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The Strongest Defense You've Never Heard of: The Constitution's Federal Enclave Doctrine and its Effect on Litigants, States, and Congress

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PRACTITIONERS' NOTES

THE STRONGEST DEFENSE YOU'VE NEVER HEARD OF: THE CONSTITUTION'S FEDERAL ENCLAVE DOCTRINE AND ITS EFFECT ON LITIGANTS, STATES, AND CONGRESS

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I. INTRODUCTION

The U.S. Constitution's Enclave Clause offers a little-known, but extraordinarily powerful, defense for the multitude of entities operating within "federal enclaves." These enclaves include, inter alia, military bases, national parks, post offices, and federal courthouses.[1] The Enclave Clause has spawned the "federal enclave doctrine," which renders certain state and common law claims inapplicable within areas of land ceded by a state to the federal government.[2] Recent cases reveal the doctrine's potential as a sleeping giant for the defense bar, with one court going so far as to permanently enjoin the New York State Division of Human Rights from enforcing the state's Human Rights Law against an entity working within a military reservation.[3]

The Enclave Clause, found at Article I, Section 8, Clause 17 of the United States Constitution, grants the United States exclusive legislative

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1. *See* Charles F. Wilkinson, *Cross-Jurisdictional Conflicts: An Analysis of Legitimate State Interests on Federal and Indian Lands*, 2 UCLA J. ENVTL. L. & POL'Y 145, 152 (1982).

2. *See* Paul v. United States, 371 U.S. 245, 268 (1963) (holding that state laws are inapplicable in a federal enclave unless the state "reserved the right to do so when it gave its consent to the purchase by the United States"). *See, e.g.*, Stiefel v. Bechtel Corp., 497 F. Supp. 2d 1138, 1147-51 (S.D. Cal. 2007) (holding that the federal enclave doctrine barred a wrongful election claim).

3. *See infra* Part II.C.3 (discussing Brookhaven Science Assocs. v. Donaldson, No. 04-4013, 2007 WL 2319141 (S.D.N.Y. Aug. 9, 2007)).

jurisdiction over any parcel of land ceded by a state to the federal government "for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."[4] The United States Supreme Court has interpreted this clause to mean that state laws passed after the date upon which the parcel was ceded by the State to the federal government — thereby creating a "federal enclave" — do not apply within the enclave, unless the state specifically retained jurisdiction over the subject matter at issue.[5] Further, common law causes of action that gained recognition after the date of cession have no application within the enclave.[6] Moreover, state laws in existence at the time of cession that are inconsistent with federal purposes do not apply within the federal enclave. [7] State laws can, however, be saved from an Enclave Clause bar if Congress specifically authorizes their enforcement within federal enclaves.[8] Finally, state laws in existence at the time of cession that do not conflict with federal purposes become federal laws within the enclave.[9] These basic rules form the foundation of the "federal enclave doctrine."[10]

Although the federal enclave doctrine is a powerful weapon in the defense arsenal for entities operating within enclaves, few litigants seem to be aware of its existence, and it has gone almost entirely unnoticed by scholars.[11] This Article seeks to bring attention to the federal enclave doctrine by analyzing its contours and offering lessons for litigants, States, and Congress. Part II of the Article explains the history and development of the federal enclave doctrine. Part III.A offers a roadmap for litigants who are involved in a dispute that implicates the federal enclave doctrine. Part III.B offers lessons for States and Congress to help clarify the delineation of federal and state jurisdiction within federal enclaves. Part IV concludes the Article.

4. U.S. CONST. art. I, § 8, cl. 17.

5. *See infra* Part II.B (providing an overview of the development of the Supreme Court's interpretation of the Enclave Clause).

6. *See id.*

7. *See id.*

8. *See id.*

9. *See id.*

10. *See id.*

11. The body of law addressing the federal enclave doctrine is relatively small, and research reveals no published law review articles examining the doctrine.

II. BACKGROUND

A. 1885: The Enclave Clause Becomes a Doctrine

Article I, Section 8, Clause 17 of the United States Constitution, known as the Enclave Clause, is most well known for establishing the District of Columbia. It gives Congress the power:

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, *and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.*[12]

The italicized provision is the foundation upon which the federal enclave doctrine is built.

The Supreme Court first addressed the Enclave Clause's effect on the enforceability of state law within a military base in the case of *Fort Leavenworth R. Co. v. Lowe*.[13] Specifically, the *Fort Leavenworth* case considered whether a state had the power to assess a tax against a railroad company operating on the Fort Leavenworth Military Reservation in Kansas.[14] The parcel of land at issue had been under the exclusive jurisdiction of the United States before Kansas was admitted into the Union in 1861.[15] At that point, because the United States did not exclude the land from Kansas's dominion, the Court noted that the federal government retained full control only over the portions of the property being used for military purposes.[16] "So far as the land constituting the reservation was not used for military purposes, the possession of the United States was only that of an individual proprietor."[17]

This weakness in the federal government's jurisdiction came to the attention of the Secretary of War in 1872.[18] The Secretary then asked the Attorney General what could be done to ensure that the federal

12. U.S. CONST. art. I, § 8, cl. 17 (emphasis added).
13. 114 U.S. 525 (1885).
14. *See id.* at 526.
15. *See id.* at 526-27.
16. *See id.* at 527.
17. *Id.*
18. *Id.*

government regained exclusive jurisdiction over Fort Leavenworth, and the Attorney General advised that "to restore the federal jurisdiction over the land included in the reservation, it would be necessary to obtain from the state of Kansas a cession of jurisdiction."[19] The Court noted that no records existed of the government requesting such a cession from Kansas, but in 1875, the State Legislature passed an Act by which the Fort Leavenworth Military Reservation was ceded to the federal government.[20] However, the Act reserved to Kansas the right "to tax railroad, bridge, and other corporations, their franchises and property" within Fort Leavenworth.[21] The plaintiff-railroad argued that the State's reservation of the right to levy taxes was invalid (and that therefore the railroad should be permitted to recover taxes already paid), because in ceding the land the State vested in the federal government exclusive jurisdiction over Fort Leavenworth, as provided for in the Enclave Clause.[22]

The Court rejected this argument, holding that the Constitution gives the United States exclusive jurisdiction only over lands actually purchased by the federal government with the consent of the State.[23] Because the federal government had not paid for Fort Leavenworth, but rather had acquired it essentially as a gift from France, Kansas had the authority to reserve for itself any jurisdiction that did not conflict with federal purposes.[24] Further, the Court noted that if any areas within the ceded territory were not used for federal purposes, then "the legislative power of the state over the places acquired will be as full and complete as over any other places within her limits."[25] The Court held that

19. *Id.*

20. *See id.* at 528.

21. *Id.* The state also reserved the right to serve criminal and civil process within the enclave. *See id.* This reservation of authority was not challenged, and the Court noted that such a reservation of jurisdiction by a state "is not considered as interfering in any respect with the supremacy of the United States over [the ceded territory], but is admitted to prevent them from becoming an asylum for fugitives from justice." *Id.* at 533.

22. *See id.* at 528.

23. *See id.* at 537-38.

24. *Id.* at 539.

