

In the

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Supreme Court of the United States

HARRY R. HUGHES, Secretary of
Transportation, State of Maryland,
et al.,

Appellants,

v.

No. 74-1607

ALEXANDRIA SCRAP CORPORATION,

Appellee.

Washington, D. C.
January 21, 1976

Pages 1 thru 50

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IN THE SUPREME COURT OF THE UNITED STATES

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 HARRY R. HUGHES, Secretary of :
 Transportation, State of Maryland, :
 et al., :
 : No. 74-1607
 Appellants, :
 v. :
 :
 ALEXANDRIA SCRAP CORPORATION, :
 :
 Appellee. :
 :
 -----X

Washington, D. C.

Wednesday, January 21, 1976

The above-entitled matter came on for argument at
 1:25 p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
 WILLIAM J. BRENNAN, JR., Associate Justice
 POTTER STEWART, Associate Justice
 BYRON R. WHITE, Associate Justice
 THURGOOD MARSHALL, Associate Justice
 HARRY A. BLACKMUN, Associate Justice
 LEWIS F. POWELL, JR., Associate Justice
 WILLIAM H. REHNQUIST, Associate Justice
 JOHN P. STEVENS, Associate Justice

APPEARANCES:

HENRY R. LORD, ESQ., Deputy Attorney General of
 Maryland, P.O. Box 8755, Baltimore-Washington
 International Airport, Maryland 21240, for the
 Appellants.

NORMAN P. RAMSEY, ESQ., Baltimore, Maryland, for the
 Appellee.

I N D E X

ORAL ARGUMENT OF:

Page

HENRY R. LORD, ESQ., for the Appellants

3

NORMAN P. RAMSEY, ESQ., for the Appellee

21

REBUTTAL ARGUMENT OF:

HENRY R. LORD, ESQ.

45

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in 1607, Hughes against Alexandria Scrap Corporation.

Mr. Lord, you may proceed whenever you are ready.

ORAL ARGUMENT OF HENRY R. LORD ON BEHALF

OF APPELLANTS

MR. LORD: Mr. Chief Justice, and may it please the Court: The plaintiff here, a Virginia corporation, has attacked successfully up until this moment before a three-judge court on equal protection and commerce clause grounds a subpart of a single aspect of Maryland's enlightened and comprehensive program unique in the nation for removing from the highways and junk yards of the State blighted automobiles.

The operative facts here, although somewhat dreary and inelegant, are nonetheless quite important to a full understanding of the program and of the constitutional claims, at least in our view, are relatively simple, despite the fact that the appellee here has filed a 40-page statement of the case.

I would like to take 5 minutes to touch on those facts.

This program originated as a result of a careful study made in 1967 by the Legislative Council of Maryland of the very problem that I described a minute ago. The Council

report is in the record, and I think a reading of it will indicate the attention that was given to the problem. The Council recognized that hulks accumulated on the lots of automobile wreckers throughout the State largely because the free market mechanism at that time provided very little financial incentive to wreckers to place these vehicles in the hands of scrap processors for recycling. Accordingly, a three-part program with both carrot and stick aspects was adopted in 1969.

Part I requires all wreckers to be licensed and it limited the wreckers in the way they maintained their yards. There were density requirements and stacking requirements as to heights of vehicles so that inspection could be done more readily and also so that the blight would not be as obvious from the roads.

QUESTION: Mr. Lord, it might help some if you could raise the microphone a little bit.

MR. LORD: Now, out-of-State processors were also licensed for the first time. In fact, the 1969 statute provided that wreckers had to be resident in the State of Maryland to be licensed, but processors, such as the plaintiff, could be licensed no matter where they operated, it being recognized that an out-of-State processor could contribute just as well to solving the environmental problem of Maryland by removing these hulks from the highways.

Now, as far as an out-of-State processor is concerned, the licensing requirements were and are identical. Same fee, they must have the same sort of equipment. The equipment I think was described in an article which is in the record but, very quickly, a processor's equipment must include a hydraulic bailer which is known in the trade as a goldfinger machine -- it reduces an automobile to a 2 by 2 by 5 foot bail-- or a shredder, or what is known as shears. That plus payment of the fee plus maintaining at least a nominal office in the State, although records don't have to be kept there, and compliance with other rather rudimentary Maryland regulations admit an out-of-State processor to the Maryland program.

QUESTION: Mr. Lord, this is a distinction, then, between the wrecker who must be a resident and a processor who may or may not be a resident, is that correct?

MR. LORD: That's correct.

QUESTION: What does the wrecker do that a processor doesn't?

MR. LORD: A wrecker, your Honor, is a person who takes possession of hulks of automobiles, holds them for resale for the value of all of the wreck or of the parts. And I think it's fair to say that a wrecker is very often the source of hulks to clients such as my brother represents here today, the processor. They are the source to the processor, one of several.

I suppose that the next equal protection case we will have to defend is one based on that distinction, but that distinction doesn't happen to be before this Court. We have already had one equal protection challenge, and I will come to that in a minute.

Suffice it to say that Alexandria qualified and was licensed. So that's part I of the program.

