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 OF MARITIME LAW PROFESSORS AS AMICI CURIAE IN SUPPORT OF PETITIONER

Captain Alan S. Richard
Florida State University
College of Law
425 West Jefferson St.
Tallahassee, Florida 32306
850-556-9955
asrichard@fsu.edu

Richard T. Robol
Counsel of Record
Rachel C. Monaghan
Robol Law Office , LLC
433 West Sixth Avenue
Columbus, Ohio 43201
614-737-3739
rrobol@robollaw.com

Thomas J. Schoenbaum
George Washington
University, School of Law
2000 H Street NW
Washington DC 20052

Steven Friedell
Rutgers University
School of Law
217 North Fifth Street
Camden, NJ 08102

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BRIEF OF MARITIME LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

Amici Curiae respectfully submit this brief in support of Petitioner Fane Lozman pursuant to Supreme Court Rule 37.3.[1] *Amici* urge the Court to reverse the judgment of the United States Court of Appeals for the Eleventh Circuit.

STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici are scholars who have studied, taught, practiced, and published extensively in the field of admiralty and international law. This case presents a key element for determining the parameters of admiralty law and jurisdiction-- the definition of a "vessel." The knowledge held by each *amicus* as a result of their devotion to this area of law will be critical in helping the Court to determine the outcome of this matter.

Professor Thomas J. Schoenbaum was the Dean Rusk Professor Emeritus of the University of Georgia and has now taken a post as Research Professor of Law at George Washington University. Professor Schoenbaum was the founding Director of the Tulane Admiralty Law Center, where he served from 1980 to 1983. He was also the author of the treatise, Admiralty and Maritime Law, 5th ed. 2011, published by Westgroup.

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[1] Pursuant to Supreme Court Rule 37.6, *Amici* state that no counsel for a party authored this brief in whole or in part, and no person or entity other than *Amici* has made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this brief *amici curiae*, and their consent letters are on file with the Clerk's Office.

Professor Steven F. Friedell teaches courses on admiralty, torts and Jewish law at the Rutgers University School of Law. In 1996, he served as chair of the AALS Section on Maritime Law and was on the executive committee from 1997 to 2001. He is the author of volume 1 of Benedict on Admiralty (Jurisdiction), a co-author along with David Robertson and Michael Sturley of a casebook on Admiralty, and has written extensively on Admiralty law. Professor Friedell is a member of the Editorial Board of the Journal of Maritime Law and Commerce, and is a member of the American Law Institute and of its members consultative group, Liability for Economic Loss.

Captain Alan S. Richard is an Adjunct Professor at Florida State University School of Law. He retired as a Captain from the Division of Law Enforcement for the Florida Fish and Wildlife Commission after 32 years of maritime law enforcement service. His teaching focus is on Admiralty Law, a topic on which he has published and lectured extensively. He is a member and past chair of the Admiralty Law Committee of the Florida Bar, a member and director of the Southeastern Admiralty Law Institute, and a member of the Admiralty and Maritime Law Network, the Maritime Accident Investigation Group, and the National Association of State Boating Law Administrators. He has been licensed by the United States Coast Guard to serve as Master of Steam or Motor Vessels and is presently serving as a member of the Coast Guard's Navigation Safety Advisory Council.

SUMMARY OF ARGUMENT

Amici respectfully urge the Court to hold that floating structures that are intentionally and indefinitely moored, that are used in the manner of structures on fast land, that are not used for transportation on the water, and that will not be so used for the foreseeable future are not vessels within the meaning of 1 U.S.C. § 3 or the General Maritime Law of the United States.

In enacting Section 3, Congress intended to codify the judicially established understanding of the term "vessel" under the General Maritime Law. Maritime law is, and at the time of the enactment of Section 3 was, a special field of jurisprudence, created for special reasons. Fundamentally, the special grant of admiralty jurisdiction to the federal courts seeks to provide uniform rules of law for the business of shipping, to facilitate maritime commerce, and to apply uniform remedies for persons traveling or working on navigable waters in connection with these maritime activities.

