] over water," even to its "detriment," it is a vessel. *Id.* at 18a-19a (quoting and citing *Belle of Orleans*, 535 F.3d at 1312).

The Eleventh Circuit acknowledged that its holdings here and in *Belle of Orleans* conflicted with the Fifth Circuit's holding in *Pavone v. Miss. Riverboat Amusement Corp.*, 52 F.3d 560 (5th Cir. 1995). Pet. App. 15a-16a. In *Pavone*, the Fifth Circuit drew on a long line of circuit precedent – based, in turn, on prior decisions from this Court – to hold that a floating casino was not a vessel, even though it had been towed several times over considerable distances (and even had a contract contemplating potential future tows if necessary). 52 F.3d at 563-64, 568-70; *see also Cope v. Vallette Dry Dock Co.*, 119 U.S. 625, 627-30 (1887) (floating dry-dock not a vessel); *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19, 22 (1926) (indefinitely moored wharfboat used as a business office and warehouse not a vessel, even

though previously towed); *Roper v. United States*, 368 U.S. 20, 23-24 (1961) (deactivated military ship used as "mobile warehouse" for grain storage not a vessel, even though previously towed). The Eleventh Circuit, however, refused to follow *Pavone*, reasoning that this Court's subsequent decision in *Stewart v. Dutra Constr. Co.*, 543 U.S. 481 (2005), which cited *Pavone* with approval in the course of holding that a harbor dredge was a vessel, "clearly rejected any definition of 'vessel' that relies on [a structure's] purpose." Pet. App. 16a.

4. This Court granted certiorari. 132 S. Ct. 1543 (2012).

SUMMARY OF ARGUMENT

Indefinitely moored floating structures that function as extensions of land, such as petitioner's floating home, do not constitute "vessels" under 1 U.S.C. § 3. Contrary to the Eleventh Circuit's view, it is immaterial whether such structures may be towed over water without sinking. In order to be a vessel, a structure's purpose must be to carry people or things over water, and indefinitely moored structures that function as extensions of land lack any such purpose.

I. Section 3 provides that the term "vessel" "includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of *transportation* on water" (emphasis added). The ordinary meaning of "transportation" – as well as the meaning found in legal dictionaries and reflected throughout the U.S. Code – is the movement of people or things from one place to another. This notion of conveyance is distinct from merely being moved by something else. And the

latter is the most that ever happens to indefinitely moored floating structures.

That a structure need only be "capable" of serving as a means of maritime transportation does not alter this conclusion. On the contrary, general maritime law – which Section 3 codified and is intended to track – has always looked to a structure's *purpose*, as evidenced by its design and function, to determine whether it is "capable" of moving people or things over water. Indefinitely moored floating homes and businesses lack any transportation purpose.

This Court's precedent is in accord. In a series of cases dating back to the nineteenth century, this Court has confirmed that a structure's purpose determines whether it is capable of serving as a means of maritime transport. And applying that purposive test, this Court has repeatedly held that indefinitely moored structures functioning as extensions of land are not vessels. *See Cope v. Vallette Dry Dock Co.*, 119 U.S. 625 (1887) (floating dry-dock permanently moored by means of large chains); *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19 (1926) (floating wharfboat that functioned as a business office and warehouse); *Roper v. United States*, 368 U.S. 20 (1961) (deactivated military ship being used as a grain warehouse). In two of those cases, the structures at issue had been towed multiple times over considerable distances. But this Court deemed that fact inconsequential because they were "not moved in order to transport commodities from one location to another." *Roper*, 368 U.S. at 23; *see also Evansville*, 271 U.S. at 22 (structure "was not used to carry freight from one place to another").

Contrary to the Eleventh Circuit's view, this Court's recent decision in *Stewart v. Dutra Constr. Co.*, 543 U.S. 481 (2005), did not abrogate the purposive approach to determining vessel status. To the contrary, *Stewart* reaffirmed that, in order to be a vessel, a floating structure's purposes must include moving people or things over water. Transportation was not the *primary* purpose of the type of structure involved in *Stewart*, a harbor dredge. But this Court stressed, consistent with prior cases, that transportation must be *one* of the purposes of a structure for it to qualify as a vessel. That is why this Court was careful to note that "in performing their work [dredges] carr[y] machinery, equipment, and crew over water." *Id.* at 492. And that purpose, this Court explained, differentiated dredges from the structures in *Cope*, *Evansville*, and *Roper*, which performed their functions by sitting still. Accordingly, after *Stewart* as before, indefinitely moored structures that function as extensions of land fall outside of the scope of Section 3.

II. Abandoning the longstanding rule that indefinitely moored floating structures that function as extensions of land are not vessels would create significant problems.

If Section 3 encompassed indefinitely moored floating structures, such structures would become subject to a host of substantive maritime laws – laws specially designed to accommodate the perils of the sea – that Congress cannot possibly have intended to apply to them. For example, the Federal Maritime Lien Act gives putative creditors the extraordinary ability to attach liens without notice and to have "vessels" seized without providing the owner an

opportunity to be heard. The objectives of that Act are to allow ships engaged in operations far from home to obtain necessary goods and services, and to prevent ships from sailing away to escape their debts. But those objectives do not apply to indefinitely moored floating homes or businesses. Similarly, indefinitely moored structures should not be covered by the Limitation of Liability Act, which restricts damages available to tort plaintiffs to the value of a "vessel" and its cargo; by the Jones Act and other uniquely generous protections afforded to certain employees aboard "vessels"; or by federal maritime safety laws intended to protect "vessels" and their occupants when engaged in maritime transportation.

Treating indefinitely moored floating structures that function as extensions of land as vessels would also undermine principles of federalism. Admiralty jurisdiction seeks to promote commerce by providing a uniform system of federal regulation for maritime activity. There is no federal commercial interest, however, in regulating floating homes and businesses that function as extensions of land. Therefore, expanding the reach of Section 3 to include such structures would unnecessarily burden federal courts and agencies with resolving parochial issues such as the landlord-tenant dispute at issue here. Our federal system has more appropriately entrusted the regulation of such matters to the states, and the states have long been performing that task perfectly well.

ARGUMENT

Petitioner's home was not designed or used to move people or goods over water. It had no raked bow, no means of self-propulsion or steering, and did

not perform any function that a shore-based structure would not have performed just as well. It was a fixed residence that was connected to land-based utilities. Indeed, at the time it was seized, it had not been moved in more than three years. In short, petitioner's floating home was an indefinitely moored structure that functioned as an extension of land.

It has long been the rule that such structures are not "vessels." And the configuration and animating purposes of maritime law confirm that the regulation of such structures is better left to land-based law.