Part II is the stick aspect, and that is that there is a continuing fine assessed against a wrecker who maintains in his possession for more than a one-year period a vehicle more than 10 years old. So it becomes economically a liability to him to keep it there, encouraging him to move it off to a processor. So it's really encouraging commerce, at least in this aspect.

Now, the third facet is the carrot. The carrot is the bounty. The bounty is payable if a licensed wrecker is involved, half to the licensed wrecker delivering the hulk, half to the processor. In the event that there is no licensed wrecker, if some other source has brought the vehicle abandoned in Maryland to the processor, the entire \$16, which is the current total, although it's varied over the years, is paid to the processor. It's an extra bonus, in effect, for ridding Maryland of another hulk vehicle.

QUESTION: I take it the Maryland policy is directed not merely to getting the hulks off the highway right away, but

to getting them even off the wrecker's private property because of eyesores.

MR. LORD: Exactly correct. I'd say there is an equal interest in both.

But the program, although the statute could be clearer on this, is restricted to hulks that have been abandoned in Maryland. Any fair reading of the statute I think will indicate that, and there are definitions in the statute which I think support that.

Now, that is the program. What has happened under the program is that in the five years of its existence, simple mathematics applied to the dollar figures in the records would indicate that at least 100,000 vehicles have been removed from junk yards, to use Mr. Justice Rehnquist's question, and the highways of the State, abandoned cars.

Now, who knows how many would have been removed if there hadn't been a bounty program? It's fair to say that a very high percentage of those are the result of the inducements already described.

Now, the record further shows that Alexandria has participated in this program from its inception and has received in excess of \$219,000 of money from Maryland's Treasury under the program, money it of course would not have received without the program. It might have received the hulks and it might have received just as many of them, but it

would not have received the bounty because it was not in existence.

QUESTION: And this \$219,000 is all bounty, is it?

MR. LORD: That's right.

QUESTION: Either the half shared with the wrecker or the whole \$16.

MR. LORD: Precisely, your Honor.

All right, now, as with any new and innovative program, the General Assembly since its inception has constantly monitored this program in the light of experience and a review of the Maryland Acts for the last several years will indicate that there have been at least a dozen amendments, probably as many as a dozen and a half, to this program, different parts of it. It's a complicated, lengthy piece of statutory material.

One of these amendments, Chapter 465 of the Laws of Maryland of 1974, is the subject of this case.

Now, the challenged amendment doesn't relate in any way to the three-part program described. It doesn't even relate to the entire bounty program. It relates to the manner by which vehicles in a certain category -- and bear in mind that this bounty is available on all abandoned vehicles no matter whether it was an Aston-Martin that just rolled off the assembly lines. But the one category that's being complained about is an eight-year old and inoperable vehicle which prior to the '74 amendment for out-of-State processors

could be received and a bounty paid thereon by virtue of something known as an indemnity agreement, an agreement between the person delivering the vehicle to the processor and the processor himself executed, of course, at the door of the processor's plant upon delivery of the vehicle, in effect, holding harmless the processor for any claims by a prior person in title. That's really what this case comes down to.

Now, prior to that amendment -- and we will come to this more clearly in the equal protection discussion -- prior to that amendment, vehicles in that category could really be destroyed without any due process notions that traditionally had been applied; the notice, the publication, all of which is carefully written into the first part of the statute was absent in this last part, and if the Court would like to direct its attention to the statute, it's found at 17A in the Appendix and 18A. I'm sorry, 15A and 16A.

Now, all of the language in caps at 16A is the new language of the '74 amendment, as inartistically drafted as any piece of legislation one could imagine, but I think all the parties here know what it means, and we are interpreting it in a uniform manner.

All of the prior language which overflows from 15A to 16A says in essence only this: Anybody who is licensed, unlicensed, resident or nonresident, who comes into the possession of a vehicle eight years old and inoperable can

transfer that into the bounty program through a processor without the title and without notification procedures. It was open ended and really threatened to swallow up all of the carefully drafted aspects of the statute which are laid out at the prior 10 or 15 pages of the record.

QUESTION: Why would that be, Mr. Lord?

MR. LORD: Well, I think --

QUESTION: It would only apply to an 8-year-old vehicle.

MR. LORD: That's true, but I think the record also states that the bulk of vehicles processed through the bounty program fall in that category.

QUESTION: Yes, but you would catch up with that pretty quickly, wouldn't you?

MR. LORD: You may. I don't know, your Honor. But I think it's fair to say that as of a couple of years ago, less than 5 percent of the vehicles on the road were 7 years old and older, something like that.

Now, it is this amendment that is being challenged and it's being challenged obviously on two grounds. But I think it's important before we go to the constitutional challenge to see exactly what that new statute, the amendment that's challenged, does.

First of all, it says that for Maryland processor indemnity agreements are permitted. It's an announcement of

Maryland public policy, for the first time. There was no reference prior to that anywhere in that statute to indemnity agreements. It may have been the practice, and I understand it was, although --

QUESTION: Mr. Lord, on 16A, about three lines down in the heavy type it says "shall" and "may." Which is it?

MR. LORD: The "may" has been deleted. That's legislative symbology there.