The application of admiralty law and jurisdiction entails a special set of substantive rules. These rules are specifically designed to facilitate the movement of maritime commerce across state and national boundaries. At its core, admiralty law consists of a uniform body of federal law. Typically, the substantive law applied in admiralty cases is federal maritime law—a body of law distinct from state law and the common law.

In addition to special substantive rules, maritime law entails certain practical procedural consequences. These include, among others, limited availability of the right to trial by jury; application of the special procedures for the arrest and attachment of maritime property under the Supplemental Rules. These procedures provide powerful tools which inherently also contain the potential for

misuse when applied to persons or things not appropriately within maritime jurisdiction.

In reflecting the general maritime law codified in 1 U.S.C. §3, therefore, amici respectfully urge that the definition of "vessel" reflect these principal considerations: (1) the functional reasons for applying admiralty law to particular subjects of interstate and international commerce; (2) the adequacy of state law in addressing those subjects; and, conversely, (3) the intended and unintended consequences of applying admiralty law.

In light of these considerations, indefinitely moored structures should not be treated as vessels. There are no significant functional reasons for displacing state law with federal admiralty law in adjudicating legal issues pertaining to dispute between the City of Rivera Beach and Mr. Lozman regarding Lozman's floating house. State law is adequate to address the legal issues associated with Lozman's floating house.

In light of the special nature of maritime law, the test for determining whether a floating structure qualifies as a "vessel" should remain focused on functional considerations in order to vindicate the special purpose of admiralty and maritime jurisdiction. By analogy, in the context of the Jones Act, the Court has determined that land-based workers are not seamen. *Chandris Inc. v. Latsis*, 515 U.S. 347 (1995). Just as there is no significant federal interest in providing rules of decision for land-based workers, so also, there is no significant federal interest in providing a uniform body of federal maritime law to determine landlord-tenant relations for floating houses.

For the reasons explained below, treating indefinitely moored structures as "vessels" would erode

federalism and have other adverse unintended consequences. For example, treating indefinitely moored structures as "vessels" would sweep within the reach of admiralty law and jurisdiction an inappropriate array of fixed structures. Extending admiralty jurisdiction to encompass Lozman's floating house would impinge on matters that are primarily those of state concern. State law is adequate to address the competing interests of landlord and tenant.

Applying admiralty law to indefinitely moored structures such as Lozman's floating house would also tend unnecessarily to broaden the reach of admiralty law. The inevitable result of such an expansion would be to erode federalism and the right to trial by jury, while also expanding special admiralty procedures not meant for adjudicating issues associated with floating houses and other structures not used for transportation.

ARGUMENT

I. Indefinitely Moored Floating Structures Are Not Vessels Under 1 U.S.C. §3 and Related Federal Maritime Statutes.

A. Congress Intended that Section 3 Codify the Judicially Established Understanding of the Term "Vessel" Under the General Maritime Law.

Because "Section 3 merely codified the meaning that the term 'vessel' had acquired in general maritime law," it should be construed "in light of the term [vessel's] established meaning in general maritime law." *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 490, 492 (2005). "There is no legally significant difference between the statutory

definition of the term 'vessel" and the meaning attributed to it by the general maritime law as obtaining in this country." Steven F. Friedell, 1 *Benedict on Admiralty* §1-2 (7th ed. rev. 1997).

To assist in determining legislative intent, the Court has previously surveyed decisions of the lower courts at and around the time of Congress' enactment of 1 U.S.C. §3. *See Stewart*, 543 U.S. at 490-91 (surveying lower court decisions around the time of Section 3's enactment to discern the statute's meaning). Numerous decisions at that time focus on the actual purpose of the structure, as being fairly engaged in maritime commerce or navigation.

