No. 24-849

IN THE

Supreme Court of the United States

LAURA SMITH, as Duly Appointed Representative of the Estate of Andrea Manfredi, et al.,

Petitioners,

v.

THE BOEING CO., et al.,

Respondents.

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

BRIEF OF AMICUS CURIAE AMERICAN ASSOCIATION FOR JUSTICE IN SUPPORT OF PETITIONERS

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March 12, 2025

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INTEREST OF AMICUS CURIAE[1]

The American Association for Justice ("AAJ") is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions, including major air crash litigation. Throughout its 78-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct and for the preservation of the constitutional right to trial by jury for all Americans.

AAJ believes that the Seventh Circuit Court of Appeals interpretation of the Death on the High Seas Act (DOHSA), 46 U.S.C. §§ 30301–30308 (2006), denies Petitioners and future victims of high-seas fatal accidents their Seventh Amendment right to trial by jury and their associated right of election under 28 U.S.C. § 1333(1) and Federal Rule of Civil Procedure 9(h). AAJ believes that the issues raised by Petitioners

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[1] Pursuant to Rule 37.2, all parties were timely notified of the filing of this brief. Pursuant to Rule 37.6, amicus affirms that no counsel for any party authored this brief in whole or in part and no person or entity, other than *amicus*, its members, or its counsel, has made a monetary contribution to its preparation or submission.

merit this Court's attention and urges this Court to grant the Petition for Writ of Certiorari.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners' DOHSA claims are "suits at common law" under the Seventh Amendment. Petitioners cannot be forced to proceed in admiralty, without a jury, when the district court has a non-admiralty basis for jurisdiction. The Seventh Amendment exists to prevent this very occurrence. The Founders created the civil jury right in response to England's abusive expansion of colonial vice-admiralty jurisdiction before the Revolution. The same suspicion of admiralty gave rise to the saving-to-suitors clause contained in the Judiciary Act of 1789. To this day, that clause preserves a maritime plaintiff's right to proceed with a common law claim, before a jury, on the law side of a federal district court where, as here, that court has a non-admiralty basis for subject-matter jurisdiction.

The Seventh Circuit failed to interpret DOHSA with these principles and history in mind. According to the decision below, a DOHSA claim may be brought at law in a state court but only in admiralty in federal courts. This new species of quasi-exclusive jurisdiction serves no purpose. Worse, it is fundamentally unfair. Defendants can now remove DOHSA cases from state courts if there is an independent basis for the court's subject-matter jurisdiction, such as diversity. But plaintiffs are barred from invoking diversity to proceed at law, before a jury. This arbitrary new rule turns the saving-to-suitors clause on its head and violates the Seventh Amendment.

History repeats itself in the Seventh Circuit. The undue expansion of admiralty jurisdiction has extinguished Petitioners' right to a jury trial. This Court should grant the Petition to preserve DOHSA plaintiffs' Seventh Amendment Rights and our centuries-old framework of concurrent maritime jurisdiction.

ARGUMENT

DOHSA provides that the personal representative of a decedent's estate "may bring a civil action in admiralty against the person or vessel responsible." 46 U.S.C. § 30302. The Seventh Circuit concluded that a "natural, ordinary" reading of this language gives federal courts the right to hear DOHSA cases on the admiralty side of the court only, where there is no right to a jury trial. Pet. App. 14a. But that reading is unconstitutional. Petitioners seek money damages, the prototypical common law remedy. And because the district court has an independent basis for subject-matter jurisdiction, forcing Petitioners into juryless admiralty violates the Seventh Amendment. The language, history, and purpose of the Seventh Amendment—as well as this country's tradition of concurrent jurisdiction over maritime disputes—supports Petitioners' request for a jury trial in the district court.

I. COMPELLING A DOHSA PLAINTIFF TO PROCEED IN ADMIRALTY WHEN THE DISTRICT COURT HAS A NON-ADMIRALTY BASIS FOR SUBJECT-MATTER JURISDICTION VIOLATES THE SEVENTH AMENDMENT.

