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Constitutional Law - Taxation - The Constitutionality of the Alaska Exemption of the Crude Oil Windfall Profits Tax Act of 1980 - Ptasynski v. United States

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CONSTITUTIONAL LAW—TAXATION—The Constitutionality of the Alaska Exemption of the Crude Oil Windfall Profits Tax Act of 1980. ***Ptasynski v. United States*****, 550 F. Supp. 549 (D. Wyo. 1982).**

In 1979 President Carter proposed the decontrol of domestic crude oil and the imposition of a tax on the windfall, or additional profits, expected to be reaped by oil companies as a result of decontrol.[1] While Congress considered what form the tax should take,[2] the Carter administration began phasing out price controls on domestic crude oil.[3] One year later, Congress passed the Crude Oil Windfall Profits Tax Act[4] of 1980 (the Act).

The Act imposes a tax (WPT),[5] paid by the producer,[6] on domestically produced crude oil. The profit subject to tax is the

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1. President Carter's Energy Address to the Nation, 15 WEEKLY COMP. PRES. DOC. 609, 610 (Apr. 5, 1979). The Congressional Record is replete with adjectives such as "huge" and "enormous" describing the additional revenues expected to go to the oil companies. *See, e.g.*, 125 CONG. REC. S. 18470 (daily ed. Dec. 13, 1979).
2. *See, e.g.*, 125 CONG. REC. S. 16864 (daily ed. Nov. 16, 1979); 125 CONG. REC. S. 18863 (daily ed. Dec. 17, 1979).
3. Price controls on domestic crude were first imposed when President Nixon exercised his authority, under the Economic Stabilization Act Amendments of 1971, Pub. L. No. 92-210, 85 Stat. 743, to impose a freeze on all commodities. Although price controls on other commodities were lifted not long thereafter, price controls on crude oil continued through a series of acts of Congress. The price controls which the Carter Administration began phasing out were direct successors to those controls imposed by President Nixon. On January 28, 1981, President Reagan completed the phasing out when he exercised his authority under the Emergency Petroleum Allocation Act of 1973, *as amended*, 15 U.S.C. §§ 751-760 (1975), to decontrol crude oil prices effective immediately. Executive Order No. 12287, 46 Fed. Reg. 9909 (1981).
4. I.R.C. §§ 4986-4998 (Supp. V 1981).
5. The following chart illustrates the interaction of the category, base price, and rate of tax.

Category *See* § 4991	Base Price *See* § 4989	Rate of Tax *See* § 4987
Exempt:	Not Applicable.	No Tax.
1. Oil owned by Governments or charities.		
2. Indian Oil.		
3. Certain Alaskan Oil.		
4. "Front-end" oil, meaning oil the proceeds of which are used, subject to complex restrictions, to finance tertiary recovery projects.		
Tier 3:		
1. Newly discovered oil	$16.55, with various adjustments	30%
2. Heavy oil		
3. Incremental tertiary oil		
Tier 2:		
1. Stripper oil	$15.20, with various adjustments	Independents: 30% Others: 60%
2. National Petroleum Reserve Oil		

difference between the removal price and a statutorily adjusted base price, with severance and inflation deductions.[7] Because Congress wanted both to raise revenue and to stimulate domestic production,[8] crude oil was separated into categories, or tiers, and taxed at different rates.[9] For instance, "newly discovered oil," a tier three oil, is taxed at 30%, whereas "stripper oil," a tier two oil, is taxed at 60%, if produced by a non-independent producer.[10] Congress also provided that certain oil would be completely exempt from the WPT, including oil owned by charities, Indian oil, and oil in designated areas of Alaska.[11]

Certain royalty owners and independent oil producers brought an action challenging the constitutionality of the Act.[12] Specifically, they challenged the provision of the Act that exempts certain Alaska oil as violative of the constitutional requirement that indirect taxes be uniform (the uniformity clause) throughout the United States.[13] The United States District Court for the District of Wyoming held that the Alaska exemption was facially discriminatory, consequently violative of the uniformity clause, and that the remedy was not simply to severe the Alaska exemption, but to invalidate the entire Act.[14] The United States Supreme Court has granted the government's petition for writ of certiorari.

