

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 13, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,
v.
STATE OF WASHINGTON et. al.,
Defendant.

NO. 4:18-CV-5189-SAB

**ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Before the Court are the United States' Motion for Summary Judgment, ECF No. 20, and the State of Washington's Response and Cross-Motion for Summary Judgment, ECF No. 23. This case involves a recently passed Washington law, Wash. Rev. Code § 51.32.187, which creates a rebuttable presumption that, for the purposes of Washington's workers compensation regime, employees of contractors or subcontractors of the United States working at the Hanford nuclear cleanup site who suffer from a list of illnesses contracted those ailments as a result of their work. The United States argues that this law violates the Supremacy Clause, U.S. Const. Art. VI, cl. 2. Washington argues that the United States has waived its federal sovereign immunity with regard to the enforcement of workers compensation statutes on federal land. All parties agree that the matter is appropriate for resolution through cross-motions for summary judgment.

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT 3 1

FACTUAL BACKGROUND

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2 Hanford is a former nuclear production site in Washington, and the current
3 site of a cleanup operation of unprecedented scale and complexity. The United
4 States Department of Energy (DOE) is overseeing the cleanup, with a primarily
5 contractor workforce, on federally owned land. There are roughly a dozen
6 contractors and subcontractors of the DOE assisting with the cleanup. In addition,
7 there are some employers who are situated in the same geographical area but
8 which are not subcontractors of the DOE, including the Laser Interferometer
9 Gravitational Wave Observatory (LIGO) and the private company US Ecology.

10 By the text of Wash. Rev. Code § 51.32.187, employees at LIGO and US
11 Ecology are not granted the same presumption as federal contractors and
12 subcontractors working at the same sites. Wash. Rev. Code § 51.32.187 applies
13 only to “United States department of energy Hanford site workers,” and defines
14 such workers to be “any person, including a contractor or subcontractor, who was
15 engaged in the performance of work, either directly or indirectly, for the United
16 States, regarding projects and contracts at the Hanford nuclear site, and who
17 worked on the site at [specific locations.]” Wash. Rev. Code § 51.32.187. The law
18 further clarifies that the term “Hanford site” means the “approximately five
19 hundred sixty square miles in southeastern Washington, excluding leased land,
20 state-owned lands, and lands owned by the Bonneville Power Administration.” *Id.*

21 The DOE submits that the law will increase its costs at the cleanup site. The
22 DOE bears workers compensation costs due to a memorandum of understanding
23 (MOU) between the State of Washington and the Department of Energy, which
24 provides that the DOE will cover the worker’s compensation administration and
25 benefit awards for its contractors and subcontractors at the Hanford site. This
26 MOU, authorized by Wash. Rev. Code § 51.04.130, makes the DOE the certified
27 self-insurer under Washington’s worker compensation regime, such that the DOE
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1 will pay for benefits and administration for the 13 contractors and subcontractors
2 currently working at the Hanford site, as well as the 61 contractors who had
3 previously performed work there.

4 The United States is challenging the newly passed law under the Supremacy
5 Clause, arguing that it (a) facially discriminates against the Federal Government;
6 and (b) directly regulates the Federal Government by imposing additional costs on
7 the cleanup operation. Washington alleges that the United States authorized the
8 several states to enact such bills with the passage of 40 U.S.C. § 3172, which
9 provides a waiver of intergovernmental immunity as it relates to workers
10 compensation regimes on federally owned land, and that any differential treatment
11 between federal contractors and non-federal employers is justified by significant
12 differences – namely, the heightened risk of exposure to harmful compounds by
13 federal workers and poor chemical testing records kept by the federal contractors.

14 The Court agrees that 40 U.S.C. § 3172 constitutes waiver by congressional
15 authorization, and thus, does not reach the question of whether the statute would
16 violate intergovernmental immunity absent such authorization.