QUESTION: OK. That's what I thought.

MR. LORD: It now reads "shall."

So in each instance now with a Maryland processor an indemnity agreement is required to be executed and submitted to the Motor Vehicle Administration.

QUESTION: What do you mean by Maryland processor, Mr. Lord. He must be a Maryland resident with a plant in the State?

MR. LORD: That's correct, your Honor.

QUESTION: I see. If you had a Virginia resident with a plant in Maryland, he would not be a Maryland processor?

MR. LORD: I think that he may well be, because what you are looking at for the public policy reason is whether an indemnity agreement executed in Maryland is valid public policy in Maryland. And the indemnity agreement is executed at the processor's plant. If that plant is in Maryland, I think a good argument could be made that he would

be all right.

QUESTION: If he has more than one plant, one in Maryland and one in Virginia, is he still all right?

MR. LORD: I would read that, and I think my brothers read it the same way, that under this amendment to qualify Alexandria would have to open a plant in Maryland.

QUESTION: A plant.

MR. LORD: It wouldn't have to be its exclusive plant.

QUESTION: Right.

MR. LORD: And then you would have an indemnity agreement in each instance that that plant executed in the State.

QUESTION: It depends on the location of the plant, not a legal residence status, is that right?

MR. LORD: That's correct.

Now, the other aspect is that the manufacturer's serial number or identification number must be sent in also. In effect, added protections.

QUESTION: Just to clarify a tag end on this, on these vehicles, these over-eight-year-old vehicles, must the processor actually process the vehicle in a plant in Maryland or just have a plant in Maryland? How do you --

MR. LORD: In this category, I think if he had a plant in Maryland and indemnity agreements were executed in

Maryland, he would be a Maryland processor for purposes of --

QUESTION: Even though he processed that particular car outside of Maryland.

MR. LORD: Well, I think it would be where the indemnity agreement was entered into, your Honor. One of the points --

QUESTION: So your answer is yes.

MR. LORD: Yes.

QUESTION: It would be all right if he processed it across the line in some other State.

MR. LORD: I think the question really should be answered as to where the indemnity agreement is executed.

QUESTION: Let's assume that the indemnity agreement is executed in Maryland.

MR. LORD: Well, the only way that would happen, your Honor, factually is by delivery to the plant in Maryland because that is where the indemnity agreement would be executed. And it's plaintiff's position that he would have to open a processing plant in Maryland to qualify under this amendment. And I think that's a fair reading --

QUESTION: Supposing a processor has a plant in Maryland and one just across the line in Virginia, and he goes around and picks up wrecked cars. And when he picks one up from an owner, he gives them an indemnity agreement right on the spot. He has a plant in Maryland, but he just happens

to be closer to his plant in Virginia, so he takes it over to Virginia.

MR. LORD: Well, I think to put the argument in its cleanest form, I think that the State position would be that that vehicle would have to be processed at the Maryland plant.

QUESTION: All right.

MR. LORD: As a matter of practice, that I know would happen in all instances.

QUESTION: I'm sorry, you've already answered it, Mr. Lord, but tell me again, what's the significance of an indemnity agreement?

MR. LORD: An indemnity agreement has places behind the processor as far as liability is concerned, the seller, an unlicensed person, it could be anyone. It says to the processor, if you take this vehicle, I'm warranting to you that I have title to it and that if you get into any kinds of further problems with a prior owner, I will indemnify you and hold you harmless.

QUESTION: Right.

MR. LORD: And that, of course, is an incentive to the processor to take the car because he is not buying a --

QUESTION: Is that executed by a wrecker to the processor or by a third party?

MR. LORD: No, your Honor, and that brings me to the aspect of the equal protection argument. There are several

other ways in which title can pass, or evidence of title can pass. I think it's fair to say, and I think we are all in agreement that in Alexandria's case a wrecker's certificate, a licensed wrecker's certificate, is the second most prevalent way that they receive vehicles. Indemnity agreements was the first; a second was a wrecker's certificate, which is a document obtained from the Motor Vehicle Administration after the wrecker has established to the Motor Vehicle Administration that he has evidence of title. That becomes a title document and that is the second way and the typical way that a wrecker passes title to a processor.

And, of course, one of the arguments here is that the processor has that option still available to him. And before I break on this point, I would like to get quickly to the State's justification for this amendment because we have briefed thoroughly and urged this Court to accept our argument that Blake v. McClung on the "within its jurisdiction" point. Justice Harlan's opinion of 1898 stands for the proposition that Alexandria simply can't qualify for equal protection relief because it doesn't do business in Maryland, it doesn't maintain a real office in Maryland, the only office is the home of its president; it's not incorporated in Maryland, it doesn't pay taxes in Maryland, all four, as with the McClung case, and that case remains good law today. It has been cited with approval several times. That's fully briefed.

Now, I want to get, though, to the justifications under equal protection because they cut just as much toward the commerce clause argument as they do towards the equal protection argument.