Tier 1:		
1. All other oil	Approximately the May 1979 ceiling price for "upper tier" oil under the price control system, or about $13.	Independents: 50% Others: 70%

Ptasynski v. United States, 550 F. Supp. 549, 551 (D. Wyo. 1982).

6. I.R.C. § 4986(b) (Supp. V 1981).
7. I.R.C. § 4988(a) (Supp. V 1981).
8. What the true "intent" of Congress was when passing the Act was bitterly disputed in the trial briefs. *See* Brief for Defendant, Ptasynski v. United States, 550 F. Supp. 549 (D. Wyo. 1982); Brief for Plaintiff, Ptasynski v. United States, 550 F. Supp. 549 (D. Wyo. 1982).
9. *See supra* the chart in note 5.
10. *Id.*
11. I.R.C. § 4994(e) (Supp. V 1981):

    Exempt Alaskan Oil.—For purposes of this chapter, the term "exempt Alaskan oil" means any crude oil (other than Sadlerochit oil) which is produced—

    (1) from a reservoir from which oil has been produced in commercial quantities through a well located north of the Arctic Circle, or

    (2) from a well located on the northerly side of the divide of the Alaska-Aleutian Range and at least 75 miles from the nearest point on the Trans-Alaska Pipeline System.
12. Ptasynski v. United States, 550 F. Supp. 549 (D. Wyo. 1982).
13. *Id.* at 552. U.S. CONST. art. I, § 8, cl. 1 provides: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises . . . but all Duties, Imposts and Excises shall be *uniform* throughout the United States." (emphasis added).
14. 550 F. Supp. at 553, 555.

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This Note is limited to a consideration of the uniformity issue. Part I begins by analyzing the traditional interpretation of the uniformity requirement, and moves toward a definition of uniformity in light of the United States Supreme Court's most recent pronouncements on the subject. Part II outlines the bases for the District Court's finding that the Alaska exemption violated the uniformity clause. Finally, Part III considers the District Court's application of the uniformity requirement, and suggests that the court failed to evaluate the Alaska exemption in light of the Supreme Court's recent pronouncements on the subject.

PART I.

A. *Uniformity and the Geographic Requirement*

Few references were made during the constitutional debates as to the purpose of the uniformity clause. Instead, the dominant concern of the founding fathers appears to have been with the imposition of a direct tax[15] and its effects upon the states.[16] Of those commentators who have addressed the subject, perhaps the most concise statement as to the purpose of the unifromity clause was made by Justice Story. Discussing in his commentaries why direct taxes were to be apportioned and why indirect taxes were to be uniform, he stated that

> The answer to the latter [the uniformity requirement] may be given in a few words. *It was to cut off all undue preferences of one state over another, in the regulation of subjects affecting their common interests.* Unless duties, imports and excises were uniform, the grossest and most oppressive inequalities vitally affecting the pursuits and employment of the people of different states might exist.[17]

Implicit in this statement is the notion that the potential abuse of the uniformity clause was *geographic:* the preference of one state over another.

15. *See* 3 ELLIOT'S DEBATES 248 (2d ed. 1836) (remarks by James Madison) ("the subject of direct taxation is perhaps one of the most important that can possibly engage our attention.")
16. A direct tax is a tax imposed on property itself, such as a property tax. BLACK'S LAW DICTIONARY 415 (5th ed. 1979). An indirect tax, on the other hand, is a tax upon some right or privilege, such as an excise tax. BLACK'S LAW DICTIONARY 695 (5th ed. 1979).
17. J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 957, at 57 (3d ed. 1853).