25. *Id.* The Court softened its view on this point only seven years later. *See* Benson v. United States, 146 U.S. 325, 331 (1892). *Benson* centered on a murder committed within the boundaries of Fort Leavenworth. *See id.* at 329. The appellant contended that the federal court before which his case was tried was without jurisdiction to hear the matter because the crime occurred on a portion of the property that was being used for farming, rather than for any military purpose. *See id.* at 331. The *Benson* Court rejected this argument, reasoning that all of Fort Leavenworth had been reserved for military purposes, and "it is not open to the courts, on a question of jurisdiction, to inquire what may be the actual uses to which any portion of the reserve is temporarily put." *Id.* The *Benson* Court made no attempt to reconcile this holding with its reasoning on the same point in *Fort*

because no argument had been made that the State's reservation of authority to tax the railroad interfered with any federal purpose, the reservation was enforceable.[26]

Thus, the *Fort Leavenworth* Court established the early rules underlying the federal enclave doctrine: If the federal government purchases an area from a State with that State's consent, then federal jurisdiction is complete and impenetrable.[27] However, if a State gives a parcel of land to the federal government free of charge, then the State is free to reserve for itself jurisdiction over matters that do not conflict with the federal purposes to which the land is being used.[28] As discussed below, these early rules would be modified and expanded upon in the years to come.

B. The Development of the Federal Enclave Doctrine

The Supreme Court's next significant federal enclave doctrine case came in 1929, when it decided *Arlington Hotel Co. v. Fant*.[29] A fire tore through a hotel owned by the Arlington Hotel Company on April 5, 1923, destroying some of the hotel guests' personal property.[30] The property upon which the hotel was situated had been ceded by the State of Arkansas to the federal government in 1904 for use as a national park, with Arkansas reserving only the authority to serve civil and criminal process and impose taxes upon structures erected on the land.[31] The hotel had operated under a lease from the United States for more than fifty years at the time of the fire.[32]

When the hotel guests sued to recover the value of their lost property, Arlington Hotel Company argued that it could not be held liable for the losses, pursuant to a law passed by the Arkansas Legislature in 1913 "relieving innkeepers from liability to their guests for loss by fire, unless it was due to negligence."[33] The plaintiffs contended that the federal enclave doctrine rendered the statute upon which the company relied inapplicable to the hotel at issue, because it

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Leavenworth. *See id.*

26. *See Fort Leavenworth*, 114 U.S. at 541.

27. *See id.* at 538. The Court would later back away from this position. *See* James v. Dravo Contracting Co., 302 U.S. 134, 141 (1937). *See infra* notes 59-65 and accompanying text.

28. *See Fort Leavenworth*, 114 U.S. at 539.

29. 278 U.S. 439 (1929).

30. *Id.* at 445, 449.

31. *Id.* at 445, 448.

32. *Id.* at 449.

33. *Id.* at 445-46.

was passed post-cession.[34] In an effort to avoid the federal enclave doctrine bar, the Arlington Hotel Company replied that the government did not have exclusive jurisdiction over the property in question, because it was used as a national park rather than for any of the purposes enumerated in the Enclave Clause.[35]

The Court declined to speak on whether the Enclave Clause generally gives the United States exclusive jurisdiction over land ceded for use as a national park, because it found that the particular park in question contained hot springs with waters "of a special excellence with respect to diseases likely to be treated in a military hospital."[36] Indeed, the federal government constructed a military hospital near some of the hot springs.[37] Therefore, the Court found that the United States was justified in securing to itself the "complete police protection, preservation, and control" of the forty-four hot springs within the ceded area.[38] Consequently, the federal government enjoyed exclusive jurisdiction over the land upon which the hotel sat, and the state law relieving innkeepers of liability for losses caused by fire did not apply.[39] Thus, *Arlington Hotel Co.* is a rare example of a case in which the federal enclave doctrine worked in the plaintiff's favor.

In 1938, the Court answered the question left open in *Arlington Hotel Co.* and held that lands ceded to the federal government for use as national parks fall within the Enclave Clause as a matter of law.[40] *Collins v. Yosemite Park & Curry Co.* required the Court to rule on whether California's Alcoholic Beverage Control Act was enforceable within Yosemite National Park.[41] The Yosemite Park and Curry Company operated hotels, camps and stores on portions of the Park that it leased from the United States pursuant to a contract with the Secretary of the Interior.[42] Before the lower court, the company successfully sought an injunction against the enforcement of the Alcoholic Beverage Control Act within Yosemite National Park, arguing that the Enclave Clause rendered the Act inapplicable to establishments operating on park grounds.[43] The Board of Equalization of California and the State's

34. *See id.* at 446.
35. *See id.* at 449.
36. *Id.* at 454-55.
37. *Id.* at 455.
38. *Id.*
39. *See id.*
40. *See* Collins v. Yosemite Park & Curry Co., 304 U.S. 518, 529-30 (1938).
41. *See id.* at 518.
42. *Id.* at 521.
43. *Id.* at 522-26.

Attorney General appealed this result, arguing that land ceded for national park purposes does not fall within the Enclave Clause's grant of exclusive jurisdiction.[44] The Court held that the Enclave Clause is not to be strictly construed and that national parks fall within its purview.[45] Therefore, those portions of the Alcoholic Beverage Control Act that were not covered by the State's reservation of jurisdiction at cession were inapplicable within Yosemite National Park.[46]

In 1930, the Supreme Court decided *United States v. Unzeuta*,[47] which determined the effect on federal jurisdiction of the United States granting a right-of-way to a state railroad within a federal enclave.[48] There, as in *Benson*,[49] the Court was faced with a murder committed on property that had been ceded to the federal government for purposes of a military reservation. When Nebraska became a state in 1864, the United States retained ownership of all un-appropriated public lands within the former territory, and a portion of those lands was set aside as the Fort Robinson Military Reservation.[50] In 1885, the federal government granted a right of way over a portion of Fort Robinson to a railroad company.[51] Two years later, Nebraska passed an act officially ceding the Fort Robinson and Fort Niobrara Military Reservations to the United States, providing that "the jurisdiction hereby ceded shall continue no longer than the United States shall own and occupy such military reservations."[52]

Years later, someone was killed in a freight car on the railroad company's right of way at Fort Robinson, and Unzeuta was indicted for murder and brought before a federal court.[53] He argued that Nebraska, not the federal government, had jurisdiction over the right of way, and therefore the federal court was without jurisdiction to hear the charges against him.[54] The trial court agreed with Unzeuta, and the United States appealed directly to the Supreme Court under the Criminal

44. *Id.* at 526-27.

45. *See id.* at 528-30.

46. *Id.* at 530. Because the district court considered only whether the Alcoholic Beverage Control Act as a whole applied within the Park, the Supreme Court remanded the matter for a determination of which portions of the Act fell within the State's reservation of jurisdiction, and thus were enforceable against Yosemite Park & Curry Company. *Id.* at 539.

47. 281 U.S. 138 (1930).

48. *Id.* at 141.

49. *See* Benson v. United States, 146 U.S. 325 (1892).

50. *Unzeuta*, 281 U.S. at 141.

51. *Id.*

52. *Id.*

53. *Id.* at 140.

54. *See id.* at 140-41.

Appeals Act.[55] The Supreme Court reversed, holding that the question of federal jurisdiction is not dependent upon whether a portion of the enclave is used as a railroad under a right of way granted by the United States, because such rights of way can be used for many purposes that are "entirely compatible with [the] exclusive jurisdiction ceded" to the federal government.[56] Thus, the Court concluded that the district court had jurisdiction over Unzeuta's case.[57]

Next, the Supreme Court examined the reach of the Enclave Clause's reference to "other needful buildings."[58] In *James v. Dravo Contracting Co.*,[59] the Court made clear that "other needful buildings" encompasses locks, dams, federal courts, custom houses, post offices, and "whatever [other] structures are found to be necessary in the performance of the functions of the Federal Government."[60] Further, the Court emphasized a crucial difference between land ceded by a state to the federal government, and land acquired by the federal government through a taking.[61] The Court noted that in the event that the United States takes land from a state through the federal sovereign's right of eminent domain, its legislative jurisdiction over the property remains dependent upon cession by the state.[62] In other words, state laws apply within an area taken by the federal government via eminent domain, unless the state affirmatively cedes the land to the United States either at the time of, or after, the taking.