Maryland wanted to do several things with this amendment in 1974. First of all, it wanted to legitimize a haphazard practice with respect to indemnity agreements. It wanted to announce the principle that at least in Maryland indemnity agreements were valid. Your Honors know that there is a split of authority around the country on whether indemnity agreements are valid public policy documents. They are for these purposes in Maryland. Obviously, we can't affect the public policy of Virginia or Pennsylvania, and didn't purport to. That is why it is restricted to indemnity agreements in Maryland.

Now, it's interesting, too, that there are five other out-of-State processors who have gained the benefits over the years of the Maryland program, but only one, Alexandria, has brought this suit. Now, the reason is the other processors have just shifted their ground and have obtained vehicles more readily under the wrecker's certificate and haven't relied on indemnity agreements. This, I think, illustrates, in response to an earlier question, that this is an equal possibility.

Now, a second reason --

QUESTION: Does the record show that their input is

as great under these alternative methods as it was before?

MR. LORD: The record indicates, such as the record is on this point, that in a couple of specific instances attested to by an affidavit of a Mr. Gittleston, an officer of Alexandria, that several towers have not delivered the quantity of vehicles after July 1, 1974, to Alexandria that they delivered prior to that. But the record also shows that the money figures are unpersuasive and may help the State. There was no loss of revenue established.

It further establishes, however, and equally importantly, that there are other sources of vehicles. In fact, those sources picked up in Alexandria's case after the '74 amendment.

The second justification, under the McGowan, Dandridge, and San Antonio School District cases, these justifications are clearly satisfactory, are that owners gain additional protection because under these agreements an owner can look to a Maryland processor. Put yourself, if you will, in the situation of an owner whose vehicle has been wrongfully taken. If it's been destroyed by an out-of-State processor with no contacts in Maryland, not subject to process in Maryland, our position is firmly, contrary to a gratuitous statement in the district court's opinion, Alexandria is not subject to process in Maryland under any fair reading of our long-arm statute or this Court's principles.

QUESTION: You say it would be unconstitutional to reach them?

MR. LORD: What I am saying --

QUESTION: You say the State would be barred by the Constitution to have a long-arm statute that would reach them?

MR. LORD: I haven't gotten to that, your Honor. What I am saying, right now, for a Maryland resident who has been wronged, whose car has been wrongfully destroyed in Virginia, he has no relief in the Maryland courts.

QUESTION: Under the existing Maryland long-arm law.

MR. LORD: That's right. Now, it's possible that that could be expanded and broadened in light of this Court's holdings, but as it stands now, he would have to go to Virginia to get relief.

QUESTION: This is the owner of an eight-year-old inoperable vehicle hulk.

MR. LORD: Right. Inoperable, of course, could mean that a part or two --

QUESTION: Well, it's defined as cars without an engine, among other things.

MR. LORD: Without an engine is one category; otherwise inoperable is a second category, and that could simply mean that --

QUESTION: That it's out of gas?

MR. LORD: We discussed that before argument. That

may be pressing it. If it needed new spark plugs I think it would be inoperable.

QUESTION: Some of these are made of pure gold. It's such a valuable right on the part of the owner.

MR. LORD: Well, I guess beauty is in the eye of the beholder, your Honor. I think if the owner is in title; he may have a vehicle he has been holding for future appreciation, in his mind at least.

... QUESTION: .. under these agreements?
ments?

MR. LORD: I don't have any idea, your Honor.

What I am saying is since this statute has been in effect, it at least says that the owner can go against the Maryland processor. In effect, there is a second string to his bow.

QUESTION: That's your first reason.

MR. LORD: No. The first reason is the legitimization of these agreements in the first place, only in Maryland. The second is --

QUESTION: Do you go on the premise that indeed Alexandria is a person for purposes of the --

MR. LORD: That's correct.

QUESTION:: On that premise, but you don't concede.

MR. LORD: That's right.

QUESTION: But there isn't any State desire at all

to keep the bounty payments within the State of Maryland?

MR. LORD: Your Honor, I don't see how you can divine that from this record at all. The simple --

QUESTION: One reason would be that they might pick up Maryland income tax on them. They don't from Alexandria, maybe, I don't know.

MR. LORD: I think that's an additional justification, your Honor.

QUESTION: It's a pretty good one, don't you think?

MR. LORD: It is. But it raises questions that simply aren't in this case.

QUESTION: Precisely. It raises some constitutional questions.

MR. LORD: Right.

QUESTION: Is that why you are avoiding it?

MR. LORD: Not at all. Not at all. I think all we have to show under equal protection is that there are rational reasons that legislators at least could have thought.

QUESTION: What's the third.

MR. LORD: The third reason, your Honor, is that there is a tendency to have bounty payments come only on vehicles abandoned in Maryland if they are delivered to Maryland processors under indemnity agreements. Remember, now, the weakest possible evidence of title is an indemnity agreement, and the position here is that unlike the 56 vehicles that the

State apparently wrongfully paid for on behalf of Alexandria Scrap which were turned over to Alexandria from the District of Columbia police, if Maryland processors subject to Maryland jurisdiction are receiving these vehicles under indemnity agreements, there is a greater tendency that they will be vehicles abandoned in Maryland.

Now, I will come back in my remaining time to some of the other aspects of the case.

Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Ramsey.