I. An Indefinitely Moored Floating Structure That Is Functionally An Extension Of Land Is Not A Vessel.

The text of 1 U.S.C. § 3, buttressed by historical maritime law and this Court's precedent, makes plain that indefinitely moored floating structures that are functionally extensions of land are not "vessels" for purposes of federal maritime jurisdiction. Contrary to the Eleventh Circuit's view, it makes no difference whether such structures can be towed across water without sinking. Being pulled across the water is not the same as serving as a means of maritime transportation; only structures whose purpose is transportation fall within the ambit of Section 3.

A. The Text Of 1 U.S.C. § 3, Understood In Light Of The General Maritime Law It Codified, Does Not Encompass Indefinitely Moored Structures That Function As Extensions Of Land.

Section 3 provides the default definition of "vessel" for use throughout the U.S. Code: the term

"includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." 1 U.S.C. § 3. Indefinitely moored floating structures that are functionally extensions of land fall outside of this definition because such structures are neither used for "transportation" nor "capable" of being so used.

1. The process of statutory construction always "begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). In 1873, when Congress enacted Section 3, the ordinary meaning of the word "transportation" contemplated the notion of moving people or goods. A leading dictionary of the period defined "transportation" as "[t]he act of transporting, carrying, or conveying from one place to another." Noah Webster, An American Dictionary of the English Language 1406 (Chauncey A. Goodrich & Noah Porter eds., 1873). The intervening 140 years have not altered this meaning: "transportation" is currently defined as connoting the "conveyance of passengers, goods, or materials esp. as a commercial enterprise," Webster's Third New International Dictionary 2430 (3d ed. 1993), or the "conveyance (of things or persons) from one place to another." 18 Oxford English Dictionary 424 (2d ed. 1989).

The same meaning, grounded in the concept of carriage, has long pertained in American legal parlance. The first edition of Black's Law Dictionary defined "transportation" as "[t]he removal of goods or persons from one place to another, by a carrier." Henry Campbell Black, A Dictionary of Law Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and

Modern 1184 (1st ed. 1891). That definition has barely changed with the publication of eight successive editions; the ninth edition's definition – "[t]he movement of goods or persons from one place to another by a carrier" – is virtually identical to the first's. Black's Law Dictionary 1638 (9th ed. 2009).

Other provisions of the U.S. Code demonstrate that Congress subscribes to this ordinary meaning of "transportation." *Cf. Mohamad v. Palestinian Auth.*, 132 S. Ct. 1702, 1707 (2012) (examining usage of statutory term throughout the Code to confirm its meaning in particular provision). The Code does not expressly define "transportation." But it repeatedly employs the term to signify the same thing it does in normal usage – carrying people or goods. *See, e.g.*, 8 U.S.C. § 1324 ("means of transportation" used to move illegal aliens within the United States); 18 U.S.C. § 2421 ("transportation" of individuals across state lines for sexual activity); 39 U.S.C. § 3208 (shipments of official matter to be made by most economical "means of transportation").

The Eleventh Circuit's focus on whether a structure is merely capable of "*moving* over water," Pet. App. 18a (quoting *Bd. of Comm'rs of the Orleans Levee Dist. v. M/V Belle of Orleans*, 535 F.3d 1299, 1312 (11th Cir. 2008)) (emphasis added), contradicts this ordinary meaning and pattern of usage. Objects that are merely "moved" (or even "transported under tow," *Belle of Orleans*, 535 F.3d at 1312), do not necessarily serve as a "means of transportation." Only structures used to convey people or goods from one place to another fit this description – a requirement that excludes from vessel status indefinitely moored floating structures functioning as

extensions of land. Such structures, at most, are merely themselves occasionally moved from place to place. But sporadic movement does not, without more, alter the character of, say, a floating home as a stationary residence, a floating business office as a meeting place, or a floating casino as an entertainment venue.

Lest there be any doubt that Section 3 uses "transportation" to refer to more than the bare concept of movement, another provision of the U.S. Code, 18 U.S.C. § 1081, demonstrates that if Congress had meant to encompass anything that floated and thus could be towed within Section 3's definition of "vessel," it would have used different language to reach that result. *Cf. Dole Food Co. v. Patrickson*, 538 U.S. 468, 476 (2003) ("Where Congress intends to refer to ownership in other than the formal sense, it knows how to do so."). Section 1081 defines the term "vessel" for purposes of certain criminal gambling laws as including "every kind of water and air craft or other contrivance used or capable of being used as a means of transportation on water, or on water and in the air, *as well as any ship, boat, barge, or other water craft or any structure capable of floating on the water*." 18 U.S.C. § 1081 (emphasis added).

It is scarcely conceivable that the 81st Congress, which drafted Section 1081, thought that the description of "means of transportation" in the first half of that statute, which incorporates the definition of vessel in Section 3, encompassed the very structures described in the second half – those that float upon water and are capable of being towed, but are *not* used to move goods or people. Such an

assumption would trample "the cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant." *Kungys v. United States*, 485 U.S. 759, 778 (1988). The only logical conclusion one may draw from Section 1081 is that Congress thought it necessary to include the additional language regarding floating structures because merely floating (and thus being capable of tow) does not render something a "means of transportation."

2. Instead of focusing on the word "transportation," the Eleventh Circuit fixated on a different word in Section 3 – "capable." In the Eleventh Circuit's view, that word expands the statute to cover not merely structures designed and used for transportation, but also anything that is conceivably susceptible to being used to that end. Pet. App. 13a. This view, however, rests on an overly expansive interpretation of the word "capable" – one that is inconsistent with the statutory context in which it appears, as well as with the general maritime law that informs the meaning of Section 3.

The word "capable" can be understood in two alternate ways: one that refers to an object's performance of some function as within the realm of conceivability, and another that refers more narrowly to the object's purpose or suitability for performing some function.[7] The Eleventh Circuit settled without

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[7] At the time of Section 3's enactment, "capable" was defined as "[p]ossessing ability, qualification, or *susceptibility*; having capacity; adapted; *suited*." Webster's (1873) at 193 (emphases added). Today, "capable" has similarly been defined as either "of a nature, or in a condition, to allow or admit of;

serious analysis on the first of these connotations. But in construing statutory terms, a court should consider not "only the bare meaning of the critical word or phrase but also its placement and purpose in the statutory scheme." *Holloway v. United States*, 526 U.S. 1, 6 (1999) (quotation marks and citation omitted). The context in which Section 3 appears makes plain that the provision uses the word "capable" in its narrower sense, the one relating to purpose.