Additionally, the *Dravo Contracting* Court held that the Enclave Clause carries with it no implication that a state's cession of an enclave must be made without reservation — regardless of whether the land is purchased from the state or is otherwise acquired.[63] Indeed, a state is free to "qualify its cession by reservations not inconsistent with the governmental uses."[64] In so holding, the Court seems to have overruled the portion of *Fort Leavenworth* that held that the federal government enjoys absolutely exclusive jurisdiction over lands purchased with the consent of the state. The *Dravo Contracting* Court noted that it could

55. *Id.* at 141.
56. *Id.* at 144.
57. *Id.* at 146.
58. U.S. CONST. art. 1, § 8, cl. 17.
59. 302 U.S. 134 (1937).
60. *Id.* at 142-43 (citing Battle v. United States, 209 U.S. 36, 37 (1908)).
61. *Dravo*, 302 U.S. at 147.
62. *Id.*
63. *See id.* at 148-49. This case involved both land purchased from willing owners and land acquired by condemnation. *Id.* at 141.
64. *Id.* at 147.

not reconcile the implication that a state cannot reserve some jurisdiction over land it voluntarily sells to the federal government with the "freedom of the State and its admitted authority to refuse or qualify cessions of jurisdiction when purchases have been made without consent or property has been acquired by condemnation."[65]

Having determined the types of federal property encompassed by the Enclave Clause, the applicability within federal enclaves of state laws passed after cession, and the extent of a state's authority to reserve jurisdiction over certain matters at the time of cession, the Supreme Court next was called upon to determine the status of state laws already in existence at the time of cession. In *James Stewart & Co. v. Sadrakula*,[66] the Court considered whether a pre-cession provision of the New York Labor Law, which established requirements for iron and steel floor beams used in construction projects, applied to the construction of a post office within a federal enclave.[67] The Court held that the provision remained in effect within the enclave, noting that the "Constitution does not command that every vestige of the laws of the former sovereignty must vanish."[68]

In so holding, the Court rejected the appellant's argument that, because some provisions of the Labor Law were irrelevant to the federal territory, the entire statute was rendered inapplicable within the enclave.[69] The Court made clear, however, that if the enforcement of a pre-existing state law would conflict with "the carrying out of a national purpose," then the state law must be held invalid within the enclave.[70] Building upon *James Stewart & Co.*, the Fifth Circuit held in *Mater v. Holley*[71] that state laws in existence at the time of cession are converted into federal laws within the enclave.[72] Therefore, the *Mater* Court concluded that federal question jurisdiction exists over matters arising on a federal enclave that center on a claim based on a pre-cession state law.[73] To date, the Supreme Court has not spoken on this issue.

65. *Id.* at 148-49. The Court reiterated this idea in a companion case decided the same day as *Dravo*. *See* Silas Mason Co. v. Tax Comm'n of Wash., 302 U.S. 186 (1937).

66. 309 U.S. 94 (1940).

67. *Id.* at 97-98.

68. *Id.* at 99.

69. *See id.* at 102-03.

70. *Id.* at 103-04.

71. 200 F.2d 123 (5th Cir. 1952).

72. *Id.* at 123-24.

73. *See id.* at 125. *See infra* notes 114-17 and accompanying text for further discussion of the federal enclave doctrine's relation to federal question jurisdiction.

In *Humble Pipe Line Co. v. Waggonner*,[74] the Court revisited the Enclave Clause's requirement that the land at issue be "purchased" by the federal government.[75] The case centered on a 22,000 acre tract of land in Louisiana, which the State had donated to the federal government for use as an air force base.[76] The federal government contended that the Enclave Clause divested the State of authority to tax privately owned property on the base.[77] The State, on the other hand, contended that the Enclave Clause did not encompass the property because the federal government had not paid for it; that is, it was not "purchased" as the Clause requires.[78] The Court quickly rejected this argument, noting that it "cannot agree to such a constricted reading of [the constitutional provision]."[79]

Because the federal government undoubtedly could acquire exclusive jurisdiction over the property had the State consented to its condemnation, the Court explained, it stands to reason that the same jurisdiction is acquired when a state donates property to the federal government of its own free will.[80] Thus, the Court held that pursuant to the Enclave Clause, "the United States acquired exclusive jurisdiction when the land was ceded to it with consent of the State (except for the State's express reservation as to civil and criminal process) just as if the United States had acquired its title by negotiation and payment of a money consideration."[81] The Court also rejected the State's argument that the property was not encompassed by the Enclave Clause because the federal government had not affirmatively accepted it from the State.[82] In rejecting this argument, the Court noted that "a grant of jurisdiction by a State to the Federal Government need not be accepted and . . . a refusal to accept may be proved by evidence."[83] Because the State had offered no such proof of refusal, the area was properly considered a federal enclave.[84]

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74. 376 U.S. 369 (1964).
75. *Id.*
76. *Id.* at 370-71.
77. *Id.* at 370.
78. *Id.* at 371.
79. *Id.*
80. *See id.* at 372.
81. *Id.*
82. *Id.* at 373.
83. *Id.*
84. *See id.* at 373-74. This portion of *Humble Pipe Line* does not apply to federal enclaves ceded after 1940, when Congress passed a statute specifying how the federal government should accept exclusive jurisdiction over land ceded by a state. That statute provides that "[i]t is conclusively presumed that jurisdiction has not been accepted until the Government accepts

Finally, the Supreme Court decided two cases that established that a state law or regulation, enacted post-cession, will apply within an enclave if Congress has authorized the enforcement of that state law or regulation within federal enclaves.[85] In *Hancock*, the Court examined the possible intersection of the Federal Clean Air Act with the State of Kentucky's permit requirements for facilities emitting air pollution.[86] At the center of the controversy were several federally owned facilities that argued they were not required to secure permits that the State mandated all pollution-producing facilities obtain in order to remain in operation.[87]

While the State apparently conceded that the facilities at issue were federal enclaves, it argued that section 118 of the Clean Air Act constituted congressional authorization for the State's regulations to apply to those facilities.[88] Although the federal government agreed that section 118 requires all "federal installations to conform to state air pollutions standards," it contended that Congress did not go so far as to authorize Kentucky to compel federal installations to provide the information required for the permits at issue.[89] After carefully parsing section 118, the Court held that the statute does not provide clear and unambiguous authorization for federal installations to be subjected to state permit requirements.[90] Indeed, the Court concluded,

> to the extent it considered the matter in enacting § 118 Congress has fashioned a compromise which, while requiring federal installations to abate their pollution to the same extent as any other air contaminant source and under standards which the States have prescribed, stopped short of subjecting federal installations to state control.[91]

Therefore, no Congressional authorization existed which would

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jurisdiction over land as provided in this section." 40 U.S.C. § 3112 (2006).

85. *See* Hancock v. Train, 426 U.S. 167 (1976); Goodyear Atomic Corp. v. Miller, 486 U.S. 174 (1988).

86. 426 U.S. at 168.

87. *Id.* at 174-75, 180.