ORAL ARGUMENT OF NORMAN P. RAMSEY,

ON BEHALF OF APPELLEE

MR. RAMSEY: Mr. Chief Justice, and may it please the Court: If I may, sir, I would like to lower this. Mr. Lord stands somewhat taller than I do.

MR. CHIEF JUSTICE BURGER: That's why we have it arranged that way.

MR. RAMSEY: It's very convenient, your Honor.

Let me address myself, if I may, to one of the introductory subject matters which may be the grounds of some sorts of confusion in this case. I think it was Mr. Justice White or possibly Mr. Justice Brennan who inquired concerning the impact on wreckers and what a wrecker was.

The wrecker, of course, under this statutory scheme -- I believe it was Mr. Justice Brennan -- the wrecker is a

man who does in fact maintain a yard. He is defined to be a man who maintains a yard, the purpose of the yard being that he may take from those cars which he has on the yard usable parts for the purpose of vending them to others who retain cars of the same vintage.

A tower, however, a term which Mr. Lord did not identify to the Court, he is the gentleman who comes out on the highways, maintains no yard in which he stores vehicles which have been the subject matter of wrecks, maintains no yard from which he vends spare parts, but who simply twos in the total automobile off the Beltway accident, and it is irreparable, cannot be repaired, and it is this tower who is not the subject matter of licensure under the Maryland organization statutory structure who is the large source of vehicle hulks. He is also the large source, if the Court please, of those vehicles which make use of the indemnity agreement.

QUESTION: He might dispose of the hulk he picks up either to a wrecker or a processor.

MR. RAMSEY: He could do either, Mr. Justice Brennan. He could go to either. And if he goes to a processor, it was in this area that you will see the subject matter of the appendices which are very detailed in analyzing Alexandria's performance, where they got their vehicles from -- their hulks, I should say more properly -- why it was that they felt this

constituted an impingement on the commerce, the interstate commerce, because needless to say, sitting as this Court does in this district, Alexandria Scrap is just over the Potomac, it is a relatively convenient location for the towing of hulks from that graveyard of automobiles that we call our Beltway around Washington. And it is a logical place to which vehicles may be towed, as distinct from a wrecker taking them in.

QUESTION: Mr. Ramsey, does the tower give an indemnity?

MR. RAMSEY: He did, Mr. Justice Marshall,

QUESTION: How can he? He doesn't have title to that car, does he?

MR. RAMSEY: Sir?

QUESTION: How does he get title?

MR. RAMSEY: Well, it would be an abandoned vehicle to which he would be giving title. It would be in excess of eight years. You note, sir, that the statute talks about vehicles in excess of eight years of age without motor -- indicating that they have no longer sort of a function as an automobile and have become an abandoned vehicle -- or otherwise totally inoperable.

QUESTION: Mr. Ramsey, according to Mr. Lord they don't have to be without motor, that's just one of several qualifications.

MR. RAMSEY: Without motor or inoperable, otherwise totally inoperable.

QUESTION: It means he doesn't have a distributor.

MR. RAMSEY: It could mean that, Mr. Justice Marshall, or spark plugs. But in any event, may I address myself to it and tell you the classic ways in which this might occur, sir?

In the event that you had a vehicle which you couldn't part with, as I did with some of mine, it simply died in your driveway and you wanted it towed away, you would have title. You might, however, over an excess of eight years not be able to locate the title, nor would you want to go to the cost and expense of applying for a new title, of a duplicate title for an ancient vehicle.

You might, on the other hand, suffer the ignominy of having parked in your front yard an abandoned motor vehicle which somebody else just pulled up and left, which we see on the streets of our cities at all times, utterly abandoned, stripped down by youngsters, without wheels, without distributor, without spark plugs, but a clearly abandoned vehicle.

An abandoned property -- and I'm not, of course, trying to teach the Court law as respects abandoned property, but abandoned property signifies to us just that. And the indemnity agreement really says to the processor, I, a tower, found this car under conditions which I deem it to have been an abandoned vehicle. If on the other hand there is any question

raised, I, sir, will indemnify you.

Now, here's where Mr. Lord's argument falls considerably short, because he attempts to direct this Court's attention to the necessity of having a Maryland agreement. That agreement does not inure to the benefit of the State of Maryland; that agreement inures to the benefit, in my case, of Alexandria Scrap. And if Alexandria Scrap should make the mistake -- and again, Justice Marshall, I am back to the line of inquiry which you addressed to me, sir -- if I should through--for, and on behalf of Alexandria Scrap say to my client, "Yes, sir, you may accept that indenmnification," and some judge or jury thereafter said, "That chattel had not lost its true ownership and you are a converter of the chattel," I would suffer whatever the civil and/or criminal consequences which might follow, although civil would be far more likely given the type chattel and the conditions under which it was found.

QUESTION: Mr. Ramsey, I thought Mr. Lord's argument was that if the processing of these hulks is limited to Maryland plants, that the owner could at least have someone within that jurisdiction to go to and sue for the conversion.