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Traditionally, the courts have followed Justice Story's guidelines. In *Head Money Cases*,[18] for instance, the Supreme Court evaluated the constitutionality of an excise tax laid upon shipowners transporting noncitizens to United States seaports. The tax was challenged because it did not apply to noncitizens arriving in the United States by railroad or other inland modes of conveyance. In upholding the tax, the Court determined that a "tax is uniform when it operates with the same force and effect in every place where the subject of it is found."[19] In Justice Story's terms, because the subject of the tax included seaports and the tax applied to all ports alike, giving no preference to the ports of one state over the ports of another, it operated uniformly.[20]

In *Knowlton v. Moore*,[21] the Court reaffirmed Justice Story's interpretation of the uniformity requirement. In *Knowlton*, executors of a decedent's estate challenged the constitutionality of death duties imposed by the War Revenue Act of 1898.[22] The executors argued that the uniformity clause required an intrinsic uniformity, whereby taxes operated equally on all individuals.[23] In effect, the executors argued that objects being taxed by duties, imports, and excises must be located in uniform quantities and conditions throughout the United States. Expressly rejecting such an interpretation, the Court first noted that an intrinsic uniformity interpretation would be a virtual impossibility, because obviously objects subject to duty, import, and excise taxes are rarely located in every state, not to mention in equal quantities or conditions, and then went on to conclude that only *geographic* uniformity, as defined in *Head Money Cases*, was mandated by the uniformity clause.[24]

B. The Current Status of the Uniformity Requirement

The *Head Money Cases* definition of uniformity has, until recently, been the test applied by courts in determining whether tax laws satisfy the geographic requirement. In two

18. 112 U.S. 580 (1884).
19. *Id.* at 594. Although the statement has been widely quoted, technically it is dictum: the tax was ultimately upheld on the basis of the power of Congress to regulate commerce. *Id.* at 595.
20. *Id.* at 595.
21. 178 U.S. 41 (1900).
22. War Revenue Act of 1898, ch. 448, 30 Stat. 448.
23. 178 U.S. at 84.
24. *Id.* at 97.

recent cases arising under the bankruptcy uniformity clause,[25] the Court determined that the bankruptcy laws require the same geographic uniformity required of tax laws.[26] As a result, the *Head Money Cases* definition of uniformity has been reexamined.

Regional Rail Reorganization Cases[27] (3R Act Cases) involved a crisis precipitated when eight major northeast and midwest railroads entered into reorganization proceedings under section 77 of the Bankruptcy Act.[28] Responding to the crisis, Congress supplemented section 77 with the Regional Rail Reorganization Act[29] (Rail Act), which, as its name implies, applied only to railroads in reorganization proceedings in an expressly-defined group of states.[30] Upholding the Rail Act in spite of its regional application, the Court concluded that the "uniformity provision does not deny Congress power to take into account differences that exist between different parts of the country, and to fashion legislation to resolve *geographically* isolated problems."[31]

If this broad statement were taken literally, it would seem to suggest that Congress could enact legislation that on its face preferred one debtor over another, the only requirements being that the debtor's problem be isolated and result from differences existing between different parts of the country.[32] But the Court did not go that far, as evidenced by *Railway Labor Executives Assn. v. Gibbons,*[33] the most recent case dealing with the bankruptcy clause's uniformity requirement.

25. U.S. CONST. art. I, § 8, cl. 1, 4: "The Congress shall have Power To establish . . . uniform Laws on the subject of Bankruptices throughout the United States."
26. Hanover Nat'l Bank v. Moyses, 186 U.S. 181, 188 (1902).
27. 419 U.S. 102 (1974).
28. 11 U.S.C. § 205 (1898), *repealed by* Pub. L. No. 95-598, §§ 401(a), 402 (a), 98 Stat. 2682 (§ 101 of which enacted revised Title II).
29. 45 U.S.C. §§ 701-797 (Supp. IV 1980).
30. 45 U.S.C. § 702(15) (1976):

> "Region" means the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Michigan, and Illinois; and those portions of contiguous States in which are located rail properties owned or operated by railroads doing business primarily in the aforementioned jurisdictions (as determined by the Commission by order).