88. *Id.* at 180. Section 118 provides, in relevant part:

> Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, . . . shall . . . comply with [ ] Federal, State, interstate, and local requirements . . . respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity.

42 U.S.C. § 7418(a) (2006).

89. *See Hancock*, 426 U.S. at 181.

90. *Id.* at 184.

91. *Id.* at 198-99.

eliminate the federal enclave bar in *Hancock v. Train.*

By contrast, in *Goodyear Atomic Corp.*, the Court held that a federal statute did provide clear and unambiguous authorization for state workers' compensation laws to apply within federal enclaves.[92] Goodyear Atomic Corp. was a private company that operated a federally owned nuclear production facility.[93] Notably, the property at issue in *Goodyear Atomic Corp.* was not a federal enclave, but rather was a federally owned nuclear plant, being operated by a private company under contract with the Department of Energy.[94] The case is instructive nonetheless, because the federal statute in question specifically addresses federal enclaves.[95]

The Court first noted that, under *Hancock*, a federal facility may be shielded from state regulation even if it is operated by a private company.[96] It then held that 40 U.S.C. § 290 provides the clear congressional authorization required for the plaintiff's state law-based workers' compensation claim to move forward, because the statute notes:

> States shall have the power and authority to apply [their worker's compensation] laws to all lands and premises owned or held by the United States of America *by deed or act of cession, by purchase or otherwise* . . . in the same way and to the same extent as if said premises were under the exclusive jurisdiction of the State within whose exterior boundaries such place may be.[97]

Thus, *Goodyear Atomic Corp.* is an example of the type of case in which the federal enclave doctrine would not bar a claim based on a state law passed after the territory at issue was ceded to the federal government; it is also the most recent Supreme Court case examining the federal enclave doctrine. Having traced the development and contours of the federal enclave doctrine, we now can move on to an examination of its more recent application by trial courts.

92. 486 U.S. 174, 186 (1988).

93. *Id.* at 176.

94. *Id.* at 176, 183 n.4.

95. *Id.* at 183 n.4. (noting that 40 U.S.C. § 290 also applies to federal facilities that are not federal enclaves).

96. *See id.* at 181.

97. *Id.* at 182 (citing 40 U.S.C. § 290 (2006)) (emphasis added).

C. Modern Application of the Federal Enclave Doctrine

1. Trial Courts Explore the Doctrine's Scope

Although the body of law exploring the federal enclave doctrine is relatively small, the doctrine's reach has proven to be significant. In recent years, defendants have successfully used the federal enclave doctrine to deflect a variety of state law claims, including those based on state anti-discrimination and anti-retaliation laws,[98] state wage and hour laws,[99] state workers' safety laws and regulations,[100] and state consumer

98. *See, e.g.*, Klausner v. Lucas Film Entm't Co., No. 09-03502 CW, 2010 WL 1038228, at *1-3 (N.D. Cal. Mar. 19, 2010) (dismissing discrimination claims brought under state law against an employer operating within the Presidio in San Francisco, despite the fact that the area in which plaintiff worked no longer was used for military purposes); Hooda v. Brookhaven Nat'l Lab., 659 F. Supp. 2d 382, 388, 393 (E.D.N.Y. 2009) (dismissing claims brought under the New York Human Rights Law against a federal contractor operating Brookhaven National Laboratory, which is located within a federal enclave); McMullen v. S. Cal. Edison, No. 08-957-VAP (PJWx), 2008 WL 4948664, at *2, *8-9 (C.D. Cal. Nov. 17, 2008) (granting defendant's motion to dismiss discrimination claims brought under state law against a federal contractor providing services at the San Onofre Nuclear Generating Station, but also granting plaintiff leave to amend the complaint to allege that actions complained of occurred outside the federal enclave); Brookhaven Sci. Assocs. v. Donaldson, No. 04-4013(LAP), 2007 WL 2319141, at *8 (S.D.N.Y. Aug. 9, 2007) (declaring that New York Human Rights law does not apply to Brookhaven National Laboratory, which is located within a federal enclave); Sundaram v. Brookhaven Nat'l Labs., 424 F. Supp. 2d 545, 555, 558, 570-71 (E.D.N.Y. 2006) (dismissing claims brought under the New York Human Rights Law against a federal contractor operating Brookhaven National Laboratory, which is located within a federal enclave); Schiappa v. Brookhaven Sci. Assocs., 403 F. Supp. 2d 230, 238 (E.D.N.Y. 2005) (holding same as *Sundaram*); Kelly v. Lockheed Martin Servs. Grp., Inc., 25 F. Supp. 2d 1, 2-3, 9 (D.P.R. 1998) (dismissing a claim brought under Puerto Rico anti-discrimination law against a federal contractor operating an MK-30 shop at Roosevelt Roads Naval Station).

99. *See, e.g.*, Torrens v. Lockheed Martin Servs. Grp., Inc., 396 F.3d 468, 469, 473 (1st Cir. 2005) (remanding for consideration of whether the federal government accepted jurisdiction over the Roosevelt Roads naval base, such that state wage and hour claims brought against a federal contractor providing maintenance and other services to the U.S. Navy at the base should be dismissed); Alvarez v. Gold Belt, L.L.C., No. 08-4871, 2010 WL 743923, at *1, *3 (D.N.J. Mar. 4, 2010) (dismissing a state wage and hour claim brought against a federal contractor providing training services to U.S. Army at Fort Dix); Manning v. Gold Belt Falcon, L.L.C., 681 F. Supp. 2d 574, 574-75, 577 (D.N.J. 2010) (holding same as *Alvarez*); Mersnick v. USProtect Corp., No. C-06-03993, 2006 U.S. Dist. LEXIS 94408, at *2-3, *20, *25, *36 (N.D. Cal. Dec. 18, 2006) (dismissing state wage and hour claims brought against a federal contractor providing security services at Vandenberg Air Force Base); Koren v. Martin Marietta Servs., Inc., 997 F. Supp. 196, 199, 202, 205-06, 209 (D.P.R. 1998) (dismissing state wage and hour claims brought against a federal contractor working at Roosevelt Roads naval base); George v. UXB Int'l, Inc., No. C-95-20048-JW, 1996 U.S. Dist. LEXIS 22292, at *2, *9-10 (N.D. Cal. May 3, 1996) (dismissing state wage and hour claims brought against a federal contractor providing unexploded ordnance remediation services within the federal enclave of Fort Ord).

100. *See, e.g.*, Janulewicz v. Bechtel Corp., No. 06-CV-1413-H, 2007 WL 2462110, at *1, *3-4 (S.D. Cal. Aug. 27, 2007) (dismissing a claim brought under the California Occupational Safety and Health Act against a federal contractor doing business at the San Onofre Nuclear Generating

protection laws,[101] as well as claims alleging wrongful discharge[102] and personal injury. [103] Additionally, courts have considered the federal enclave doctrine in relation to many common law claims, including breach of contract,[104] unjust enrichment,[105] intentional infliction of emotional distress, [106] negligent infliction of emotional distress,[107] defamation,[108] breach of the duty of good faith and fair dealing,[109]

Station, which is located within the federal enclave of Camp Pendleton); Stiefel v. Bechtel Corp., 497 F. Supp. 2d 1153, 1155 (S.D. Cal. 2007) (holding same as *Janulewicz*); Bussey v. Edison Int'l, Inc., No. CV 08-0158, 2009 U.S. Dist. LEXIS 14057, at *2 (C.D. Cal. Feb. 23, 2009) (holding same as *Janulewicz*).