Section 3 sets forth a default definition of "vessel," a term that triggers a vast array of substantive maritime statutes. Accordingly, this Court has instructed that Section 3 cannot "sweep within its reach an array of fixed structures not commonly thought of as capable of being used for water transport." *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 494 (2005). Yet if the Eleventh Circuit were correct that the word "capable" confers vessel status upon anything that can be towed without sinking, Pet. App. 21a, then maritime law would come to govern a multitude of floating structures that have no maritime transportation function whatsoever. Driftwood, for example, is capable of being pulled over water without sinking, as are floating bridges, swimming platforms, doors removed from their hinges, and innumerable other objects made of wood or plastic. Such items do not have the slightest relevance to a system of regulating maritime

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admitting; *susceptible*" or "[h]aving the needful capacity, power, or *fitness* for (some specified purpose or activity)." 2 Oxford English Dictionary 856 (2d ed. 1989) (emphases added).

commerce. It is implausible to think that Congress intended the numerous statutory regimes governing vessels to regulate them.

The general maritime law that Section 3 incorporates confirms this analysis. Because "Section 3 merely codified the meaning that the term 'vessel' had acquired in general maritime law," this Court has emphasized that the statute should be construed "in light of the term's established meaning in general maritime law." *Stewart*, 543 U.S. at 490, 492; *see also id.* at 490-92 (referencing treatises and surveying lower court decisions around the time of Section 3's enactment to discern the statute's meaning). The leading admiralty treatise at the time of Section 3's enactment, Benedict's on Admiralty, explained that "[i]t is not the form, the construction, the rig, the equipment, or the means of propulsion that establishes [vessel status], but the *purpose and business of the craft*, as an instrument of naval transportation." Erastus Cornelius Benedict, The American Admiralty, its Jurisdiction and Practice § 218 (2d ed. 1870) (emphasis added).[8]

As contemporary decisions made clear, this purposive approach to assessing "capability" for maritime transport excluded from vessel status

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[8] This concept of purpose was an objective one, focusing on the uses for which a structure was designed and in which it was employed. A purposive test that disregards an actor's *subjective* intent is, of course, a familiar notion in this Court's jurisprudence. *See, e.g.*, *Michigan v. Bryant*, 131 S. Ct. 1143, 1156 (2011) (determining "primary purpose" of a police interrogation by "objectively evaluat[ing] the circumstances" and actions of parties involved).

indefinitely moored structures that functioned as extensions of land. In 1869, for instance, the Southern District of New York held that a steamboat hulk that had been decommissioned, towed, and turned into a dockside hotel was not a vessel. *The Hendrick Hudson*, 3 Ben. 419 (S.D.N.Y. 1869). The court explained that the test for vessel status looked to "the actual status of the structure, as being fairly engaged in commerce or navigation." *Id.* at 421. This test, the court elaborated, left "[a] floating house of religious worship, or a floating swimming bath, or *a floating residence*" beyond the reach of admiralty jurisdiction. *Id.* at 420 (emphasis added). The same was true of the hulk. Even though all of these structures "could be towed, and, in such a sense, navigated," they "would not be engaged in navigation" in the sense necessary to constitute a vessel. *Id.*

Other lower court decisions applied the purposive approach to reach similar results. One case involved a floating scow, upon which rested "a floor and a house nearly the size of the float." *Woodruff v. One Covered Scow*, 30 F. 269, 269 (E.D.N.Y. 1887). Just like petitioner's home in this case, the structure had "for a long period been moored alongside [a] wharf, in one of the slips of [a] harbor, being attached to the wharf by lines, and there safely rising and falling with the tide." *Id.* The court held that the structure was not a vessel because it was "stationary, and never employed in the transportation of freight or passengers from place to place upon the water." *Id.* at 270. In another case, a court held that a floating scow platform was not a vessel even though it was "capable of being towed from one wharf to another." *Ruddiman v. A Scow Platform*, 38 F. 158, 158

(S.D.N.Y. 1889). The platform, the court emphasized, "was not designed or used for the purpose of navigation, nor engaged in the uses of commerce, nor in the transportation of persons or cargo." *Id.* at 158.

Years later, still another court summed up the law this way: "The word 'capable' in [Section 3's] definition is to be read 'practically capable,'" because "any contrivance that will float on water is *capable* of being used as a means of transportation (of things or persons) on water." *Petition of Kansas City Bridge Co.*, 19 F. Supp. 419, 419 (W.D. Mo. 1937) (citation omitted); *see also* George Rutherglen, *Dead Ships*, 30 J. of Mar. L. & Com. 677, 682 (1999) ("Anything can be towed, provided that it can float. The fact that it is sufficiently seaworthy to be towed does not make it into a vessel."). By looking to a structure's "practical capability," in short, general maritime courts treated as vessels only craft whose *purpose*, evinced by their design and function, was to move people or things over water.[9] Indefinitely moored floating structures were not vessels under this test.

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[9] The Third Circuit, for example, held that a dredge was a vessel as defined by Section 3 because "it was intended and adapted for navigation and transportation by water of its crew, supplies and machinery, from point to point." *The International*, 89 F. 484, 485 (3d Cir. 1898). Other lower court decisions applied the purposive test to find other structures vessels for the same reason. *See The Hezekiah Baldwin*, 8 Ben. 556, 557 (E.D.N.Y. 1876); *The Pioneer*, 30 F. 206, 207 (E.D.N.Y. 1886); *Mosser v. The City of Pittsburgh*, 45 F. 699, 702-03 (W.D. Pa. 1891); *Charles Barnes Co. v. One Dredge Boat*, 169 F. 895, 901 (E.D. Ky. 1909).

B. This Court's Precedent Makes Clear That Indefinitely Moored Floating Structures Are Not Vessels, Regardless Of Whether They Can Be Towed.

This Court has repeatedly confirmed that indefinitely moored structures that function as extensions of land are not vessels. Contrary to the Eleventh Circuit's view, this Court's recent decision in *Stewart v. Dutra Constr. Co.*, 543 U.S. 481 (2005), did not abandon that precedent. To the contrary, *Stewart* reaffirmed the exclusion of indefinitely moored structures, such as floating homes, from vessel status.