The general maritime law at the time of enactment of Section 3 was firmly rooted in an understanding of the nature and function of maritime law and jurisdiction. The leading admiralty treatise at the time of Section 3's enactment, *Benedict on Admiralty*, analyzed maritime law and jurisdiction within the context of the historical reasons and purposes for this special body of jurisprudence. Reflecting these functional considerations, he explained that "[i]t is not the form, the construction, the rig, the equipment, or the means of propulsion that establishes [maritime] jurisdiction, 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). Benedict also stated that "[S]HIP is a general term, and in the law is equivalent to *vessel*," and defined a ship as "a locomotive machine adapted to transportation over rivers, seas and oceans." *Id.* § 215. *Cf. The Rock Island Bridge*, 73 U.S. 213, 216 (1867) (railroad bridge could not be subject to a maritime lien, since"[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.") Historically, "the terms ship and vessel are used interchangeably as synonymous terms, connoting a craft capable of being used for transportation on oceans, rivers, seas, and navigable water." Friedell, 1 *Benedict on Admiralty* §162.

B. Maritime Law Is a Special Body of Jurisprudence Aimed at Protecting a Special Federal Interest, Namely, Facilitating Maritime Commerce Through a Uniform Body of Federal Law and Distinctive Federal Jurisdiction.

Maritime law is, and at the time of the enactment of Section 3 was, a special field of jurisprudence, created for special reasons. "The purpose of the special grant of admiralty jurisdiction to the federal courts… is to provide uniform rules of law for the business of shipping, to facilitate maritime commerce, and to apply uniform remedies for persons traveling or working on navigable waters in connection with these maritime activities." Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 1-2 (5th ed. 2012).

The application of admiralty law and jurisdiction entails a special set of substantive rules. *See generally id.* These rules are specifically designed to facilitate the movement of maritime commerce across state and national boundaries. *See id*. The development of maritime law has thus been historically tied to sea trade. Friedell, 1 *Benedict on Admiralty* §1-2.

At its core, admiralty law consists of a uniform body of federal law. *The Lottawan*a, 88 U.S. (21 Wall.) 558, 575 (1874). "The substantive law applicable in admiralty cases is, in general, the federal maritime law, which in many respects is distinct from state law and the common

law." *See generally* Schoenbaum §1-2. A key purpose of the grant of admiralty and maritime jurisdiction under Article III, §2 of the Constitution was to ensure the essential uniformity of maritime law, consistent with international rules of the sea, that "would supersede the numerous conflicting and changing rules that could not fail to result from the varying legislation and adjudication of the States." Friedell, 1 *Benedict on Admiralty* §105. "Although the lines are not always easy to draw, it would likely lead to more satisfactory results if courts recognized that the purpose of having jurisdiction over maritime affairs is to provide a forum for developing a uniform body of law for those aspects of maritime commerce for which there is a substantial federal interest."*Id*.

Federal maritime law springs primarily from the General Maritime Law, "a body of concepts, principles and rules, originally customary and international in origin, that have been adopted and expounded over time by the federal courts." Schoenbaum §2-1. Over time, federal statutes and international agreements have supplemented and expanded the General Maritime Law, together with "State law (insofar as appropriate in the admiralty context)", where needed to fill in the interstices of maritime law and to avoid gaps or "lacunae." *See id.* The admiralty and maritime jurisdiction of the U.S. has historically not been limited by the restraining statutes in English admiralty practice, and "is to be interpreted by an original view of its essential nature and objects and with reference to analogous jurisdictions in other countries constituting the maritime commercial world as well as the jurisdiction in England." Friedell, 1 *Benedict on Admiralty* §104.

In addition to special substantive rules, maritime law entails certain practical procedural consequences. These include, among others, limited availability of the right to trial by jury; application of the special procedures for the arrest and attachment of maritime property under the Supplemental Rules, including authorization for "special *in rem* process, which permits seizure without a hearing and before judgment by *ex parte* order of the court"; the right to interlocutory appeal; the right to petition for limitation of liability and to obtain a federal injunctive relief requiring that claims be filed in a single, unified concursus; and a host of other procedures specially designed to facilitate maritime commerce. *See generally* Schoenbaum, §1-2. These procedures provide powerful tools which inherently also contain the potential for misuse when applied to persons or things not appropriately within maritime jurisdiction.