MR. RAMSEY: Well, he has the same person or persons in this line to sue for the conversion. Now, keep in mind, sir, that --

QUESTION: But in the case of your client, if Hughes

processes in Alexandria, a Maryland claimant to the hulk is going to have to go into the Virginia court. If Mr. Lord's argument is right that the bounty is limited to Maryland processors, he will have somebody within his own jurisdiction to sue. Do you disagree with that?

MR. RAMSEY: Yes, but I step back --

QUESTION: You disagree?

MR. RAMSEY: I step backward to your premise, sir.

I do not agree with Mr. Lord's argument, because under the regulations as they are enacted in Maryland, and we have adhered to them, we have an office in Maryland, our president lives in Maryland, and we maintain a license under Maryland law, and we may be reached by service of process by Maryland.

QUESTION: But we are being told by the Attorney General's office of Maryland that the Maryland long-arm statute doesn't apply. Certainly we are not going to sit here and decide a constitutional question trying to resolve that issue.

MR. RAMSEY: I don't think you need to, Mr. Justice Rehnquist, but I think that this same issue was addressed by a three-judge court which heard this below. It is discussed by Judge Kaufman who wrote the opinion for the three-judge court. The fact of our licensure in Maryland and the fact of our office in Maryland is discussed by Judge Kaufman, and the three-judge court had no difficulty whatsoever with the

fact that Alexandria Scrap could be subjected to the court processes of Maryland -- none. And I am saying to you, sir, that the structure of the Maryland Act -- and mind you, Mr. Lord attempts to direct your attention to the bounty program in its broad scope. We say to you that the bounty program is not what this case is about. If you read the record in this case, you will find, gentlemen of the Court, that when a \$16 payment is made to a processor, \$14 of it goes back out to the tower who delivers the hulk to the processor. The State's brief would have this Court believe, understand, or find that we are in this business and are constructing a \$1 million bailer or shredder and an enormous processing plant for the purpose of collecting bounties from the State of Maryland for hulk automobiles.

We are running a processing plant requiring some 50,000 to 60,000 hulks a year. Our constitutional complaint is that when the legislature of Maryland attempts to deprive our plant of the right to compete on an even footing in interstate commerce with those processors in intrastate commerce who also want 60,000 hulks a year to keep their gold-finger machine, as Mr. Lord described it, the one that takes a car and crams it into a 2 by 2 by 5 bail -- we want them and they want them.

QUESTION: Mr. Ramsey, may I ask --

MR. RAMSEY: Certainly, sir.

QUESTION: About \$219,000 that apparently Alexandria received in bounty, I think Mr. Lord told us.

MR. RAMSEY: That's correct, sir.

QUESTION: Are you suggesting that seven-eighths of that has gone back to towers?

MR. RAMSEY: I am suggesting, sir, that the record will sustain me in saying that essentially seven-eighths of it has gone back to the persons who deliver them to us, because we analyzed Mr. Lord's -- and you will note this dichotomy, really, between the State's approach and the approach of Alexandria in this case. We are unfortunately asking the Court to bring together divergent views of trains running on somewhat separate tracks. The State keeps talking about the money we have gotten. We keep talking about the hulks we have not gotten, because it is the hulk which is the subject matter of commerce; it is the hulk which Maryland has affixed an added value to by its bounty program. They have made it to the person who gathers it out of the woods, off the streets, out of the side yard of your home if you've abandoned it. It is to that hulk that they have affixed this added value.

QUESTION: Why isn't that entirely consistent with the commerce clause, Mr. Ramsey? It seems to me it's one thing for Maryland to prohibit you from shipping something out of Maryland. But if Maryland wants to bid up the price of hulks within Maryland, I would think that's quite consistent with

our prior cases.

MR. RAMSEY: I think it is not, Mr. Justice Rehnquist, although, having reviewed the various commerce clause cases in preparation for the argument, the commerce clause cases diverge in many respects, but it essentially says this: We, as a licensed person, participating in this program in accordance with the laws of Maryland and in the interstate, as distinct from intrastate, aspects of it, are entitled to be treated even-handedly and to have our fair shot at the market. They cannot appreciate the value of the hulk and then say that by virtue of the appreciation of the value of the hulk only a Maryland processor may have a crack at those appreciated hulks where we are in the State.

Now, you're mixing, admittedly -- or I am mixing; you are not, sir -- equal protection and commerce clause, but the cases and the considerations do tend to merge and overlap.

QUESTION: What do you think is your strongest case supporting your position on the commerce clause from this Court?

MR. RAMSEY: On the commerce clause? I think the Court will note, and it is not difficult to note, the repetition and --

QUESTION: Are you going to answer the question?

MR. RAMSEY: I am, sir. I'm going to come back to the cases of Hood, Polar Ice Cream, Dean Milk, Baldwin v. Seelig -- these are in the milk field essentially, Mr. Justice Rehnquist,

you will recall -- and Pike v. Bruce Church, which is the Arizona cantaloupepacking case, and Halliburton Oil, which is the -- that is the group of cases which I think you will find essentially are the heartland of our commerce clause argument.

QUESTION: They were all prohibitions, though, by the State against doing something rather than simply bidding up the price, weren't they?