To address maritime disputes in the colonial economy, England's High Court of Admiralty established

vice-admiralty courts in the colonies. *See* Steven L. Snell, *Courts of Admiralty and the Common Law: Origins of the American Experiment in Concurrent Jurisdiction* 145 (2d ed. 2007). Within the colonial justice system, the courts of common law and the courts of vice admiralty generally had overlapping jurisdiction. *Id.* at 205. As they do today, maritime plaintiffs could weigh the benefits and drawbacks of each court's unique procedures and choose where to proceed. "The hallmark of colonial maritime jurisdiction was its flexibility," and this flexibility "formed a valuable legacy for the generation that met in Philadelphia in the summer of 1787 to draft the Constitution." *Id.*

Admiralty, however, was also a tool of imperial power. To assert control over the colonies, Parliament expanded vice-admiralty jurisdiction beyond that exercised by admiralty courts in England. *See generally* Matthew P. Harrington, *The Legacy of the Colonial Vice-Admiralty Courts (Part II)*, 27 J. Mar. L. & Comm. 323, 334 (1996). In the Townshend Acts, for example, Parliament taxed imports and created district courts of vice-admiralty to enforce violations of those unpopular acts without a jury. *Id.* at 335. Colonists such as John Adams lambasted the "Brand of Infamy, of Degradation and Disgrace fixed upon every American" by the use of admiralty courts over trade disputes that would be resolved by juries in England. *Id.* at 336 (quoting John Adams, Admiralty Notebook, in microfilms of the Papers of John Adams, pt. III, reel 184).

The strife caused by the Crown's expansion of admiralty jurisdiction is difficult to overstate. *See* Carl Ubbelohde, *The Vice-Admiralty Courts and the Amer-*

ican Revolution 208 (1960) ("No other argument concerning the courts was more consistently debated nor more indicative of the gulf separating the British and colonials."). Indeed, the denial of trial by jury in civil cases was a direct cause of the Revolution. *See SEC v. Jarkesy*, 603 U.S. 109, 121 (2024) ("[W]hen the English continued to try Americans without juries, the Founders cited the practice as a justification for severing our ties to England."). After all, the Declaration of Independence's complaint of the Crown's "[d]epriving us in many cases, of the benefits of trial by jury" is an explicit reference to the abuse of admiralty jurisdiction. The Declaration of Independence para. 20 (U.S. 1776).

When our Constitution was later ratified, however, the Founders did not explicitly guarantee the right to a civil jury trial. *See Jarkesy*, 603 U.S. at 121 ("In the Revolution's aftermath, perhaps the most successful critique leveled against the proposed Constitution was its want of a provision for the trial by jury in civil cases.") (quoting The Federalist No. 83, at 495 (Alexander Hamilton) (Clinton Rossiter ed. 1961)) (cleaned up). This was unacceptable to antifederalists who felt that the jury trial right should be explicit in a Bill of Rights. *See* Kurt T. Lash, *Becoming the "Bill of Rights": The First Ten Amendments from the Founding to Reconstruction*, 110 Va. L. Rev. 411, 427 (2024). To assuage these critiques, James Madison drafted the Bill of Rights' ten amendments, which were added to the Constitution in 1791. *See* Jeff Broadwater, *George Mason, James Madison, and the Evolution of the Bill of Rights*, 15 Geo. J. L. & Pub. Pol'y 547, 561 (2017). The Seventh Amendment provides:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

U.S. Const. amend. VII. Today, as throughout our history, this Court regards any encroachment upon this prized and sacred right "with great jealousy." *Jarkesy*, 603 U.S. at 122 (quoting *Parsons v. Bedford*, 28 U.S. 433, 434 (1830)).

The application of the Seventh Amendment here is straightforward. The Amendment "preserve[s]" the right to a jury in causes of action cognizable in English common law courts as of 1791, when the Seventh Amendment came into force. U.S. Const. amend. VII; *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41 (1989). This right, however, is not "limited to the 'common-law forms of action recognizes when the Seventh Amendment was ratified.'" *Jarkesy*, 603 U.S. at 122 (quoting *Curtis v. Loether*, 415 U.S. 189, 193 (1974)). Statutory causes of action "require[] a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law." *Curtis*, 415 U.S. at 194.

Petitioners' suit is a personal injury action: "a prototypical example of an action at law, to which the Seventh Amendment applies." *Wooddell v. Int'l Bhd. of Elec. Workers, Loc. 71*, 502 U.S. 93, 98 (1991). And they seek only money damages, "the prototypical common law remedy." *Jarkesy*, 603 U.S. at 123; *see also Curtis*, 415 U.S. at 196 n.11 ("If the action is properly

viewed as one for damages only, our conclusion that this is a legal claim obviously requires a jury trial on demand."). Accordingly, the dispositive question is: Can a federal district court exercise law-side jurisdiction over a DOHSA claim? *Atlas Roofing Co. v. Occupational Safety and Health Rev. Comm'n*, 430 U.S. 442, 450 n.7 (1977) ("On the common-law side of the federal courts, the aid of juries is not only deemed appropriate but is required by the Constitution itself.") (quoting *Crowell v. Benson*, 285 U.S. 22, 51–52 (1932)). The history and purpose of the Seventh Amendment *requires* an affirmative answer to this question. To hold otherwise means a court can force a "Suit at common law" into an admiralty court without a jury, the very evil the Seventh Amendment aims to prevent. U.S. Const. amend. VII. And this result also harmonizes DOHSA with our tradition of concurrent jurisdiction over maritime disputes.