Amici recognize the vital importance of the grant of admiralty and maritime jurisdiction to the federal judiciary under Article III, §2 of the Constitution. The rules and customs of the sea extend back to the very beginnings of maritime commerce. Friedell, 1 *Benedict on Admiralty* §1-2. Even the Code of Hammurabi recorded laws of the sea. *Id.* These rules and customs have influenced the development of not only our system of law, but also our cultural heritage and values. *See generally* Robert M. Jarvis *et al.* "Admiralty Law in Popular Culture," 31 J. Mar. L & Comm. 519-661 (2000) (series of articles on influence of admiralty law on human culture). It is precisely in order to protect and maintain its continuing vitality that maritime law should not be diluted, let alone perverted, by overextension to deal with subjects and issues that do not implicate the historical goals and underpinnings of admiralty jurisprudence.

In reflecting the general maritime law codified in 1 U.S.C. §3, therefore, *amici* respectfully urge that the definition of "vessel" reflect these principal considerations: (1) the functional reasons for applying admiralty law to particular subjects of interstate and international commerce; (2) the adequacy of state law in addressing those subjects; and, conversely, (3) the intended and unintended consequences of applying admiralty law.

C. Indefinitely Moored Structures Should Not Be Treated As Vessels.

Indefinitely moored floating structures are more-or-less permanent extensions of the shore that do not implicate the essential objectives or purposes of displacing state law with federal maritime law. There are no significant functional reasons for displacing state law with federal admiralty law in adjudicating legal issues pertaining to dispute between the City of Rivera Beach and Mr. Lozman regarding Lozman's floating house. State law is adequate to address the legal issues associated with Lozman's floating house.

There is no federal statute governing landlord-tenant relations within the states for good reason. There is no significant federal interest in providing a uniform body of federal law to govern those relations. Just as there is no significant federal interest in displacing state law governing landlord-tenant relations with a uniform body of federal law, there is also no significant federal interest in displacing state law and jurisdiction over indefinitely moored residential structures.

Indefinitely moored structures should not be deemed vessels because of the mere fact that such structures can be, and occasionally are, towed across water. The mere ability to tow something does not sufficiently engage the

underlying purposes of admiralty jurisdiction to treat everything involving the structure when it is moored as a matter of maritime concern. *See* 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 a vessel.").

In light of the special nature of maritime law, the test for determining whether a floating structure qualifies as a "vessel" should remain focused on functional considerations in order to vindicate the special purpose of admiralty and maritime jurisdiction. *Compare* Schoenbaum, §1-6 ("The business or employment of a watercraft is determinative, rather than its size, form, capacity or means of propulsion.") *with* Friedell, 1 *Benedict on Admiralty* §164 ("It is not the form, the construction, the rig, the equipment, or means of propulsion that establishes the jurisdiction, but the purpose and business of the craft as an instrument of maritime transportation.")

By analogy, in the context of the Jones Act, the Court has determined that land-based workers are not seamen. *Chandris Inc. v. Latsis*, 515 U.S. 347 (1995). Just as there is no significant federal interest in providing rules of decision for land-based workers, so also, there is no significant federal interest in providing a uniform body of federal maritime law to determine landlord-tenant relations for floating houses.

This Court has rejected "a 'snapshot' test for seaman status" *Chandris*, 515 U.S. at 363, and *amici* are not suggesting that such a test be employed for vessel status. This Court has repeatedly reaffirmed its belief that "it is important to avoid engrafting upon the statutory classification of a seaman a judicial gloss so protean,

elusive, or arbitrary as to permit a worker to walk into and out of coverage in the course of his regular duties." *Chandris*, 515 U.S. at 363 (internal quotation marks omitted); *see also Barrett v. Chevron, U.S.A., Inc.*, 781 F. 2d 1067, 1075 (5th Cir. 1986); *Longmire v. Sea Drilling Corp.*, 610 F. 2d 1342, 1347, n. 6 (5th Cir. 1980).]