MR. RAMSEY: I don't think that that's a fair description of the totality of the opinions, Mr. Justice Rehnquist. I think that's the posture in which the State has attempted to put them. I do not believe that that fairly states the scope of the cases as this Court has laid them down in connection with --

QUESTION: So is that a valid distinction between that line of cases and this one?

MR. RAMSEY: Is there any valid distinction?

QUESTION: No. Even so. Even if they are prohibitions, does it make them any less valid precedent in your favor here?

MR. RAMSEY: I think not, sir. Mr. Justice Blackmun, as you know, sir, when you intermix the concepts of each of these various cases and where the Court has talked in terms of a prohibition in a given instance as being constitutionally interdicted, obviously the thrust of the opinion may tend that way. We submit, however, sir, that they are equally valid in

support of our position, which I think is the precise answer to the exact question which you addressed to me.

QUESTION: Well, I was trying to show up your argument a little bit.

Let me go back to a factual difference. I think Mr. Lord said that this bounty is split 50-50, and you say it's split --

MR. RAMSEY: I have misled you slightly, sir, by the way I put it. If you have a wrecker who delivers under a wrecker's certificate, that's the wrecker, the man with the yard and he strips a car for parts, it's split \$8 to the wrecker and \$8 to the processor. On the other hand, if you have an unlicensed -- a tower, the gentleman I earlier started to describe, the man who picks up the inoperative car but who does not retain them for use or cannibalizing for parts, then \$16 goes the processor, and the processor rebates and has for year \$14 of the \$16 to the man who delivered it to him.

Have I clarified the problem, Mr. Justice Blackmun?

QUESTION: I wanted to get it straight so that I know we are not quibbling about facts here.

MR. RAMSEY: No. I think there is no disagreement between the parties that there is a distinction between a wrecker and a tower, no disagreement that the statutory structure carries an \$8 and \$8 breakup where it's a wrecker who delivers the hulk, and you can visualize the logic of it.

He has presumably cannibalized the hulk down.

QUESTION: Now, Jack Benny takes his 1908 Maxwell up before Alexandria Scrap and it died at your front door and you take it over and there isn't any antique value to it. Who gets the money?

MR. RAMSEY: If a tower brought it in?

QUESTION: Jack Benny drove it up and it dies on your front door.

MR. RAMSEY: Then we would talk to him about the market value of a scrap hulk at that point. We would not talk bounty. He is not qualified to get bounty. He is not a wrecker and he's not a tower, and he's not anything in the delivery market. He's an owner. And may I say, sir, if you drove your own car up to Alexandria, we would talk to you, sir, on the basis of what is the going value of an automobile --

QUESTION: You would get the bounty then. This is what I am trying to get out of you.

MR. RAMSEY: We would get the bounty and we would pay you what may be called fair market value, your Honor. That would be the answer to that.

QUESTION: And if he knew you were going to get \$16, he might want a little more than he would without that.

MR. RAMSEY: If it were Jack Benny and he was still alive, God bless him, I think he would probably want \$20. I think we would resist, but I think he would ask for it.

QUESTION: May I ask one more question, Mr. Ramsey. Did I understand that you said the larger proportion of the hulks that Alexandria acquires in Maryland come from towers?

MR. RAMSEY: That's correct. And that's in our brief.

QUESTION: What's the percentage, roughly, between towers and wreckers?

MR. RAMSEY: About two to one, sir. You will find a full schedule of where we got them, who we got them from, and the number of hulks which we got from these two categories.

QUESTION: Does an owner who thinks that he has had his car stolen illegally, does he have a cause of action on the indemnity against the tower who picked it up?

MR. RAMSEY: I suspect, sir, if you are talking about -- we are back into that esoteric field of who can get title from a thief, and I think the answer has always been nobody. Therefore --

QUESTION: I wonder why that has gone through that chain.

MR. RAMSEY: It would be a claimed right, an asserted right to property in the hulk, but in fact nobody after the owner from whom it was stolen could acquire genuine title.

QUESTION: What I am wondering is, if Maryland says, we are trying to, among other things with this rule, we are trying to protect the owner so that he will have somebody in the State of Maryland he can come to --

MR. RAMSEY: Yes.

QUESTION: Actually the indemnity agreement runs from the fellow who brought it in.

MR. RAMSEY: To the processor.

QUESTION: To the processor.

MR. RAMSEY: That's correct, sir.

Now, the only way in which that would be helpful, as a qualified processor, and Alexandria remains a qualified processor under Maryland law right down to today, but we would have filed with the Department the title, the VIN plate, the vehicle identification number plate, the indemnity agree. We would show by that indemnity agreement that Alexandria Scrap, a processor which has an office in Silver Spring, Maryland, and holds a license under the regs, received a 1969 Oldsmobile which Mr. Justice White believes was stolen from his front yard, and that it was received from Joseph Smith Hauling Company.

Now, when you come to us and say, "I think my car was stolen," nobody had good title. The Department would be able to tell you that Joseph Smith of Rockville was the tower who hauled it away, Alexandria Scrap was the processor who compressed it into a 2 by 2 by 4 --

QUESTION: Really, if you could get at the fellow who gave the indemnity agreement, and if he was any good, it wouldn't make any difference who the processor was.