31. 419 U.S. at 159 (emphasis added).
32. *Id.* at 185 (Douglas, J., dissenting). Justice Douglas stated: "I fear that the 'hydraulic pressure' generated by this case will have a serious impact on a historic area of the law, jealously protected over the centuries by courts of equity in the interests of justice."
33. 50 U.S.L.W. 4258 (U.S. Mar. 2, 1982).

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In *Railway Labor,* the Rock Island Railroad Transition and Employee Assistance Act[34] (RITA) was challenged because on its face it applied to only one bankrupt railroad. The Court held that RITA was neither a response to particular problems of major railroad bankruptcies, nor a response to any geographically isolated problem. Instead, it was a response to a particular problem of one bankrupt railroad. Consequently, it did not satisfy uniformity clause requirements.[35]

At first glance, it would appear that the only real distinction between the Rail Act in *3R Act Cases* and RITA in *Railway Labor* is that the Rail Act applied to a *group* of railroads in a certain region, whereas RITA applied to only one railroad in a certain region. Thus, it would seem that Congress could have insulated RITA from any uniformity clause challenge merely by making it applicable to the *region* in which the Rock Island Railroad operated, rather than singling out the Rock Island Railroad by name. In *3R Act Cases,* Congress had done just that, and there the Rail Act survived a uniformity clause challenge. A closer examination of *3R Act Cases* reveals, however, that the Rail Act in fact survived a uniformity clause challenge for another, and quite narrow, reason.

The Rail Act in *3R Act Cases* was unusual in that, by its terms, it was operative for only 180 days.[36] Because no reorganization proceeding outside the defined region was pending either on the effective date of the Rail Act or 180 days thereafter, the Court concluded that the Rail Act *in fact* operated uniformly upon all bankrupt railroads and their creditors.[37] Thus, *3R Act Cases* would seem to qualify the *Head Money Cases* definition[38] of uniformity only slightly: a tax is uniform when it operates with the same force and effect wherever the subject is found *during the time the tax is applied,* and Congress can consider regional problems when legislating in these areas.

Upon reexamination of the facts in *Head Money Cases* it becomes clear that Justice Brennan's sweeping language in *3R*

34. 45 U.S.C. §§ 1001-1018 (Supp. IV 1980).
35. 50 U.S.L.W. at 4262.
36. 45 U.S.C. § 717(b) (1976).
37. 419 U.S. at 160.
38. *See supra* text accompanying note 18.

Act Cases describing Congress' power to enact bankruptcy legislation affecting geographically isolated problems does *not* in fact add to the *Head Money Cases* definition of uniformity. In *Head Money Cases,* the problem seen by Congress did not exist in the interior of the United States. In light of this fact, it was unnecessary to make the tax apply to all states, because all states did not have seaports. To satisfy the uniformity requirement, it was only necessary that Congress apply the tax uniformly to all states with ports, which it did.[39] Thus, to the extent that Congress has always taken into account geographically isolated problems when legislating in the bankruptcy and tax areas, the second part of the test is tautological.

This test, as qualified, is also consistent with *Railway Labor.* In *Railway Labor,* the duration of the effective period of RITA was not limited to 180 days, as was the Rail Act. And RITA, by its terms, applied to only one particular railroad, although on RITA's effective date there *were* other railroads in reorganization proceedings that could have benefited from the legislation enacted for the Rock Island Railroad.[40] Consequently, the Court's holding in *Railway Labor* is consistent with the *Head Money Cases* test for uniformity, as reinterpreted in *3R Act Cases.*

PART II

A. *The Court's Analysis*

The Wyoming District Court found the provision of the Act exempting Alaskan crude oil facially discriminatory and thus "a clear violation of the constitutional requirement of uniformity."[41] Applying the *Head Money Cases* definition of uniformity, the court concluded that the WPT did not operate with the same force and effect wherever crude oil[42] was found because oil in other states was subject to the tax, whereas oil in certain areas of Alaska was not.[43] The Court also noted that, although legitimate exemptions from tax could exist, they must still satisfy uniformity clause requirements.[44]