Amici are not asserting that Lozman's house should float into and out of vessel status based on the circumstances as they exist at any particular instant. Nevertheless, "just as someone actually transferred to a desk job in the company's office and injured in the hallway should not be entitled to claim seaman status on the basis of prior service at sea," *Chandris*, 515 U.S. at 372, Lozman's floating house should not be accorded vessel status simply on the basis that, on prior occasions, it had been towed from one point to another without breaking up or sinking. As a seaman may lose that status upon being assigned indefinitely to duties ashore with no intent for him to ever return to sea, so may a vessel lose its status as such upon being attached indefinitely to the shore or an extension thereof with no intent for it to ever leave.

More important, a land-based worker does not attain seaman status upon occasionally receiving a work assignment aboard a vessel as distinguished from an assignment "that involves a regular and continuous, rather than intermittent, commitment of the worker's labor to the function of a vessel." *Chandris*, 515 U.S. at 372. Similarly, a floating structure such as Lozman's floating house should not attain vessel status based on occasional, intermittent movement on the water. Although the purpose for which it was built may not be the deciding factor in such an analysis, the purpose for which it is used, and especially the purpose which it will

be used for the indefinitely foreseeable future, should certainly be considered in determining its status. Under this Court's precedents, "a vessel does not cease to be a vessel when she is not voyaging, but is at anchor, berthed, or at dockside." *Chandris*, 515 U.S. at 373 quoting *DiGiovanni v. Traylor Bros., Inc.*, 959 F. 2d 1119, 1121 (1st Cir.), cert. denied, 506 U.S. 827, 113 S. Ct. 87, 121 L. Ed. 2d 50 (1992). Similarly, a shore-based floating structure does not become a vessel simply because it is physically possible to tow it from one point to another.

For one and one-half centuries, this Court's jurisprudence has made it clear that structures that are indefinitely moored and that function as extensions of land are excluded from the status of being vessels. *Amici* respectfully urge that the Court clarify its intent to follow that long-established precedent and hold, as a matter of law, that Lozman's floating house did not fall within the definition of "vessel" in 1 U.S.C. § 3.

II. Treating Indefinitely Moored Structures As "Vessels" Would Erode Federalism and Have Other Adverse Unintended Consequences.

A. Treating Indefinitely Moored Structures As "Vessels" Would Sweep Within the Reach of Admiralty Law and Jurisdiction an Inappropriate Array of Fixed Structures.

Section 3 of title 1 sets forth a default definition of "vessel." It provides the predicate for a panoply of substantive maritime statutes. "The definition of a 'vessel' is important in many different contexts of admiralty and maritime law. Vessel status is important in determining jurisdiction since acts that occur aboard a vessel will be presumed, absent unusual circumstances, to meet the maritime relationship requirement. Furthermore, under the Admiralty Extension Act, land-based damages are

within the jurisdiction if 'caused by a vessel.' The existence of a vessel may also be necessary for the assertion of a salvage award, liability for unseaworthiness, or a maritime lien under the general maritime law. The applicability of several statutes, such as the Jones Act, the Longshore and Harbor Workers' Compensation Act, the Limitation of Shipowners Liability Act, and the Outer Continental Shelf Lands Act, may depend on whether a vessel is involved." Shoenbaum §1-6 (footnotes omitted).

For this reason, 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). The decision of the Eleventh Circuit below that "capability" means that anything that can be towed without sinking is a vessel, Pet. App. 21a, would bring within the ambit of admiralty law and jurisdiction innumerable floating structures having nothing to do with the functional reasons for admiralty jurisprudence. It would be absurdly overbroad to treat every floating structure that is capable of being towed as a "vessel" for purposes of admiralty jurisdiction and law. Any pedant could easily identify thousands of floating structures that are capable of being towed that have nothing to do with the functional reasons for admiralty jurisdiction and maritime law. Extending the reach of maritime law and jurisdiction to encompass such items would not advance the purpose of admiralty. It would only erode the core principle of federalism and the right to trial by jury.