1. Indefinitely moored floating structures that function as extensions of land fall into two general categories: (a) craft that were never intended for use as transportation over water; and (b) "dead ships" – that is, structures that were once vessels but are removed from navigation and thus no longer have the purpose of transporting people or things. Prior to *Stewart*, this Court consistently held, in accordance with general maritime law, that both kinds of structures do not constitute vessels.

a. This Court explained more than a century ago, echoing Benedict's treatise, that the question of vessel status "regards only the purpose for which the craft was constructed, and the business in which it is engaged." *Perry v. Haines (The Robert W. Parsons)*, 191 U.S. 17, 30 (1903). That test remains the law. *See* 1 Benedict on Admiralty § 164 (2012) (vessel status depends on "the purpose and business of the craft as an instrument of maritime transportation"); Thomas J. Schoenbaum, Admiralty and Maritime

Law § 1-6, at 37 (4th ed. 2004) ("The most basic criterion used to decide whether a structure is a vessel is the *purpose* for which it is constructed and the business in which it is engaged.") (emphasis in original). And applying that general test, this Court has twice held that indefinitely moored structures never intended for moving people or things across water are not vessels.

The first such case was *Cope v. Vallette Dry Dock Co.*, 119 U.S. 625 (1887). *Cope* involved a floating dry-dock, which, like a floating home, was "a large oblong box, with a flat bottom and perpen-dicular sides." *Id.* at 627. This Court characterized the dry-dock – again, in terms reminiscent of petitioner's floating home – as a "fixed structure," "permanently moored by means of large chains." *Id.*; *compare* Pet. App. 17a-18a. Referring to the concept of "purpose" ten times in five pages, this Court held that the dry-dock was not a vessel because it was "not used for the purpose of navigation or for "the purpose of locomotion from one place to another." *Id.* at 626-27.

In reaching its conclusion, the Court contrasted a dry-dock and a number of other indefinitely moored structures with the hopper-barge involved in a contemporaneous English case, *The Mac*, [1882] 7 P. 126 (Eng.). The hopper barge, this Court observed, was a vessel because its purpose was "carrying men and mud." 119 U.S. at 629-30. But this Court explained that *The Mac* went "as far as any case has gone in extending the meaning of the terms 'ship' or 'vessel.'" *Id.* at 630. "[N]o case can be found which would construe the terms [ship or vessel] to include a dry-dock, a floating-bridge, or meeting-house, permanently moored or attached to a wharf." *Id.*; *see*

also Perry, 191 U.S. at 30, 34 (noting that *Cope*'s purpose requirement "rule[s] out the floating dry dock, the floating wharf, the ferry bridge hinged or chained to a wharf, the sailors' Bethel moored to a wharf, . . . and a gas float moored as a beacon") (citations omitted). Just because a structure "floats on the water," this Court stressed, "does not make it a ship or vessel." *Cope*, 119 U.S. at 627.

This Court returned to the question of vessel status in *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19 (1926). *Evansville* involved a wharfboat – a floating structure used as a business office and a platform "to transfer freight between steamboats and land and from one steamboat to another." *Id.* at 21. Like petitioner's floating home, the wharfboat was rectangular and built mostly of wood. "It had no machinery or power for propulsion and was not subject to government inspection as are vessels operated on navigable waters." *Id.* The wharfboat was also "secured to the shore by four or five cables," and – like petitioner's home – had "connections with the water, electric light and telephone systems of the city." *Id.* at 21-22.[10]

Relying on *Cope* and *Perry*, this Court held that the wharfboat was not a vessel. This Court reasoned that the wharfboat "was not practically capable of being used as a means of transportation" because it

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[10] A photograph of a turn-of-the-century wharfboat is available at http://www.flickr.com/photos/ohiocountypublic library/6123544619/. The physical design of the structure bears a striking resemblance to petitioner's floating home.

"was not used to carry freight from one place to another." *Evansville*, 271 U.S. at 22. Rather, the wharfboat's purpose was to function as a stationary "office, warehouse and wharf." *Id.* "It performed no function that might not have been performed as well by an appropriate structure on the land." *Id.*

Evansville also clarified that the mere fact that a structure has been towed does not render it a vessel. After years of service on the Mississippi River, the *Evansville* wharfboat was towed hundreds of miles from Arkansas to Madison, Indiana, "where it was overhauled, and then to Louisville, Kentucky, where it was used." *Id.* at 20. It then was towed back to Madison, and then more than one hundred and fifty miles to Evansville, Indiana, where the events at issue took place. *Id.* While in service in Evansville, it also was towed yearly to a local harbor to "protect it from ice." *Id.* at 20-21. Notwithstanding all of these tows, this Court described the wharfboat at the time of the events at issue as having a "permanent location" and declined to treat it as a vessel. *Id.* at 22.[11]

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[11] The distinction between structures used to move people or things and those used for stationary purposes resonates in another area of this Court's jurisprudence: the Fourth Amendment's "automobile exception." Under that exception, police need not obtain a warrant before searching a vehicle "because [a] vehicle can be *quickly moved* out of the locality or jurisdiction in which the warrant must be sought." *Carroll v. United States*, 267 U.S. 132, 153 (1925) (emphasis added). In *California v. Carney*, this Court held that a motor home fell within the automobile exception because it was "readily mobile" and "being used not as a residence, but as a vehicle." 471 U.S. 386, 393 (1985). By contrast, this Court reserved the question

b. This Court has also determined that even a floating structure that was once a vessel loses its vessel status (and becomes what is sometimes called a "dead ship") when it is removed from navigation. This is true whenever the vessel "is taken out of service indefinitely; it need not be removed from service forever." Rutherglen, 30 J. Mar. L. & Com. at 679.

Thus, in *Roper v. United States*, this Court agreed with a trial court's determination that a deactivated military ship converted into a floating grain warehouse was not a "vessel in navigation*."* 368 U.S. 20, 23-24 (1961).[12] The deactivated ship had

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whether the exception would apply to a more fixed structure "objectively . . . being used as a residence." *Id.* at 394 n.3. Consistent with its earlier observation of a "long-recognized distinction between stationary structures and vehicles," *id.* at 390, this Court instructed that evidence that a potentially movable home was "elevated on blocks," "connected to utilities," and not licensed to travel may be relevant in determining whether the automobile exception applies, *id.* at 394 n.3. Applying this guidance, lower courts have concluded that trailer homes do not fall within the automobile exception. *See, e.g.*, *United States v. Green*, 2005 WL 3088351, at *5 (E.D. Tenn. Nov. 17, 2005); *United States v. Levesque*, 625 F. Supp. 428, 450-51 (D.N.H. 1985). Others have found the difference between motor homes and trailer homes so intuitive that they have treated the latter as subject to the ordinary rules governing immobile residences without analysis. *See, e.g.*, *United States v. Najar*, 451 F.3d 710, 717 (10th Cir. 2006); *United States v. Pelayo-Landero*, 285 F.3d 491, 495-98 (6th Cir. 2002). The objective determination that a floating home – as opposed to a houseboat – is not "readily mobile" and has a residential purpose is no more difficult to make.