39. *Id.*
40. 50 U.S.L.W. at 4262.
41. 550 F. Supp. at 553.
42. The court found that "production and removal of domestic crude oil is the subject of the tax." *Id.*
43. *Id.*
44. *Id.*

PART III

A. *The Subject Requirement*

The fact that the District Court applied the *Head Money Cases* uniformity test, rather than the test as qualified in *3R Act Cases,* did not necessarily render the uniformity issue cut-and-dried. The *Head Money Cases* test requires, in substance, that the subject being taxed be taxed equally wherever it is located. Thus, to apply either the *Head Money Cases* test, or the *Head Money Cases* test as qualified in *3R Act Cases,* a court must first discern the subject of the tax.

The District Court, apparently relying on the wording of the Act itself,[45] concluded that the subject of the tax "was the production and removal of domestic crude oil. . . ."[46] But even a cursory reading of the Act reveals that the subject of the WPT cannot *simply* be crude oil; otherwise, Congress could not have categorized crude oil into tiers, containing different types of crude oil, and then varied the rate of tax from tier to tier.[47] To illustrate this point, reference can be made to the facts in *Head Money Cases.* There, the subject of the tax, non-citizens entering the United States at seaports, did not exist within the interior of the United States. Nonetheless, if the subject of the tax *had* existed within the interior, and had Congress exempted the subject within the interior, the tax could not have been held uniform. Analogously, if the subject of the WPT were *only* the production and removal of domestic crude oil, rather than the production and removal of different kinds, or types, of crude oil, as defined within the various tiers, Congress could not have varied the tax from tier to tier.

The United States had a different view as to what consituted the subject of the tax. It argued that, because oil in Alaska is produced under such severe climatic conditions, it amounted to a completely different subject under the Act.[48] Thus, the United States reasoned that, inasmuch as legitimate exemptions from tax can exist,[49] and because Alaskan crude oil

45. I.R.C. § 4986(a) (Supp. V 1981): "An excise tax is hereby imposed on the windfall profit from taxable *crude oil* removed from the premises during each taxable period" (emphasis added).
46. 550 F. Supp. at 553.
47. *See supra* note 5.
48. Brief for Defendant, *supra* note 8, at 31 n.6.
49. 550 F. Supp. at 553.

amounted to a completely different subject under the Act, the Alaska exemption therefore did not violate the uniformity requirement.

The fallacy of this argument lies in its premise that Alaskan oil subject to the exemption amounts to a different subject under the Act. The Alaskan exemption does *not* define exempt Alaskan oil in terms of climatic conditions under which it is produced, but instead defines exempt Alaskan oil in terms of the regions of Alaska in which it is produced.[50] And since the Alaska exemption applies to "any crude oil"[51] produced in those defined regions, it becomes necessary to refer to the Act to determine into which tier the oil subject to the Alaska exemption falls. Because no oil was being produced in the exempt Alaska regions at the time the Act was passed,[52] any Alaskan oil subject to the exemption must be, by definition under the Act, categorized as "newly discovered oil,"[53] which is a tier three oil, and consequently taxed at 30%.

B. Uniformity Versus Discrimination

The District Court's decision can also be criticized for its finding that the Alaska exemption is facially discriminatory. The issue under the uniformity clause is not whether Congress discriminated against oil producers in other states by granting oil producers in certain regions of Alaska an exemption; the issue is whether the Act's provisions create uniform tax laws.[54] The facts in *Ptasynski* illustrate the importance of addressing the correct issue under the uniformity clause.