101. *See, e.g.*, Overseas Military Sales Corp. v. Suarez-Melendez, No. 08-1479, 2008 WL 793612, at *3 (D.P.R. Mar. 23, 2009) (holding that the federal enclave doctrine bars enforcement of state consumer protection laws within Fort Buchanan).

102. *See, e.g.*, Stuckstede v. NJCV L.L.C., No. 4:09CV0663 JCH, 2009 WL 3754153, at *1, *4 (E.D. Mo. Nov. 5, 2009) (dismissing a wrongful discharge claim brought under the Missouri Human Rights Act against a federal contractor and subcontractor working for the National Geospacial Intelligence Agency within a federal enclave).

103. *See, e.g.*, Crackau v. Lucent Techs., No. Civ. 03-1376, 2003 WL 21665135, at *6 (D.N.J. June 25, 2003) (holding that the federal enclave doctrine granted the court federal question jurisdiction over personal injury claims arising from exposure to defendant's product within a federal enclave); Hamrick v. A & I Co., No. 2:05-0286, 2009 U.S. Dist. LEXIS 34671, at *13 (S.D. W. Va. Apr. 20, 2009) (holding that the federal enclave doctrine granted the court federal question jurisdiction over personal injury claims arising from exposure to defendant's product on multiple Air Force bases).

104. *See, e.g.*, *Alvarez*, 2010 WL 743923, at *1-3 (dismissing a breach of contract claim brought against a federal contractor providing training services to U.S. Army at Fort Dix because the claim was merely a barred state wage and hour claim recast under common law); Kalaka Nui, Inc. v. Actus Lend Lease, L.L.C., No. 08-00308 SOM/LEK, 2009 U.S. Dist. LEXIS 38262, at *8, *14-15 (D. Haw. May 5, 2009) (denying a motion to dismiss a breach of contract claim because the state reserved concurrent jurisdiction over Hickam Air Force Base for all purposes); Rivera de Leon v. Maxon Eng'g Servs., Inc., 283 F. Supp. 2d 550, 551, 560 (D.P.R. 2003) (holding that the court had federal question jurisdiction over a breach of contract claim arising within Roosevelt Roads Naval Station); J & L Mgmt. Corp. v. New Era Builders, Inc., No. 1:09 CV-531, 2009 U.S. Dist. LEXIS 56895, at *4, *11-12 (N.D. Ohio June 16, 2009) (holding that the federal enclave doctrine did not grant the court jurisdiction over a breach of contract claim because most of the contract was performed outside the National Space and Aeronautics Glenn Research Center, which is located within a federal enclave).

105. *See, e.g.*, *Alvarez*, 2010 WL 743923, at *3 (dismissing an unjust enrichment claim brought against a federal contractor providing training services to the U.S. Army at Fort Dix because the claim was merely a barred state wage and hour claim recast under the common law).

106. *See, e.g.*, Cooper v. S. Cal. Edison Co., 170 F. App'x 496, 497-98 (9th Cir. 2006) (dismissing an intentional infliction of emotional distress claim brought against a federal contractor providing services at the San Onofre Nuclear Generating Station because the state did not recognize the cause of action at the time of the cession); Celli v. Shoell, 995 F. Supp. 1337, 1341, 1344 (D. Utah 1997) (dismissing an intentional infliction of emotional distress claim because the state did not recognize the cause of action at the time of the cession of Hill Air Force Base).

107. *See, e.g.*, *Cooper*, 170 F. App'x. at 498 (dismissing a negligent infliction of emotional distress claim brought against a federal contractor providing services at the San Onofre Nuclear Generating Station because the state did not recognize the cause of action at time of the cession).

108. *See, e.g.*, Gavrilovic v. Worldwide Language Res., Inc., 441 F. Supp. 2d 163, 176-77 (D.

tortious interference,[110] promissory estoppel,[111] quantum meruit,[112] and fraud.[113]

Courts also have given significant consideration to the issue raised in the 1952 case of *Mater v. Holly* [114]—whether the Enclave Clause bestows upon a federal court federal question jurisdiction over a complaint stating only state law claims.[115] Most courts that have considered the issue have answered in the affirmative, reasoning that state laws in existence at the time of cession (which do not conflict with federal purposes) are transformed into federal laws within the enclave.[116] A minority of courts, however, have reached the opposite conclusion.[117]

Me. 2006) (holding that the federal enclave doctrine did not bar a defamation claim because the doctrine does not apply to military bases located on foreign soil).

109. *See, e.g.*, *Kalaka Nui, Inc.*, 2009 U.S. Dist. LEXIS 38262, at *8, *15, *20 (denying a motion to dismiss a good faith and fair dealing claim because the state reserved concurrent jurisdiction for all purposes over the federal enclave encompassing Hickam Air Force Base).

110. *Id.* (denying a motion to dismiss the tortious interference claim because the state reserved concurrent jurisdiction for all purposes over the federal enclave encompassing Hickam Air Force Base).

111. *Id.* (denying a motion to dismiss the promissory estoppel claim because the state reserved concurrent jurisdiction for all purposes over the federal enclave encompassing Hickam Air Force Base).

112. *Id.* (denying a motion to dismiss the quantum meruit claim because the state reserved concurrent jurisdiction for all purposes over the federal enclave encompassing Hickam Air Force Base).

113. *Id.* (denying a motion to dismiss the fraud claim because the state reserved concurrent jurisdiction for all purposes over the federal enclave encompassing Hickam Air Force Base).

114. *See supra* notes 71-73 and accompanying text.

115. *See, e.g.*, Stiefel v. Bechtel Corp., 497 F. Supp. 2d 1153, 1156 (S.D. Cal. 2007) (holding that the Enclave Clause "grants federal courts jurisdiction over tort claims that arise on federal enclaves"); Hamrick v. A & I Co., 2009 U.S. Dist. LEXIS 34671, at *12 (S.D. W. Va. Apr. 20, 2009) (quoting Akin v. Ashland Chem. Co., 156 F.3d 1030, 1034 (10th Cir. 1998)) (noting that federal courts have jurisdiction over personal injury claims arising on federal enclaves); Crackau v. Lucent Techs., 2003 U.S. Dist. LEXIS 24317, at *6 (D.N.J. June 25, 2003) (noting that federal enclave jurisdiction exists over state law claims that arise on a federal enclave); Rivera de Leon v. Maxon Eng'g Servs., Inc., 283 F. Supp. 2d 550, 588 (D.P.R. 2003) (noting that federal enclave jurisdiction is a form of federal question jurisdiction).

116. *See Steifel*, 497 F. Supp. 2d at 1156; *Hamrick*, 2009 U.S. Dist. LEXIS 34671, at *12; *Crackau*, 2003 U.S. Dist. LEXIS 24317, at *6; *Rivera de Leon*, 283 F. Supp. 2d at 588.

117. *See* J & L Mgmt. Corp. v. New Era Builders, Inc., No. 1:09 CV-531, 2009 U.S. Dist. LEXIS 56895, at *11-12 (N.D. Ohio June 17, 2009) (holding that the fact that state law claims arise within a federal enclave is not sufficient to confer federal question jurisdiction upon a federal court); Diaz v. Gen. Sec. Servs. Corp, 93 F. Supp. 2d 129, 135 (D.P.R. 2000) (holding same as *J & L Mgmt. Corp.*). *See also Kalaka Nui, Inc.*, 2009 U.S. Dist. LEXIS 38262, at *2 (ordering the plaintiff to show cause why the complaint should not be dismissed for failure to sufficiently plead diversity jurisdiction).