Extending admiralty jurisdiction to encompass Lozman's floating house would impinge on matters that are primarily those of state concern. For example, state

law is adequate to address the competing interests of landlord and tenant. *Loretto v. Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 440 (1982) ("This Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails."). By its nature, the relationship of landlord-tenant arises out of a land-based relationship. A significant number of states have enacted statutes governing landlord-tenant relations. *See Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 155 (1944) ("[t]he great body of law in this country which controls acquisition, transmission, and transfer of property, and defines the rights of its owners in relation to the state or to private parties, is found in the statutes and decisions of the state."). These statutes implement the basic public policies within the individual states determined by the people of the states through their elected representatives. *See Herian v. U.S.,* 363 F. Supp. 287, 290 (D.C.D.C., 1973) ("Landlord and tenant cases are uniquely local."). Those public policies may appropriately vary from state-to-state, depending on the degree of urbanization within each state; the availability of courts and other resources to decide disputes; the degree of sophistication of landlords and tenants in each state; the past traditions and history of such relations within each state; *etc. See generally U.S. v. Little Lake Misere Land Co., Inc.*, 412 U.S. 580, 591-92 (1973) ("Even when federal general law was in its heyday, an exception was carved out for local laws of real property.).

Under these circumstances, the term "capability" for transportation in 1 U.S.C. § 3 should be interpreted in light of the functional reasons for admiralty law and jurisdiction. Section 3 brings within its ambit structures

purposefully designed or actually used for transportation. It does not extend to indefinitely moored floating structures with little more than a theoretical capability for transportation.

The nature and purpose of floating structures already vary widely. No doubt, with innovations in materials science, structuring engineering and computer-assisted design, many currently unheard of types of floating structures will be created in the future. Future radical changes in design and construction for many sorts of floating structures are inevitable. Treating floating structures as "vessels" under Section 3 makes sense only when the federal interest in protecting maritime commerce requires displacement of state law and jurisdiction with federal maritime law and jurisdiction.

Applying admiralty law to indefinitely moored structures such as Lozman's floating house would tend unnecessarily to broaden the reach of admiralty law. The inevitable result of such an expansion would be to erode federalism and the right to trial by jury, while also expanding special admiralty procedures not meant for adjudicating issues associated with floating houses and other structures not used for transportation.

B. Imposing "Vessel" Status on Fixed Structures that Happen to Float Would Improperly Subject Them to Maritime Regulations and Liens.

Surely, Congress had no intention to extend federal admiralty jurisdiction and regulation to a broad array of items having nothing to do with maritime commerce or travel by water. Every vessel on the navigable waters of the United States must be equipped with specified items of safety equipment, including for example, life jackets. 33 C.F.R. § 175.15, 46 C.F.R. 25.25-5. Vessels, even

homemade boats, must be built to federal specifications that specifically preempt state and local regulation. See, e.g., 46 U.S.C. § 4306. To enforce those regulations, the Coast Guard's "commissioned, warrant, and petty officers may *at any time go on board of any vessel* subject to the jurisdiction, or to the operation of any law, of the United States, address inquiries to those on board, examine the ship's documents and papers, and *examine, inspect, and search the vessel* and use all necessary force to compel compliance. 14 U.S.C. § 89 (emphasis added).

Because of this "heavy overlay of maritime law and the long practice of regulatory stops, inspections and searches by these officers," *United States v. Whitmire*, 595 F. 2d 1303,1313 (11th Cir. 1979), the expectation of privacy aboard a vessel is significantly limited. United States v. Williams, 617 F. 2d 1063, 1087 (5th Cir. 1980). Neither a warrant nor even articulable suspicion of a violation is necessary for such a boarding or inspection. *United States v. Warren*, 578 F.2d 1058, 1067-70 (5th Cir. 1978); *United States v. Freeman*, 579 F.2d 942, 945 (5th Cir. 1978).