In *Ptasynski,* the United States, apparently relying on reasoning from *3R Act Cases,* argued that because no oil was *produced* in the exempt Alaska regions during the period for

50. I.R.C. § 4994(e) (Supp. V 1981). *See supra* note 11.
51. I.R.C. § 4994(e) (Supp. V 1981). *See supra* note 11.
52. *See* Affidavit of Kye Trout, Jr., filed with the plaintiff's motion for summary judgment, Ptasynski v. United States, 550 F. Supp. 549, 551 (D. Wyo. 1982).
53. I.R.C. § 4991(e)(2) (Supp. V 1981) incorporates the June 1979 energy regulations definition for "newly discovered oil": " 'Newly discovered crude oil' means domestic crude oil which is: (1) Produced from a new lease in the Outer Continental Shelf; or (2) produced (other than from the Outer Continental Shelf) from a property from which no crude oil was produced in calendar year 1978." 10 C.F.R. § 212.79(b) (1979).
54. *See* Railway Labor Executives Ass'n v. Gibbons, 50 U.S.L.W. 4258, 4262 n.11 (U.S. Mar. 2, 1982): "The issue is not whether Congress has discriminated against the Rock Island estate, but whether RITA's provisions are uniform bankruptcy laws. The uniformity requirement of the Bankruptcy Clause is not an Equal Protection Clause for bankrupts."

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which Plaintiffs sought a refund, the exemption could not have discriminated against oil producers in other states *during that period.*[55] That the Act on its face exempted Alaska by name was apparently irrelevant: the Rail Act in *3R Act Cases* had exempted certain states by name, and it was held uniform.

This reasoning is flawed because it suggests that the Court's decision in *3R Act Cases* was based on a finding that the Rail Act did not discriminate on its face against railroads in reorganization proceedings in states outside the defined region during the effective period of the Rail Act. In fact, the Court's decision in *3R Act Cases* was based on a finding that the Rail Act was geographically uniform.[56] The Court was able to reach this decision because it had the benefit of hindsight in gauging whether the Rail Act satisfied the uniformity requirement: when the issue reached the Court, the 180 day effective period of the Rail Act had already passed. Because no railroads outside the defined region of the Rail Act were in reorganization proceedings during the 180 day effective period, the Court was able to conclude that the Rail Act *in fact* applied uniformly during that period.

Thus, not only would the United States' reliance on *3R Act Cases* as a discrimination case seem misplaced, but *any* reliance on the narrow exception to the uniformity test that *3R Act Cases* carved out of the traditional uniformity test would seem misplaced. Because the Act in *Ptasynski* is not limited, as was the Rail Act, to a 180 day effective period,[57] when the Court reviews *Ptasynski* it will not have the benefit of hindsight to gauge whether the exemption in fact operates uniformly. And since oil is currently being produced in the exempt Alaska regions, and producers in these areas are not being taxed,[58] while producers of the same type of oil in other states are being taxed at 30%, any reliance on the *3R Act Cases* narrow exception by the Court in *Ptasynski* would be wholly misplaced.

Consequently, it may be that the Rail Act in *3R Act Cases* discriminated against railroads, outside its defined region, that

55. Brief for Defendant, *supra* note 8, at 8.
56. *See supra* text accompanying note 27.
57. I.R.C. § 4990 (Supp. V 1981).
58. *See supra* note 52.

did not happen to be in reorganization proceedings during the effective period of the Rail Act. Nonetheless, the Rail Act still created uniform bankruptcy laws. Analogously, it may be, as the District Court found, that the Alaska exemption discriminates against oil producers in other states, because on its face the Act prefers oil producers in Alaska over oil producers in other states. But as the Court's analysis in *3R Act Cases* suggests, a finding of facial discrimination does not *necessarily* preclude a finding of geographic uniformity. Thus, even though the Act facially exempts certain regions of one state, Alaska, and, as applied, relieves some producers of newly discovered oil from paying taxes, the court should not be relieved from addressing the proper issue under the uniformity clause.