2. Plaintiffs Attempt to Escape the Federal Enclave Bar

In an attempt to avoid having their state or common law claims dismissed under the federal enclave doctrine, some plaintiffs have argued that the actions giving rise to the claims actually occurred outside the enclave, or that a federal statute authorizes their state law claim within the enclave.[118] For example, in *Stuckstede*, the defendant filed a motion to dismiss the plaintiff's discriminatory discharge claim — brought pursuant to the Missouri Human Rights Act — because the complaint alleged that the discharge at issue occurred within a federal enclave.[119] In response to the motion to dismiss, the plaintiff alleged that the termination actually occurred beyond the enclave at the plaintiff's home because his termination letter was received at that location.[120] The court declined to consider the termination letter because it was not attached to the plaintiff's complaint, and thus found that the plaintiff's termination occurred at the National Geospatial Intelligence Agency, which the court found to be a federal enclave.[121] Therefore, the plaintiff's lawsuit, which was based entirely on state law, came to an end.[122]

Similarly, in *Bussey v. Edison International Inc.*, the plaintiff unsuccessfully attempted to avoid summary judgment in the defendant's favor by arguing that his wrongful termination claims did not arise within a federal enclave, but rather originated beyond the enclave at the defendant's corporate headquarters.[123] Fatal to this argument was the plaintiff's previous concession that the alleged misconduct leading to his termination, and his supervisor's investigation thereof, occurred within the enclave.[124] The court granted the defendant's motion for summary judgment, concluding that "[e]ven assuming corporate headquarters performed functions such as payroll processing, record maintenance and policymaking, all of the actions giving rise to Plaintiff's termination

118. *E.g.*, Stuckstede v. NJCV L.L.C., 2009 WL 3754153, at *2 (E.D. Mo. Nov. 5, 2009); Bussey v. Edison Int'l, Inc., No. CV 08-0158, 2009 U.S. Dist. LEXIS 14057, at *6 (C.D. Cal. Feb. 23, 2009).

119. *Stuckstede*, 2009 WL 3754153, at *1. The *Stuckstede* court already had granted the defendant's previous motion to dismiss the plaintiff's age discrimination claim for failure to exhaust administrative remedies under the Missouri Human Rights Act.

120. *Id.* at *2.

121. *Id.* at *2-3.

122. *See id.* at *4.

123. *Bussey*, 2009 U.S. Dist. LEXIS 14057, at *7-8.

124. *Id.* at *6-7.

were taken by employees who worked [within the federal enclave]."[125]

Other plaintiffs, relying on the rationale underlying *Goodyear Atomic Corp.*, attempt to avoid the federal enclave bar by arguing that a federal statute permits them to bring their state law claims within the enclave.[126] *Diaz v. General Security Services Corp.* provides an example of a plaintiff successfully making such an argument before a trial court. There, the plaintiff alleged that his employer, a federal contractor that provided security services to the United States Marshals Service, violated Puerto Rico's wage and hour laws.[127] The defendant moved to dismiss the case pursuant to the federal enclave doctrine because the events underlying the lawsuit all occurred at a federal courthouse, which was located within a federal enclave.[128] The plaintiff countered that the Service Contract Act ("SCA"), which governs federal contractors' dealings with the government, provides express congressional authorization of the application of local wage and hour laws within federal enclaves.[129] In an unusual opinion, the court held that it did not have subject matter jurisdiction over the plaintiff's claims, and remanded the action to Puerto Rico's superior court, but proceeded to offer guidance to that court as to how the federal enclave issue should be decided.[130]

The *Diaz* court agreed with the plaintiff, finding that "[the SCA] clearly implies that local laws conferring benefits on workers will be applicable to employees of private companies working at federal installations."[131] In reaching this conclusion, the court relied upon language in the SCA requiring that all service contracts worth more than a statutorily set sum include "a provision for fringe benefits 'not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor.'"[132] The court interpreted this language as "manifestly assum[ing] the application of local laws benefiting workers" and held that it provides the clear and unambiguous authorization of enforcement of state laws within federal enclaves required under

125. *Id.* at *8-9.

126. *E.g.*, Manning v. Gold Belt Falcon, L.L.C., 681 F. Supp. 2d 574, 577 (D.N.J. 2010); Stiefel v. Bechtel Corp., 497 F. Supp. 2d 1153, 1158-59 (S.D. Cal. 2007); Janulewicz v. Bechtel Corp., No. 06 CV-1413, 2007 WL 2462110, at *4 (S.D. Cal. Aug. 27, 2007); Diaz v. Gen. Sec. Servs. Corp, 93 F. Supp. 2d 129, 136 (D.P.R. 2000).

127. *Diaz*, 93 F. Supp. 2d at 130.

128. *Id.* at 131 (citing Paul v. United States, 371 U.S. 245 (1963)).

129. *Diaz*, 93 F. Supp. 2d at 136.

130. *See id.* at 131.

131. *Id.* at 135.

132. *Id.* (quoting 41 U.S.C. § 351(a)(2) (2006)).

Goodyear Atomic Corp.[133] While admitting that the SCA does not specifically state that local wage and hour laws shall apply within federal enclaves, the court concluded that "[t]he only reasonable inference to be drawn from the SCA is that local and state laws were to provide the foundation upon which the SCA was to be built" and that "[t]he application of local law providing separate and independent employment benefits . . . was unambiguously assumed."[134] Thus, had the federal court not remanded the case to the Superior Court of Puerto Rico, it appears that the plaintiff would have successfully overcome the federal enclave bar. However, as noted above, the *Diaz* court's analysis is mere dicta, and there is no record of subsequent proceedings in the Superior Court.

Another court, considering a similar argument that the SCA authorizes application of state wage and hour laws within federal enclaves, disagreed with the *Diaz* court and dismissed a New Jersey Wage and Hour Law claim under the federal enclave doctrine.[135] The actions underlying *Manning v. Gold Belt Falcon, L.L.C.* occurred within the Fort Dix military base, which is a federal enclave.[136] Rather than rely upon the SCA language at the heart of the *Diaz* decision, the plaintiff in *Manning* contended that the SCA clearly and unambiguously authorizes application of state wage and hour laws within federal enclaves through its requirement that employees working under covered contracts be paid minimum wages "in accordance with prevailing rates for such employees in the locality."[137]

The *Manning* court compared this language to the statutory language found to provide the necessary authorization in *Goodyear Atomic Corp.*, which specifically granted to states "the power and authority to apply [state] laws to all lands and premises owned or held by the United States of America by deed or act of cession."[138] Held against this explicit language, the *Manning* court concluded that the SCA's reference to prevailing local wage rates did not provide the requisite clear and unambiguous authorization for application of state laws within federal enclaves.[139] Therefore, the *Manning* court granted

133. *See Diaz*, 93 F. Supp. 2d at 135, 141.
134. *Id.* at 141-42.
135. Manning v. Gold Belt Falcon, L.L.C., 681 F. Supp. 2d 574, 577 (D.N.J. 2010).
136. *Id.* at 575-76.
137. *Id.* at 576-77 (quoting 41 U.S.C. § 351).
138. *Manning*, 681 F. Supp. 2d at 577.
139. *Id.*

the defendant's motion to dismiss the state wage and hour claim.[140] Little more than a month after the *Manning* opinion was issued, another court relied upon its reasoning to reach the same decision in a related case.[141] Similarly, the United States District Court for the Southern District of California twice has held that a federal statute creating a process through which states can enact laws governing occupational health and safety standards with the approval of the Secretary of the United States Department of Labor does not provide clear and unambiguous authorization of the application of state worker safety laws within federal enclaves.[142]