[12] Although *Roper* used the phrase "vessel in navigation," 368 U.S. at 23-24, this Court clarified in *Stewart* that "vessel in

been towed twice over a two and one-half year span – the second time while carrying "a licensed riding master and six linemen stationed aboard." *Id.* at 22. Yet this Court emphasized that the structure "was not moved in order to transport commodities from one location to another." *Id.* at 23. Instead, it merely "served as a mobile warehouse which was filled *and then moved* . . . to perform its function of storing grain until needed, at which time it was returned and unloaded." *Id.* (emphasis added); *see also West v. United States*, 361 U.S. 118, 122 (1959) (deactivated military ship that had been towed was nevertheless "not in maritime service"). This movement, in the absence of a transportation purpose, was not enough to make the structure a vessel.

Under *Roper*, in short, even if an indefinitely moored structure could previously have been characterized as a vessel, it is not a vessel once it no longer has any transportation purpose. And if the "mobile warehouse" in *Roper* had ceased having any such purpose, then surely a floating home or business lacks any such purpose, too.

2. The Eleventh Circuit did not consider or even cite *Cope*, *Evansville*, or *Roper* in the decision below. Instead, the Eleventh Circuit believed that this Court's more recent decision in *Stewart* "clearly rejected any definition of 'vessel' that relies on . . . 'purpose,'" in favor of one that looks merely to susceptibility to being towed across water. Pet. App.

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navigation" and "vessel" are identical in meaning. 543 U.S. at 496. A vessel not in navigation, in other words, is not a "vessel" under Section 3 at all.

16a (quoting *Belle of Orleans*, 535 F.3d at 1311). The court of appeals thus concluded that indefinitely moored floating structures, such as floating homes and casinos, are vessels because they are "capable of being transported under tow" without sinking, even if "to [their] detriment." *Id.* at 18a.

The Eleventh Circuit erred. *Stewart* is perfectly consistent with the longstanding purposive approach to determining vessel status and reinforces the proposition that indefinitely moored floating structures that are secured to land are not vessels.

a. *Stewart*'s unanimous holding – that a harbor dredge is a vessel – made no material change in prior law. This Court had already stated a century earlier that dredges and similar craft were vessels. *Ellis v. United States*, 206 U.S. 246, 259 (1907); *see also Norton v. Warner Co.*, 321 U.S. 565, 571 (1944) (holding that barge was a vessel and citing lower court cases holding that dredges were vessels). And the reasoning that *Stewart* gave for reaffirming that conclusion – namely, that dredges "serve[] a waterborne *transportation function*, since in performing their work they *carr[y] machinery, equipment, and crew over water*," 543 U.S. at 492 (emphasis added) – is not in any way novel. It relies upon the traditional purposive test for vessel status.

Stewart also clarified that a structure is a vessel if it is "practically capable of maritime transportation, *regardless of its primary purpose*." 543 U.S. at 497 (emphasis added). But contrary to the Eleventh Circuit's view, *Stewart*'s rejection of a "primary purpose" test did not discard the purposive test altogether. Rather, *Stewart* explained that even if a structure's primary purpose is not to transport

people or things, it is nonetheless a vessel if the structure's purpose necessitates transportation. Consequently, even though the dredge at issue was not "used *primarily* for th[e] purpose" of transportation, it was a vessel because *one* of its purposes was to move people and equipment over water. *Id.* at 495 (emphasis in original). Indeed, as this Court emphasized, the dredge could not have done its job "had it been unable to traverse the Boston Harbor, carrying with it workers like Stewart." *Id.*

This reasoning leaves the law regarding indefinitely moored floating structures functioning as extensions of land where *Stewart* found it. As *Stewart* itself explained, the critical inquiry for vessel status remains "whether [a structure's] use 'as a means of transportation on water' is a practical possibility or merely a theoretical one." 543 U.S. at 496. That dichotomy is at most a reformulation of the purposive approach, leaving indefinitely moored floating structures that function as extensions of land no more as vessels than they were before. Although such structures are, like anything that can be towed, "theoretically" capable of moving people or things over water, this activity is not a "practical possibility" because they are not designed or used for any such purpose.

b. *Stewart*'s treatment of precedent confirms that it did not disturb the longstanding view that indefinitely moored floating structures that function as extensions of land are not vessels. *Stewart* expressly accepted the holdings of *Cope* and *Evansville*, both of which had held that such structures were not vessels. Those cases, this Court

explained, "did no more than construe § 3 in light of the distinction drawn by the general maritime law between watercraft temporarily stationed in a particular location and those permanently affixed to shore." *Stewart*, 543 U.S. at 493.

Stewart also endorsed the "dead ships" doctrine reflected in *Roper* and *West*, noting that even structures that were previously vessels "may lose their character as vessels if they have been withdrawn from the water for extended periods of time." 543 U.S. at 496. This is so even if there is a "remote possibility that they may one day sail again." *Id.* at 494. Permanent, "semi-permanent or indefinite" mooring, this Court reaffirmed, renders a structure "practically incapable" of serving as a means of maritime transport. *Id.* (quotation marks and citation omitted).

Lest there be any doubt that *Stewart* did not disturb the law regarding indefinitely moored structures, this Court also made a point to favorably reference a well-known decision from the Fifth Circuit on the subject. 543 U.S. at 494 (citing *Pavone v. Miss. Riverboat Amusement Corp.*, 52 F.3d 560 (5th Cir. 1995)). In that case, the Fifth Circuit held that a floating casino, built on top of a barge and "moored to the shore in a semi-permanent or indefinite manner" by "lines tied to sunken steel pylons," was not a vessel. *Pavone*, 52 F.3d at 564, 570.[13] This was true even though, like petitioner's

[13] A photograph of the floating casino is available at http://www.photoship.co.uk/jalbum%20ships/Old%20Ships%20B/slides/Biloxi%20Belle-01.html.

floating home, the structure had been towed multiple times over considerable distances.[14] It even had a contract with a company contemplating the possibility of future tows if necessary. *Id.* at 564. None of this movement, the Fifth Circuit explained, sufficed to render the structure a vessel because it was never "used as a seagoing vessel to *transport passengers, cargo, or equipment* across navigable waters. Neither was it originally constructed to do so." *Id.* at 564 (emphasis added).[15]

It cannot be that *Stewart*, despite endorsing all of these cases, somehow silently abrogated them. Yet under the Eleventh Circuit's "capability of tow" test, the *Cope* dry-dock, the *Evansville* wharfboat, the deactivated ship in *Roper*, and the floating casino in *Pavone* all would have been vessels. *Stewart* makes clear that this cannot be the law.