C. Uniformity Versus National Interest/Rational Justification

The United States' last argument, which the District Court disposed of almost summarily, asserted that a rational justification for the existence of the Alaska exemption could validate its existence, notwithstanding the fact that the exemption might otherwise violate the uniformity clause.[59] This argument was apparently based on a concurrence filed by Justice Marshall, and joined by Justice Brennan, in *Railway Labor*. There, Justice Marshall suggested that the requirement of geographic uniformity not be applied if the application of the non-geographically uniform law served a national interest and the identified national interest justified Congress' failure to apply the law uniformly.[60]

In effect, this argument is a repudiation of the whole concept of geographic uniformity as historically interpreted by the Court. Although Congress is not prohibited from taking into account geographically isolated problems, as long as the statute operates with the same force and effect wherever the subject is found, Justice Marshall's reasoning would in effect give Congress a free hand to circumvent uniformity requirements whenever it could demonstrate the law was in the national interest and was rationally justified. Although Justice Marshall did not find that RITA in *Railway Labor* satisfied his

59. 550 F. Supp. at 553.
60. 50 U.S.L.W. at 4263.

national interest requirement, because RITA was narrowly tailored to provide relief for only one railroad, the Rock Island, it is difficult to believe he would have the same problem with the Crude Oil Windfall Profits Tax Act. The Congressional debates make it clear that, in providing an exemption to certain areas of Alaska, Congress hoped to create an incentive for oil producers to develop oil resources in areas where producers might otherwise not go because of the severe difficulties involved in production.[61] Thus, Justice Marshall might reasonably conclude that it was in the national interest for Congress to provide an exemption for Alaska, in order thereby to increase domestic production and to reduce the country's reliance on foreign oil. Justice Marshall might then justify the Alaska exemption by concluding that only in Alaska do such severe conditions exist.

In order to address Justice Marshall's novel interpretation of the uniformity requirement, it is necessary to review the underlying purpose of the uniformity clause. In Justice Story's terms, the purpose of the uniformity clause "was to cut off *all* undue preferences of one state over another, in the regulation of subjects affecting their common interests."[62] It is difficult to imagine, as of the time the Act was passed, a subject more vital, affecting the common interests of citizens of more states, than *oil.*[63] But Justice Story's statement of the purpose of the uniformity requirement, which neither Plaintiffs nor the government disputes,[64] prohibits Congress from preferring *any* state over any other state, notwithstanding the national interest. Thus, even if it were in the national interest to prefer Alaskan producers over producers in other states, the uniformity clause prohibits Congress from doing so.

CONCLUSION

The Supreme Court might reasonably conclude that the Wyoming District Court reached the right result on the uniformity issue, but for many of the wrong reasons. By disregard-

61. *See supra* text accompanying note 8.
62. *See supra* text accompanying note 17.
63. *See, e.g.,* President Carter's Energy Address to the Nation, 15 WEEKLY COMP. PRES. Doc. 609, 611 (Apr. 5, 1979), stating that the country's "national strength is dangerously dependent on a thin line of oil tankers, stretching half-way around the Earth. . . ."
64. *See generally* Brief for Defendant, *supra* note 6; Brief for Plaintiff, *supra* note 6.

ing the recent case law interpreting the uniformity requirement in the bankruptcy setting, the Wyoming Court was able to apply the traditional uniformity test which, if interpreted literally, as the court's opinion shows, allows for few exceptions. Moreover, while the court purported to apply the traditional test, it in fact engaged in a perfunctory analysis which essentially went no further than the literal language of the Act itself. And the fact that the court spoke in terms of discrimination, while purporting to engage in a geographic analysis, reveals its overall misperception of the uniformity issue.

Nonetheless, it would seem the court reached the right result. The Alaskan exemption, contrary to the United States' argument, allows newly discovered oil to go untaxed, while newly discovered oil in other states is taxed at 30%. Thus, the Alaskan exemption provides a geographically-based exception to the Crude Oil Windfall Profits Tax Act and thereby does not tax oil in Alaska with the same force and effect oil is taxed elsewhere in the United States.

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