II. COMPELLING A DOHSA PLAINTIFF TO PROCEED IN ADMIRALTY WHEN THE DISTRICT COURT HAS A NON-ADMIRALTY BASIS FOR SUBJECT-MATTER JURISDICTION VIOLATES THE SAVING-TO-SUITORS CLAUSE.

The Judiciary Act of 1789, enacted just two years before the ratification of the Seventh Amendment, reflects the Founders' intentions to insulate common law claims from admiralty bench trials.

After the Revolution, the dysfunctional state system of admiralty jurisprudence adopted under the Articles of Confederation made it clear that uniform

rules enforced by national admiralty courts were essential to a nascent American economy that was dependent on marine commerce. *See* Snell, *supra*, at 207 ("The most bigoted idolizers of State authority have not thus far shown a disposition to deny the national judiciary the cognizance of maritime causes.") (quoting The Federalist No. 80, at 478 (Alexander Hamilton (Clinton Rossiter ed. 1961)). Thus, Article III of the Constitution granted the federal judiciary jurisdiction over admiralty and maritime disputes and empowered Congress to "ordain and establish" the federal judiciary. U.S. Const. art. III, § 1. Congress did so in the Judiciary Act of 1789, ch. 20, § 9, 1 Stat. 73, 77 (codified at 28 U.S.C. § 1333(1)).

Acknowledgment of the practical benefits of a federal admiralty court did not dispel the Founders' suspicions of civil law procedures, however. To the contrary, the language of the Judiciary Act (like the Seventh Amendment) was informed by the fear that expansive admiralty jurisdiction could extinguish the cherished jury right, as it did in the colonies. *See* Charles Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 Harv. L. Rev. 49, 79 (1923) ("[O]ne of the chief fears as to the new Federal Government was lest it might infringe on the right to jury trial, so cherished by the American colonists and their descendants, and lest it might adopt the obnoxious equity powers of the British royal Governors."); *see also* Snell, *supra*, at 305 n.67 ("The 'slippery slope' argument—in essence that federal courts established as civil-law admiralty tribunals would for expediency's sake utilize civil-law procedures in common-law cases—was a popular feature of antifederalist pamphlets from the onset of the debate over ratification.").

The saving-to-suitors clause within Section 9 of the Judiciary Act addressed these concerns. While granting federal courts "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction," it also sav[ed] to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." § 9, 1 Stat. at 77. Under that clause, Congress's exclusive jurisdiction over admiralty disputes does not prevent a law court from asserting concurrent jurisdiction over a common law cause of action that is maritime in nature. *See Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 444 (2021) ("The saving to suitors clause was 'inserted, probably, from abundant caution, lest the exclusive terms in which the power is conferred on the District Courts might be deemed to have taken away the concurrent remedy which had before existed. This leaves the concurrent power where it stood at common law.'") (quoting *New Jersey Steam Nav. Co. v. Merchants' Bank of Boston*, 47 U.S. (6 How.) 344, 390 (1848)).

The practical effects of the clause have been well understood for centuries. As one commentator noted in 1879:

> To suitors there is preserved the right in all cases where a concurrent remedy exists, to elect between that afforded by the admiralty or by the common law, and in the case the latter be deemed preferable to pursue it in the appropriate court wherein that jurisprudence prevails, either *State or national*, according to their residence.

Snell, *supra*, at 312 (quoting Theodore M. Etting, *The Admiralty Jurisdiction in America* 85 (Fred B. Rothman & Co. ed. 1986)) (emphasis added). This right of election still exists and is embodied today in Federal Rule of Civil Procedure 9(h). *See* Fed. R. Civ. P. 9(h) advisory committee's note to 1966 amendment ("Many claims . . . are cognizable by the district courts whether asserted in admiralty or in a civil action, assuming the existence of a nonmaritime ground of jurisdiction."). Under the saving-to-suitors clause, a maritime plaintiff has three potential venues for their claim: (1) state court; (2) a federal court sitting in admiralty; or (3) a federal court sitting at law, provided there is an independent basis for subject-matter jurisdiction. The Seventh Circuit now purports to extinguish this third option in DOHSA cases.

III. THE DECISION BELOW UNDERMINES THE FOUNDERS' WELL-DESIGNED FRAMEWORK OF CONCURRENT JURISDICTION, EXTINGUISHING DOHSA PLAINTIFFS' RIGHT TO TRIAL BY JURY.