17 **CONGRESSIONAL AUTHORIZATION**

18 Generally, the intergovernmental immunity recognized by the Supremacy
19 Clause prohibits states from either discriminating against or directly regulating the
20 federal government. *Boeing Co. v. Movassaghi*, 768 F.3d 832, 839 (9th Cir. 2014).
21 Congress can provide clear and unambiguous authorization for state regulations
22 that would otherwise be impermissible under the Supremacy Clause. *Goodyear*
23 *Atomic Corp. v. Miller*, 486 U.S. 174, 180 (1988) (citations omitted). Washington
24 argues that 40 U.S.C. § 3172 presents just such an authorization. That statute
25 provides that:
26

27 The state authority charged with enforcing and requiring compliance
28 with the state workers' compensation laws and will the orders,

1 decisions, and awards of the authority may apply the laws to all land
2 and premises in the State which the Federal Government owns or
3 holds by deed or act of cession, and to all projects, buildings,
4 constructions, improvements, and property in the State and belonging
5 to the Government, *in the same way and to the same extent as if the*
6 *premises were under the exclusive jurisdiction of the State* in which
7 the land, premises, projects, buildings, constructions, improvements,
8 or property are located.

9 40 U.S.C. § 3172 (emphasis added).

10 The United States interprets this statute to allow only non-discriminatory
11 laws, which, through neutral application, regulate employers on federal land.
12 Washington interprets this law as allowing the state to regulate federal lands
13 within its geographical boundaries with all the tools that could be brought to bear
14 on non-federally owned land. The plain language of the statute supports
15 Washington’s interpretation – Washington’s workers compensation regime applies
16 to federal land “in the same way and to the same extent as if the premises were
17 under the exclusive jurisdiction of the State.”

18 The Court notes that other authorizations of intergovernmental immunity for
19 laws on other topics which retain the non-discriminatory aspect intergovernmental
20 immunity, do so expressly. *See e.g.* 4 U.S.C.A. § 111 (waiving intergovernmental
21 immunity for income tax of federal employees “if the taxation does not
22 discriminate against the officer or employee because of the source of the pay or
23 compensation;”) 42 U.S.C. § 9620(a)(4)) (waiving intergovernmental immunity
24 for environmental cleanup laws applies on federally owned facilities, so long as
25 the State law does not “apply any standard or requirement to such facilities which
26 is more stringent than the standards and requirements” applied to a non-federally
27 owned counterpart.)

28 The worker’s compensation waiver in 40 U.S.C. § 3172 does more. The
United States Supreme Court interpreted § 3172 in *Goodyear Atomic Corp. v.*

1 *Miller*, 486 U.S. 174, 183-84 (1988). The Court found that the statute grants the
2 states the “power and authority to apply [workers’ compensation] laws to federal
3 premises in the same way and to the same extent as if said premises were under the
4 exclusive jurisdiction of the State,” and that the plain language of the statute
5 “places no express limitation on the type of workers’ compensation scheme that is
6 authorized.” *Id.*

7 Thus, the statute allows Washington to use the same power it possesses to
8 craft workers compensation laws for non-federal employers to address injured
9 employees on federal land. Those powers include the ability to legislate, in a
10 piecemeal fashion, to address specific risks to employees in specific industries.
11 *See* Wash. Rev. Code §§ 51.32.185, 51.16.035(1) (creating a similar workers
12 compensation causation presumption for firefighters.) This is precisely what
13 Wash. Rev. Code § 51.32.187 does.

14 CONCLUSION

15 Because Congress has authorized the several states to regulate workers
16 compensation on federal land to the same extent that they can regulate non-federal
17 land, and because Washington could create a similar presumption as that created
18 in Wash. Rev. Code §§ 51.32.187 if it were addressing a particular risk to
19 Washington employees on non-federal land, summary judgment is granted for the
20 Defendants.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment, ECF No. 20, is **DENIED**.

3 2. Defendants' Cross-Motion for Summary Judgment, ECF No. 23, is

4 **GRANTED.**

5 3. Judgment shall be entered against Plaintiff and in favor of Defendants.

6 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
7 file this Order, provide copies to counsel, and close the case.

8 **DATED** this 13th day of June 2019.



14 *Stanley A. Bastian*

15 Stanley A. Bastian

16 United States District Judge