Moreover, vessels are subject to maritime liens under the Federal Maritime Lien Act, 46 U.S.C. § 31342, and the general maritime law. Should floating houses be treated as vessels, every painter, roofer, electrician, plumber and other service provider may potentially be required to add a layer of federal maritime lien law to his existing practices under state law. Because contracts for these services to vessels are maritime, each may have to create a whole new set of invoice forms and contractual provisions to suit this additional new area of federal regulation. *See generally* Schoenbaum, §1-10. Owners of such structures, in turn, may be required to replace their existing homeowners or business insurance with marine

insurance—with its peculiar provisions and requirements. *See* Leslie J. Buglass, *Marine Insurance Claims American Law and Practice*, 1-6 (2nd ed. 1972). The federal courts will be required to adjudicate the potential federal or state status of any service and any person connected with such structures. Other than providing an economic stimulus for hundreds of maritime lawyers, this intrusive extension of federal power and regulation is not calculated to serve any significant federal interest in facilitating maritime commerce.

III. Indefinitely Moored Floating Structures Are Not "Vessels" Under Controlling Supreme Court Precedents.

Focusing on the functional relationship of floating structures to the purpose of admiralty law and jurisdiction, the Court has held on two occasions that indefinitely moored structures never intended for moving people or things across water are not vessels. *Compare Cope v. Vallette Dry-Dock Co.*, 119 U.S. 625, 626-27 (1887) (dry-dock was not a vessel because it was "not used for the purpose of navigation" – that is, for "locomotion from one place to another.") *with Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19, 21-22 (1926) (wharfboat was not a vessel, as it "was not practically capable of being used as a means of transportation"; "was not used to carry freight from one place to another"; its purpose was to function as a stationary "office, warehouse, and wharf"; and it "performed no function that might not have been performed as well by an appropriate structure on land.")

Even a structure that was once a vessel loses its vessel status if it is indefinitely moored. Although such structures may have initially been designed for transporting people or things over water, they cease to be

vessels if they are no longer engaged in such a purpose. *See Roper v. United States*, 368 U.S. 20 23-24 (1961) (deactivated military ship converted into a floating grain warehouse, that was capable of being towed, was not a vessel in navigation as it was not "moved in order to transport commodities from one location to another" and "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.").

Similarly, the Court's decision in *Stewart* focused on the practical, rather than theoretical, capability of a floating structure in determining vessel status: the test is whether it is "*practically capable of maritime transportation*, regardless of its primary purpose." 543 U.S. at 497 (emphasis added). Even though the dredge in question 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. Hence, the critical inquiry for vessel status remains "whether [the structure's] use 'as a means of transportation on water' is a practical possibility or merely a theoretical one." 543 U.S. at 496.

Thus, despite the "remote possibility that they may one day sail again," structures that were previously vessels "may lose their character as vessels if they have been withdrawn from the water for extended periods of time." *Stewart*, 543 U.S. at 494, 496. The loss of vessel status continues even if the vessel "is taken out of service indefinitely; it need not be removed from service forever." Rutherglen, 30 Mar. L. & Com. at 679.

CONCLUSION

Amici respectfully urge the Court to hold that floating structures that are intentionally and indefinitely moored, that are used in the manner of structures on fast land, that are not used for transportation on the water, and that will not be so used for the foreseeable future are not vessels within the meaning of 1 U.S.C. § 3 or the General Maritime Law of the United States. The Court should reverse the decision of the court of appeals.

Respectfully submitted,

Captain Alan S. Richard
Adjunct Professor
Florida State University
College of Law
425 West Jefferson Street
Tallahassee, Florida 32306
850-556-9955
asrichard@fsu.edu

Richard T. Robol
Counsel of Record
Rachel C. Monaghan
Robol Law Office , llc
433 West Sixth Avenue
Columbus, Ohio 43201
614-737-3739
rrobol@robollaw.com

Steven Friedell
Professor of Law
Rutgers University
School of Law
217 North Fifth Street
Camden, NJ 08102

Thomas J. Schoenbaum
Research Professor of Law
George Washington University
Law School
2000 H Street NW
Washington DC 20052