The most encompassing example of a plaintiff succeeding with an argument that application of state laws within a federal enclave is congressionally authorized is *Kalaka Nui, Inc. v. Actus Lend Lease, L.L.C.*[143] There, the plaintiff's common law claims for breach of contract, breach of the duty of good faith and fair dealing, intentional infliction of emotional distress, tortious interference with prospective economic advantage, unjust enrichment, quantum meruit, promissory estoppel, and fraud survived the defendant's motion to dismiss under the federal enclave doctrine, because federal law granted Hawaii concurrent jurisdiction over military bases within the state for all purposes not inconsistent with federal purposes.[144] The Federal Admission Act,[145] which transformed Hawaii from a territory to a state, provides that Congress has exclusive legislative authority over military bases in Hawaii, but also provides that federal jurisdiction:

> [S]hall not . . . prevent [Hawaii] from exercising over or upon such lands, concurrently with the United States, any jurisdiction whatsoever which it would have in the absence of such reservation of authority [by the federal government] and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation of authority.[146]

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140. *Id.*

141. *See* Alvarez v. Gold Belt, L.L.C., No. 08-4871, 2010 WL 743923, at *1 (D.N.J. Mar. 4, 2010).

142. *See, e.g.*, Stiefel v. Bechtel Corp., 497 F. Supp. 2d 1153, 1158 (S.D. Cal. 2007); Janulewicz v. Bechtel Corp., No. 06-CV-1413, 2007 WL 2462110, at *3-4 (S.D. Cal. Aug. 27, 2007).

143. No. 08-00308 SOM/LEK, 2009 U.S. Dist. LEXIS 38262, at *13-14 (D. Haw. May 5, 2009).

144. *See id.* at *1-2.

145. Pub. L. No. 86-3, 73 Stat. 4 (1959).

146. *Kalaka Nui, Inc.*, 2009 U.S. Dist. LEXIS 38262, at *13-14 (quoting Pub. L. No. 86-3, 73 Stat. 4, 11-12).

The defendant offered no authority suggesting that the plaintiff's common law claims, brought against a contractor working on Hickam Air Force Base, were inconsistent with federal purposes.[147] Therefore, the court rejected the federal enclave defense, and concluded that the plaintiff's claims could move forward.[148]

3. The Federal Enclave Doctrine Can Be Used to Quash Litigation Even Before a Complaint is Filed

As the preceding overview demonstrates, although plaintiffs have enjoyed some success in overcoming the barrier set by the federal enclave doctrine, it remains an extremely powerful defense. Indeed, it also can pack a powerful offensive punch for entities that regularly work within federal enclaves and are weary of being sued for alleged violations of state law, as *Brookhaven Science Associates v. Donaldson*[149] illustrates. After being sued several times for violations of the New York State Human Rights Law ("HRL"), Brookhaven Science Associates ("BSA") brought an action against the New York State Division of Human Rights ("SDHR") seeking a declaratory judgment that the HRL is inapplicable to any claims arising from conduct occurring at Brookhaven National Laboratory ("BNL").[150] BNL is located on Camp Upton Military Reservation, which is a federal enclave, and operates under contract with the Department of Energy.[151] Further, BSA sought a permanent injunction "prohibiting the SDHR from processing, investigating or otherwise proceeding with any pending or future cases against BSA for any alleged conduct occurring at [BNL]."[152]

The court began its analysis by articulating three theories regarding the applicability of state laws within a federal enclave.[153] "Under the

147. *See Kalaka Nui, Inc.*, 2009 U.S. Dist. LEXIS 38262, at *17-18.

148. *Id.*

149. *See* Brookhaven Sci. Assocs. v. Donaldson, No. 04-4013(LAP), 2007 WL 2319141, at *1, *9 (S.D.N.Y. Aug. 9, 2007).

150. *Id.* at *1.

151. *Id.*

152. *Id.* Specifically, BSA sought a declaration that: (1) "pursuant to the federal enclave doctrine and Article I, Section 8, Clause 17 of the United States Constitution, the SDHR is without jurisdiction to enforce the HRL with respect to BSA;" and (2) "any claim against BSA under the HRL is preempted by the United States Constitution." *Id.* at *4. Additionally, BSA sought an order preliminarily and permanently enjoining the SDHR from proceeding with two of the cases pending against it, as well as "an order preliminarily and permanently enjoining the SDHR from proceeding in any and all pending and future cases where BSA is named as a respondent." *Id.*

153. *See id.* at *5 (citing Kelly v. Lockheed Martin Servs. Grp., 25 F. Supp. 2d 1, 4 (D.P.R.

first theory, when an area becomes a federal enclave, the state law in effect at the time of cession becomes federal law and is the applicable law unless Congress provides otherwise."[154] The second theory provides that "state regulatory changes consistent with state laws which were in place at the time of cession are applicable within a federal enclave."[155] Finally, "[u]nder the third theory, all laws of the state in which the enclave exists are applicable, unless they interfere with the laws of the United States."[156] BSA argued for application of the first theory, under which the post-cession HRL would not apply to the company's activities within the enclave, while the SDHR argued that the third theory applied and presented no bar, because the HRL did not interfere with federal law.[157]

The court agreed with BSA, holding that the third theory did not apply and distinguishing the case of *Howard v. Commissioners of the Sinking Fund of Louisville*,[158] upon which the plaintiff relied. The court noted that in *Howard*, the city had statutorily annexed a portion of the property at issue without objection by the federal government, and an Act of Congress specifically authorized the tax being challenged.[159] Because neither of those facts was presented in *Brookhaven Science Associates*, the court held that the SDHR's reliance on the third theory was misplaced.[160]

Applying the first theory, the court began its analysis by determining that the BSA performs a federal function at BNL since the laboratory operates under a contract with the Department of Energy.[161] The court then rejected the SDHR's argument that the HRL should apply within the enclave because the law is merely an "*indirect* regulation of the activities of a private contractor on a federal enclave," rather than a direct regulation that would run afoul of the Supremacy Clause and the federal enclave doctrine.[162] The court also rejected the SDHR's argument that BSA had waived the federal enclave defense by having submitted to the SDHR's jurisdiction at BNL at least twenty-four times

1998)).

154. *Id.* (citing James Stewart & Co. v. Sadrakula, 309 U.S. 94, 100 (1940)).

155. *Id.* (citing Paul v. United States, 371 U.S. 245, 268 (1963)).

156. *Id.* (citing Howard v. Comm'rs of the Sinking Fund of Louisvile, 344 U.S. 624, 626-27 (1953)).

157. *See id.*

158. 344 U.S. 624 (1953).

159. *Brookhaven Sci. Assocs.*, 2007 WL 239141, at *6.

160. *Id.*

161. *Id.*

162. *Id.* at *7.

between 1984 and 2000.[163] In rejecting this waiver argument, the court explained that "[b]ecause 'direct regulation of federal facilities is allowed only to the extent that Congress has clearly authorized such regulation,' BSA could not have waived the federal enclave defense."[164] The court then agreed with three decisions from the Eastern District of New York, which held that the federal enclave doctrine bars enforcement of the HRL at BNL, and granted to BSA all of the relief it requested.[165]

Thus, the SDHR now is permanently enjoined from investigating claims of discrimination against BSA at BNL, and the company has in hand a declaration that the HRL does not apply to its activities there. A more powerful judgment is difficult to imagine, making *Brookhaven Science Associates* a prime example of the federal enclave doctrine's extraordinary reach.