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[14] The structure was first towed from Morgan City, Louisiana, to Rockport, Texas (approximately 400 miles), and then to Corpus Christi, where it served "the express purpose of supporting a floating restaurant and bar." *Pavone*, 52 F.3d at 563-64. It remained at Corpus Christi for "a while," and then was moved to Aransas Pass, Texas, where it stayed in place for about two and one-half years. Next, the structure was converted into a casino and towed (about 600 more miles) to Biloxi, Mississippi. *Id.* It was later towed one last time – much like petitioner's home – due to a hurricane. *Id.*

[15] The Fifth Circuit has reaffirmed its analysis in *Pavone* in the wake of *Stewart*. *See De La Rosa v. St. Charles Gaming Co.*, 474 F.3d 185, 187 (5th Cir. 2006).

II. Conferring Vessel Status Upon Indefinitely Moored Structures Would Thwart Important Principles Of Maritime Law And Federalism.

Construing Section 3 to encompass indefinitely moored floating structures would subject floating homes, businesses, and related structures to a host of legal requirements and doctrines that do not properly apply to them. Further, treating such structures as vessels would unnecessarily burden the federal government, and would undermine principles of federalism by encroaching upon states' authority to regulate their shorelines.

A. Conferring Vessel Status Upon Indefinitely Moored Floating Structures Would Distort Maritime Law.

In determining whether structures constitute vessels, this Court has looked not only to Section 3 but also to "the purposes" of the substantive laws that Section 3 "is intended to subserve and the reasons on which [they] rest[]," *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19, 21-22 (1926). The term "vessel" must therefore be construed not only in light of the text of Section 3 and its history and precedent, but also in light of the myriad substantive laws to which vessels are subject. Several prominent examples of such laws make clear that Congress does not intend Section 3 to encompass indefinitely moored floating structures.

1. *The Maritime Lien Act.* The substantive federal law involved in this case well illustrates why indefinitely moored structures that function as

extensions of land should not be classified as vessels. The Federal Maritime Lien Act, 46 U.S.C. §§ 31341-43, creates a means of collecting on purported debts that is unheard of outside of maritime law. Specifically, the Act allows liens to attach to vessels "without notice" and permits putative creditors in certain disputes involving "vessels" to have them seized without giving the owner an opportunity to be heard. *Usher v. M/V Ocean Wave*, 27 F.3d 370, 374 (9th Cir. 1994). This "extraordinary remedy," *id.* at 373, exists to protect both vessels and their creditors. By providing a vessel the means "to obtain upon her own account needed repairs and supplies," a maritime lien allows the vessel to be self-reliant even though it is "usually absent from the home port, remote from the residence of her owners and without any large amount of money." *Piedmont & Georges Creek Coal Co. v. Seaboard Fisheries Co.*, 254 U.S. 1, 9 (1920). At the same time, maritime liens "keep ships . . . from escaping their debts by sailing away." Thomas J. Schoenbaum, Admiralty & Maritime Law § 7-1, at 443 (4th ed. 2004) ("Schoenbaum on Admiralty").

The policies underlying the Maritime Lien Act have no bearing on stationary structures, such as floating homes, for they are never remote from their owners and cannot sail away from their debts. As this Court put the point long ago, a "maritime lien can only exist upon movable things engaged in navigation, or upon things which are the subjects of commerce on the high seas or navigable waters." *The Rock Island Bridge*, 73 U.S. (6 Wall.) 213, 216 (1867). Indefinitely moored structures do not satisfy this test – even if they were previously towed in order to be set in place.

2. *The Limitation of Liability Act and other tort doctrines*. Maritime tort law likewise has a number of doctrines specially adapted to circumstances at sea. First and foremost, unlike defendants under state law – who ordinarily are liable for the entire amount of harm that they cause – most admiralty defendants have the extraordinary advantage of limiting their liability to "the value of the vessel and pending freight." Limitation of Vessel Owners' Liability Act, 46 U.S.C. § 30505. Maritime law also restricts the availability of reasonably foreseeable damages far more than does state tort law governing land-based accidents. *See Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303 (1927). The "great object" of the Limitation Act, and the reason for preserving the *Robins Dry Dock* principle while other tort law has grown more permissive, is "to encourage ship-building and to induce capitalists to invest money in this branch of industry." *Norwich Co. v. Wright*, 80 U.S. (13 Wall.) 104, 121 (1871) (Limitation Act); *see also Louisiana ex rel. Guste v. M/V Testbank*, 752 F.2d 1019, 1022-29 (5th Cir. 1985) (*Robins Dry Dock* principle). In other words, limited liability encourages shipowners to engage in commerce that, due to the extraordinary risks involved, they would eschew if they were liable for the full extent of the harm that can result from maritime accidents.

But, as this Court already has observed, indefinitely moored floating structures that function as extensions of land do "not encounter perils of navigation to which craft used for transportation are exposed." *Evansville*, 271 U.S. at 22. They therefore neither convey the economic benefits, nor risk the crushing liabilities, that justify special tort protection for admiralty defendants. Accordingly, not only is

there "no reason" to limit liability for owners of indefinitely moored structures, *id.*, but it would be perverse to do so. Under the rule espoused by the Eleventh Circuit, for instance, a visitor suffering a debilitating accident on a floating home or business could be denied full recovery merely because the accident happened to occur on an immobile floating structure rather than on land a few yards away. Likewise, if a floating home caught fire due to owner negligence and burned down an entire marina, the owner could limit liability to a fraction of the damage. There is no justification for such results.

On the other hand, owners of vessels have various legal obligations that owners of land-based structures do not. Vessel owners owe a duty of "reasonable care under the circumstances" to every visitor lawfully aboard the vessel – a standard that may be higher than the duty owed with respect to land-based structures. *See Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959). They also are liable under the "salvage" doctrine to anyone who saves their vessel or its cargo "from impending danger or recover[s] [it] from actual loss, in cases of shipwreck, derelict, or recapture." *Cope v. Vallette Dry Dock Co.*, 119 U.S. 625, 628 (1887) (quotation marks omitted). And in many circumstances, "[a]dmiralty tort plaintiffs can sue the vessel itself even when the owner has no liability." *Tagliere v. Harrah's Ill. Corp.*, 445 F.3d 1012, 1016 (7th Cir. 2006).