As interpreted by the Seventh Circuit, DOHSA cannot exist in the same universe as the Seventh Amendment and the saving-to-suitors clause. The Seventh Circuit's incorrect reading of DOHSA has profound consequences on Petitioners' Seventh Amendment rights and the careful design of our concurrent system of maritime jurisdiction. Permitting DOHSA actions to proceed on the law side of federal district courts when there is a non-admiralty basis for jurisdiction is the only way to apply DOHSA and comply with the requirements of the Seventh Amendment and the saving-to-suitors clause.

The court below claimed it did not need to "neatly harmonize [DOHSA] with other areas of admiralty law." Pet. App. 17a. But, to the contrary, courts interpreting federal statutes must seek "harmony over conflict in statutory interpretation." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 511 (2018). They are "not at liberty to pick and choose among congressional enactments and must instead strive to give effect to both." *Id.* (cleaned up). Petitioners have common-law claims under the Seventh Amendment and the district court has law-side jurisdiction. Two words—"in admiralty"—cannot extinguish Petitioners' jury trial rights.

Holding otherwise would create a gaping procedural loophole in DOHSA cases. Following this Court's decision in *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 371–71 (1959), courts hold that the saving-to-suitors clause prevents a maritime claim from removal to federal court absent an independent basis for the district court's subject-matter jurisdiction. *See, e.g.*, *Morris v. T E Marine Corp.*, 344 F.3d 439, 444 (5th Cir. 2003). Yet, as occurred below, a defendant can now invoke a non-admiralty basis for jurisdiction to remove a DOHSA case from a law court, while a maritime suitor cannot rely on the *same jurisdictional statute* to proceed at law once removed. Pet. 59a. This turns the maritime election on its head, defeating the purpose of the saving-to-suitors clause. DOHSA must be read in harmony with that statute, particularly when doing so preserves Petitioners' sacred right to a jury trial.

The Seventh Circuit's reading of DOHSA does not even comport with the plain meaning rule the court

claimed it was applying. A statute *permitting* suitors to bring DOHSA claims "in admiralty" does not *bar* them from proceeding outside of admiralty. *See, e.g.*, *Mims v. Arrow Fin. Servs. LLC*, 565 U.S. 368, 380 (2012) ("[T]he grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive.") (quoting *United States v. Bank of New York & Trust Co.*, 296 U.S. 463, 479 (1936)). Indeed, we already know that the phrase "in admiralty" does not grant federal courts exclusive admiralty jurisdiction over DOHSA cases. This Court held decades ago that DOHSA cases may proceed in state courts, which cannot exercise admiralty jurisdiction under Article III of the Constitution. *See Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 224 (1986) ("[DOHSA] ensured that state courts exercising concurrent jurisdiction could, as under the 'saving to suitors' clause, apply such state remedies as were not inconsistent with substantive federal maritime law.").

If Congress wished to create mandatory admiralty jurisdiction in federal courts, it would not have permitted state courts to hear DOHSA cases. Allowing for state-court jurisdiction over DOHSA cases defeats the very purpose of exclusive admiralty jurisdiction: maritime uniformity. *State of Washington v. W.C. Dawson & Co.*, 264 U.S. 219, 227–28 (1924) ("The grant of admiralty and maritime jurisdiction looks to uniformity . . . ."). And there is no evidence that Congress intended to create the unique species of quasi-exclusive jurisdiction that now exists in the Seventh Circuit where state courts can hear DOHSA cases but federal courts sitting in diversity cannot. *See United States v. Turkette*, 452 U.S. 576, 580 (1981) ("[A]bsurd results

are to be avoided and internal inconsistencies in the statute must be dealt with.").

Finally, the worrying constitutional implications of the Seventh Amendment's interpretation of DOHSA cannot be overlooked. The historical lessons underlying the Seventh Amendment are clear: Congress cannot force a "Suit at common law" into juryless admiralty. U.S. Const. amend. VII. Thus, even assuming Congress wished to require DOHSA cases to proceed at law in state courts but only in admiralty in federal courts, there are serious doubts that it would be permitted to do so. DOHSA can be construed to avoid this question. Under the canon of constitutional avoidance, when a statute is subject to two plausible readings, one of which raises "a serious doubt" about its constitutionality, the court should favor a "fairly possible" interpretation that avoids the constitutional issue. *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018) (quoting *Crowell*, 285 U.S. at 62). Petitioners' interpretation of DOHSA harmonizes the statute with the language, history, and purpose of the Seventh Amendment. The Seventh Circuit's does not.

CONCLUSION

For the foregoing reasons, the American Association for Justice urges this Court to grant the Petition for Writ of Certiorari.

March 12, 2025

Respectfully submitted,

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