III. DISCUSSION

A. Lessons for Litigants

As Part II of this Article illustrates, the federal enclave doctrine is a powerful tool for defendants that know of its existence. In rare cases, such as *Arlington Hotel Co.*, the doctrine also can also be helpful to plaintiffs.[166] A synthesis of the federal enclave body of law provides a roadmap for litigants to follow when navigating state or common law claims through an enclave. This roadmap is useful both to plaintiffs looking to ensure that their state and common law claims will survive a federal enclave challenge, and to defendants looking to bring a swift end to litigation.

At the outset, litigants must carefully consider where the acts that form the basis of a state or common law claim arose. If the area in question is within a federal enclave, litigants should determine when the area was ceded to the federal government, and compare that date to the

163. *Id.* at *8.

164. *Id.* (quoting Goodyear Atomic Corp. v. Miller, 486 U.S. 172, 181 n.1 (1988)).

165. *See Brookhaven Sci. Assocs.*, 2007 WL 239141, at *8 (citing Sundaram v. Brookhaven Nat'l Lab., 424 F. Supp. 2d 545 (E.D.N.Y. 2006); Benjamin v. Brookhaven Sci. Assoc., 387 F. Supp. 2d 146 (E.D.N.Y 2005); Schiappa v. Brookhaven Sci. Assocs., 403 F. Supp. 2d 146 (E.D.N.Y. 2005)).

166. *See* 278 U.S. 439 (1929) (holding that Arkansas' statute relieving innkeepers of liability to their guests for losses by fire did not apply to a hotel in Hot Springs National Park because the park was a federal enclave governed by federal law).

date on which the state law underlying the claim was enacted.[167] In a matter raising a common law claim, litigants must determine when the state courts recognized the cause of action. If the state or common law claim was already in existence on the date of cession, then the federal enclave doctrine is not likely to be a basis for dismissal of the claim, unless the state or common law arguably conflicts with federal purposes.

If a state or common law claim came into existence after the area was ceded, then the federal enclave doctrine rises to the fore. In such a case, litigants should carefully examine the terms under which the state ceded the territory to the federal government to determine whether the state has retained jurisdiction over the area of law that will govern the claim at issue. If the cession was conditioned upon a broad reservation of jurisdiction by the state, then state laws passed after cession that fall within the state's reservation of jurisdiction are likely to apply within the enclave. If the state did not retain jurisdiction over the substantive area of law at issue, then litigants should examine federal law to determine whether Congress authorized state regulation within federal enclaves of the area of law at issue. As *Goodyear Atomic Corp.* makes clear, however, any such authorization must be "clear and unambiguous."[168]

If the case centers on a federal enclave, the state or common law claim at issue came into existence after the land was ceded to the federal government, the state did not reserve jurisdiction over the area of law in question, and there is no congressional authorization of state regulation within the enclave, then plaintiffs should consider whether facts exist to support an argument that the true impetus for the actions at issue occurred beyond the enclave. Although such an argument has not historically met with much success,[169] being able to allege facts in the complaint to support such a contention could be enough to survive a motion to dismiss, and conceivably could create an issue of fact sufficient to survive a motion for summary judgment.

Finally, if the case is filed in state court, defendants should consider

167. If the area was ceded after 1940, litigants also must determine whether the federal government accepted jurisdiction in accordance with 40 U.S.C. § 3112. *See supra* note 80.

168. 486 U.S. 174, 180 (1988). The *Diaz* court, discussed *supra* notes 127-34 and accompanying text, appears to be the only court that has interpreted this requirement loosely. Indeed, that court went so far as to find congressional authorization in the Service Contract Act, despite noting that the Act merely "clearly *implies*" that local wage and hour laws shall apply to "employees of private companies working on federal installations." 93 F. Supp. 2d at 135 (emphasis added). A mere implication, however, hardly seems to meet the Supreme Court's "clear and unambiguous" authorization standard.

169. *See, e.g*, Bussey v. Edison Int'l, No. CV 08-0158, 2009 U.S. Dist. LEXIS 14057, at *7-8 (C.D. Cal. Feb. 23, 2009).

whether to remove the case to federal court. As noted above, most courts agree that federal courts have jurisdiction over traditionally state or common law claims when those claims arise on a federal enclave.[170] Additionally, defendants should include the federal enclave doctrine in their list of affirmative defenses when answering a complaint that raises a potential enclave issue.

B. Lessons for States and Congress

Before relinquishing a portion of land to the federal government, a state should carefully consider the terms under which it is willing to cede the territory. Once the federal government accepts the property, the state loses control over the enclave to the extent it did not specifically reserve jurisdiction. Further, states should carefully consider whether to voluntarily cede the property at issue in the first instance. If the state refuses to voluntarily cede property that the federal government seeks to use for a federal purpose, then the federal sovereign has the option of exercising its eminent domain power. Under that scenario, the state's laws continue to apply within the enclave, and the state must be fairly compensated for the property. However, such a situation often leads to a battle of dueling sovereigns, and can tie the property up in costly litigation for years. Thus, as a matter of policy, it may be more prudent for the state to voluntarily cede the territory under terms it can more readily control.

At the very least, a state should specifically reserve the right to serve civil and criminal process within the enclave. If a state wants its post-cession laws to be enforced within the enclave, then it should broadly reserve concurrent jurisdiction over all areas not inconsistent with federal purposes. Further, the state should consider whether to include in the Act of Cession a reverter clause stating that the enclave shall revert back to the state if the federal government ceases to use it for a stated federal purpose.

On the other side of the coin, Congress should remain mindful that state laws passed after the creation of a federal enclave are presumptively unenforceable within those territories. Thus, if Congress determines that state laws covering certain areas of law should apply within federal enclaves, then it must provide clear authorization for such application, using language similar to that approved by the Supreme Court in *Goodyear Atomic Corp.* For example, if Congress determines

170. *See supra* notes 104-13 and accompanying text.

that state anti-discrimination laws should apply within federal enclaves, then federal anti-discrimination statutes should be amended to provide:

> States shall have the power and authority to apply [their anti-discrimination laws] to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of any State . . . in the same way and to the same extent as if said premises were under the exclusive jurisdiction of the State within whose exterior boundaries such place may be.[171]

Absent such an explicit authorization, courts following *Goodyear Atomic Corp.* are likely to hold that no congressional authorization for enforcement of state laws within a federal enclave exists.

IV. CONCLUSION

Given the large number of federal contractors operating within federal enclaves, the federal enclave doctrine could prove to be a sleeping giant for the employment law defense bar. However, the relatively small body of federal enclave law decided to date suggests that many defendants remain unaware of the doctrine's existence. As more defendants discover the doctrine and come to understand its power to remove cases to federal court, and to eliminate state and common law claims from cases arising within federal enclaves, plaintiffs will be called upon to think carefully and conduct research before filing a complaint to ensure that their claims can survive a federal enclave challenge. This Article has sought to begin the federal enclave doctrine discussion, in hopes that the courts will have increasing opportunities to examine the doctrine's contours and limits as more litigants become aware of its existence. For the time being, however, the doctrine remains the most powerful defense that most litigants have never heard of.

171. Goodyear Atomic Corp. v. Miller, 486 U.S. 172, 182 (1988) (quoting 40 U.S.C. § 290 (2006)).