Some of these maritime tort doctrines favor defendants, while others favor plaintiffs. But the point is that all of these special admiralty rules have developed over time to address unique concerns

involved in maritime navigation and commerce – that is, the "problems of vessels relegated to ply the waterways of the world, beyond whose shores they cannot go." *Exec. Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 269-70 (1967). Because accidents involving indefinitely moored floating structures have "nothing to do with the fact that [they are] afloat . . . rather than sitting on dry land," *Tagliere*, 445 F.3d at 1013, they are more suitably resolved by applying the local law governing accidents on land.

3. *The Jones Act and other legal protections for workers on vessels*. Various maritime statutes and doctrines, including the Jones Act, 46 U.S.C. § 30104, grant generous rights and legal remedies to certain employees, known as "seamen," who work aboard vessels.[16] Seamen are entitled to a "trilogy of heightened legal protections," comprising (1) the right to "maintenance and cure" for injuries incurred in the service of one's vessel; (2) the right to recover for an injury caused by a vessel's "unseaworthiness"; and (3) a cause of action for workplace injuries caused by the negligence not only of their employers but also of their fellow crew members. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 354 (1995). "[N]o other worker in our society can invoke such powerful relief

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[16] A "seaman" is "a master or member of a crew of any vessel." 33 U.S.C. § 902(3)(G); *see also Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 488 n.1 (2005). Whether a maritime worker is entitled to the generous rights and remedies afforded to seamen therefore depends, among other things, on whether he works on a vessel. *See Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995).

in the event of an industrial accident." Schoenbaum on Admiralty § 4-8, at 214. Seamen are entitled to these protections "because of their exposure to the 'perils of the sea,'" *Chandris*, 515 U.S. at 354 – that is, "the full range of dangers associated with deep water, wind and weather, tides and currents, ocean predators, great distances from shore, relative isolation, and inaccessibility of shore-side facilities for aid and succor." David W. Robertson, *A New Approach to Determining Seaman Status*, 64 Tex. L. Rev. 79, 80 (1985); *see also McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 354 (1991) (seaman remedies are designed to "compensat[e] or offset[] the special hazards and disadvantages to which they who go down to sea in ships are subjected") (quotation marks omitted).

It makes no sense to bestow these legal protections upon employees who work on indefinitely moored structures that function as extensions of land. Yet if such structures are deemed to be "vessels," then waiters in floating restaurants, nannies on floating homes, and blackjack dealers in floating casinos will become "seamen." *See* OSHA Authority Over Vessels and Facilities on or Adjacent to U.S. Navigable Waters and the Outer Continental Shelf (OCS), Occupational Safety & Health Admin., 2010 WL 1379699 (Enflex), at 14 (2010) ("OSHA 2010 Policy") (if floating casinos and similar structures are vessels, then those "whose work includes gaming or entertainment are considered to be seamen"); *Lunsford v. Fireman's Fund Ins. Co.*, 635 F. Supp. 72, 74 (E.D. La. 1986) (cleaning woman who worked three days a week on a yacht qualified as a seaman). Congress cannot have meant to confer seamen's uniquely generous protections upon such employees,

whose work is in no way meaningfully different than that of equivalent workers on land.

In particular, it is difficult even to imagine applying the unseaworthiness doctrine in this context. Seamen are entitled to recover for unseaworthiness when their vessel, its equipment, or appurtenances are not "reasonably fit *for their intended use*." *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 550 (1960) (emphasis added). But the intended use of indefinitely moored floating structures is to remain stationary. The doctrine of unseaworthiness cannot sensibly be applied to a structure that was never intended to be seaworthy in the first place.

4. *Federal maritime safety laws.* Vessels are subject to stringent federal safety laws and regulations. The Federal Boat Safety Act, which expressly displaces all state safety laws, charges the Coast Guard with creating regulations requiring recreational vessels to install or use "fuel systems, ventilation systems, electrical systems, sound-producing devices, firefighting equipment, lifesaving devices, signaling devices, ground tackle, life- and grab-rails, and navigational equipment." 46 U.S.C. § 4301 *et seq.* In addition, federal law empowers the Secretary of Homeland Security to establish a system of inspections to enforce rules "to secure the safety of individuals and property on board [certain recreational and commercial] vessels." 46 U.S.C. § 3306. Among other things, the Department of Homeland Security must ensure that certain vessels are equipped with "proper appliances for lifesaving," have "suitable accommodations for the crew," and

have "an adequate supply of potable water." 46 U.S.C. § 3305.

Pursuant to this authority and invoking its expert judgment, the Coast Guard does not inspect "permanently moored craft" (PMC) because they do not constitute "vessels" under Section 3. Craft Routinely Operated Dockside, 74 Fed. Reg. 21,814-02 (May 11, 2009). To determine whether a structure is a permanently moored craft, the Coast Guard assesses the "totality of the circumstances," including: (1) whether the craft has "practical access to navigable water," (2) whether the craft is "affixed to the shore" by cables or utility lines, (3) whether the craft would be "endangered because of its construction" if it were operated in navigation, (4) the "purpose, function, or mission of the craft," and (5) whether "the craft can get underway in less than eight (8) hours." *Id.*

As the Occupational Safety and Health Administration – which has jurisdiction over floating workplaces that are *not* vessels – has made clear, indefinitely moored structures that function as extensions of land constitute "permanently moored craft" under the Coast Guard's test. "Typically," a PMC is a craft "being used as a theater, hotel, restaurant, museum, factory, gaming casino, chapel, storage facility, or similar type of use." OSHA 2010 Policy, at 16. Petitioner's floating home had the same essential attributes as these other kinds of structures. The "purpose, function, or mission" of the home was to provide a stationary residence, not to engage in maritime transportation; it was "affixed to the shore" by utility and power lines; it took significant amounts of time to prepare for being

towed; and it was "endangered because of its construction" when towed. It thus was ineligible for Coast Guard certification. Pet. App. 20a.

The Eleventh Circuit's definition of "vessel," however, would require the Coast Guard to oversee at least some indefinitely moored floating structures (and OSHA to relinquish jurisdiction over such structures that are workplaces). Not only would such a change in the law require a reallocation of governmental resources, but it would subject structures not engaged in maritime transportation to all sorts of regulations that are inappropriate for them. Stationary structures, for instance, could be required to install "navigational equipment" and "grab-rails," and the Department of Homeland Security would be tasked with inspecting such structures' nonexistent crew accommodations and potable water supplies. It strains credulity to imagine that Congress intended such results.

B. Treating Indefinitely Moored Floating Structures As Vessels Would Contravene Principles of Federalism.

This Court has explained that "the primary focus of admiralty jurisdiction is unquestionably the protection of maritime commerce." *Foremost Ins. Co. v. Richardson*, 457 U.S. 668, 674 (1982). It accomplishes this objective by providing a regime of uniform rules for structures that travel between the states and are not subject to any single state's jurisdiction. The law thereby ensures "the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States." *The Lottawanna*, 88 U.S. (21 Wall.) 558, 575 (1874). Indefinitely moored

floating structures, however, have no implications for maritime commerce. Treating indefinitely moored structures as "vessels" thus would unnecessarily burden the federal courts and undermine important principles of federalism reflected in existing law.

1. There is no federal interest in governing floating structures uniformly across all fifty states when those structures are functionally extensions of land. Given that such structures do not transport people or goods between the states, no interstate commercial interests would be served by requiring every dispute involving such structures to be heard in federal court. As Professor Rutherglen notes: "Just as dead men tell no tales, dead ships pose no threat to admiralty jurisdiction." George Rutherglen, *Dead Ships*, 30 J. Mar. L. & Com. 677, 682 (1999). The same is true of indefinitely moored structures that were never ships to begin with.

That such structures are not vessels does not mean that disputes involving them will never come under maritime jurisdiction. It simply means that they will not *automatically* come under maritime jurisdiction. That is, while vessel status is generally sufficient to trigger maritime jurisdiction, maritime jurisdiction may attach in other ways. *See* Schoenbaum on Admiralty § 1-6, at 36. For example, if a floating structure indefinitely affixed to shore were struck by a vessel, then admiralty jurisdiction would attach under the Admiralty Extension Act, 46 U.S.C. § 30101. Or if a non-vessel were involved in an accident while being pulled over (navigable) water, admiralty tort jurisdiction would again be appropriate. *See Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995).

Petitioner's point, therefore, is simply that admiralty jurisdiction should not attach indiscriminately to all floating structures capable of being towed at some point. It is appropriately exercised only when the matter at issue somehow implicates the "commerce lying at the heart of the admiralty court's basic work." *Id.* at 533.

If the law were otherwise, federal courts would become responsible for cases that implicate no federal interest. Virtually any tort or contract dispute involving a "vessel," for example, comes under the exclusive jurisdiction of the federal courts. *Grubart*, 513 U.S. at 534 (torts); *Kossick v. United Fruit Co.*, 365 U.S. 731, 735-36 (1961) (contracts). While such broad jurisdiction may be necessary with respect to structures that transport people and goods over water, it would be a waste of the federal judiciary's limited resources to preside over disputes regarding indefinitely moored structures. Indeed, this case, which is basically a landlord-tenant dispute, aptly demonstrates that reality. Petitioner's floating home is far removed from interstate commerce and only about $3000 is at stake. Yet the district court was required to preside over months of bitter wrangling between the parties that culminated in a full-blown bench trial at which petitioner proceeded *pro se*.

2. Removing indefinitely moored floating structures from the purview of state law (or even simply adding a layer of federal law on top of that law) would also thwart federalism interests by usurping traditional state functions. Local regulation is the default in our federal system: states generally have regulatory authority over local matters because "decentralized decision making is

better able to reflect the diversity of interests and preferences of individuals in different parts of the nation." Michael W. McConnell, *Federalism: Evaluating the Founders' Design*, 54 U. Chi. L. Rev. 1484, 1493 (1987). Regulating local homes and businesses and prescribing compensation for tort victims are among states' most traditional prerogatives. Federal regulation in these realms with respect to indefinitely moored floating structures would serve little purpose, while "encroach[ing] on a regulatory domain that might well be thought to belong more properly to state courts and legislatures than to federal admiralty courts." *Tagliere*, 445 F.3d at 1015.

For example, many states have homestead protections preventing the forced sale of homes to satisfy creditors. Powell on Real Property § 18.03 n.8 (Michael Allan Wolf ed., 2011). Homestead laws embody states' determination that homeowners should not be stripped of their residences to satisfy debts. Indeed, Florida's homestead protection is enshrined in the state's constitution. Fla. Const. art. X, § 4; *see also Sherbill v. Miller Mfg. Co.*, 89 So. 2d 28, 31 (Fla. 1956) ("No policy of this State is more strongly expressed in the constitution, laws and decisions of this State than the policy of our [homestead] laws."). Homestead laws promote stability by allowing homeowners to live beyond the reach of financial misfortune. *See Miami Country Day Sch. v. Bakst*, 641 So. 2d 467, 468-69 (Fla. App. 1994).

But in a federal maritime action, creditors have recourse to the extraordinary remedy of a maritime lien on any "vessel." Again, this case illustrates how

admiralty law, carelessly applied, may preempt a state's judgment regarding the protections due to an indebted homeowner. Had the dispute here been left to state law, Florida's constitution would have protected petitioner's home from the extraordinary seizure and conversion that took place. Instead, the home was arrested and auctioned against his will because the district court and the Eleventh Circuit considered it to be a vessel to which a maritime lien could attach.

Further, different states regulate structures that occupy their shorelines according to varying historical and geographical preferences. *See, e.g.*, Shoreline Management Act of 1971, Wash. Rev. Code § 90.58.010-020 ("[C]oordinated planning is necessary in order to protect the public interest associated with the shorelines of the state . . . ."). Some states and municipalities, in fact, have adopted laws and ordinances specifically governing floating homes. Seattle, for example, has a detailed ordinance to protect "the stability, viability, and fiscal integrity of Seattle's unique floating home communities by preventing the eviction of floating homes from their moorages through arbitrary actions." Seattle Municipal Code § 7.20. In Idaho, the Floating Homes Residency Act provides owners of certain floating homes with different kinds of "protection from actual or constructive eviction." Idaho Code § 55-2702. Such policies are tailored to local priorities in a manner not replicable by a one-size-fits-all federal regime. Because states are already effectively managing their shorelines – including indefinitely moored floating structures – there is no need to frustrate states' self-governance through the introduction of federal maritime law.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

EDWARD M. MULLINS
ANNETTE C. ESCOBAR
ASTIGARRAGA DAVIS MULLINS & GROSSMAN, LLP
701 Brickell Avenue, 16th Floor
Miami, FL 33131

ROBERT TAYLOR BOWLING
COBB COLE
150 Magnolia Avenue
Daytona Beach, FL 32114

JEFFREY L. FISHER
Counsel of Record
STANFORD LAW SCHOOL SUPREME COURT LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305
(650) 724-7081
jlfisher@law.stanford.edu

KERRI L. BARSH
GREENBERG TRAURIG
333 Avenue of the Americas, 44th Floor
Miami, FL 33131

May 8, 2012