... MR. RAMSEY: Well, I think that's correct. It's the L.D. Pocket doctrine, which one would you look to for the easiest collection.

But as a practical matter, if you wanted to get to us, you have us in Maryland and you have us under the thumb of the Maryland Vehicle Administration just as surely as you have everybody else, because of our office, our presidency.

QUESTION: Incidentally, does the license -- is that issued on condition that you be available for process?

... MR. RAMSEY: It is -- well, in the early stages it was that you had to have a part of a certain type and you --

QUESTION: You are familiar with what I mean, Mr. Ramsey. Often if you come into a State, you get a license from the State only on condition that you will accept processing in lawsuits --

MR. RAMSEY: It's not stated in terms of process; it's stated in terms of maintain an office in the State, and you would have to certify where that office is.

This is what our three-judge court in effect said. Here they are, these are the circumstances under which this particular processor finds itself.

Now, insofar as the comment made by Mr. Lord concerning the justifications under the equal protection aspects of the argument, we have addressed the equal protection aspects of the argument and addressed them fully in the brief

which we have filed, and we submit that there can be shown to be no rational basis for what the State says it was doing.

QUESTION: What about the McClung argument that you are not a person?

MR. RAMSEY: Well, we think we fully answered that, Mr. Justice Brennan, in connection with it. It essentially turns itself on essentially what we were talking about earlier. We are licensees, they let us in, they laid down their conditions, we met them. There we are. And we ought to be entitled to be treated fairly and with no invidious discrimination against us while we are within that State and operating.

What they are trying to do -- and I suggest to the Court that the real problem with this case is this: The State's brief describes, and State counsel below in argument before the three-judge court, candidly conceded that when this statute which we had before the Court here today went into the legislature of Maryland, it did not discriminate against out-of-staters. It did not, gentlemen of the Court, restrict the payments of bounty to cars found abandoned within Maryland. It does not today. It has to do with cars formerly titled in Maryland. Title and abandonment spot are two entirely different things.

QUESTION: Wait a minute, Mr. Ramsey. Under your theory, then, cars formerly titled in Maryland but presently being driven around Vermont or New Hampshire would be subject

to the Maryland law. Does that make much sense? If Maryland is trying to get hulks off of its --

MR. RAMSEY: Yours is a reduction to absurdity. I am willing to agree that it does reduce it to the absurd. But you've got to visualize that what we are really confronted with here in Maryland is the problem of the District of Columbia.

QUESTION: What interest does Maryland have in getting better-looking junk yards in the District of Columbia?

MR. RAMSEY: No, no. They don't -- Now you have moved from one aspect of the Act into the other aspect of the Act.

QUESTION: You're the one that's doing the moving.

MR. RAMSEY: I'm talking about the towers. When a tower comes out of D.C. with a car with a Maryland title, the Act says, and the inquiry put to me, I submit, is why did the State say it was interested in cars titled in Maryland? That's what the Act says. It does not say cars abandoned in Maryland. As to wrecker's yards, it says, yes, we are cleaning out our own wreckers' yards. But as to vehicles, such as these indemnity agreement-type vehicles, it talked in terms of titled in, not abandoned in, nor had the State nor had the Administrator nor had the legislature, nor had anybody, and this was conceded in colloquy before the three-judge court, nobody had ever said that it was required that these cars be abandoned in Maryland.

QUESTION: How does the three-judge court construe this statute?

MR. RAMSEY: They construed it as violative of both the commerce clause --

QUESTION: I know, but how did they -- does the bounty reach cars abandoned outside Maryland?

MR. RAMSEY: They clearly say, and Judge Miller, I think, put the spot right on it in the colloquy, yes, it would. And today --

QUESTION: As long as they were titled, the three-judge court construed the Maryland law to mean that.

MR. RAMSEY: That's what it says and that's what --

QUESTION: But I thought they had a hang-up in the District, about those two affidavits where Judge Kaufman said that it is suggested that there are some recovered from the District of Columbia, but he intimated that that wasn't critical to the court's decision.

MR. RAMSEY: It was an irrelevant fact, Mr. Justice Rehnquist, with what the court was really saying, because never had there been any regulation, statutory requirement, or any other requirement the car be abandoned in Maryland in order to be the subject of bounty. And counsel for the State conceded that. The regs show it. The statute shows it. And that was what Judge Kaufman was addressing himself to as respects that.

Now, as respects to where it was claimed that two processors had submitted the same VIN plate, or made claim on the same car, there was absolutely no evidence in the record that our man didn't in fact process, that our man wasn't the one who did process. And that's what Judge Kaufman said on that, Mr. Justice Rehnquist, I think you will find in the opinion of the three-judge court.

But in essence what the court did was analyze what was before it and say that there are no relevant or material considerations, and that this is not a rational basis for the State's amendment because as a practical matter the statute has never been enforced this way, the regs have never been enforced this way. It simply hasn't worked this way. And to say now that this is a rational basis is simply not supportable. And it is not a rational basis for what was claimed to be the discrimination, which was admitted to exist.

QUESTION: Mr. Ramsey, just going back to your commerce argument for a moment, are there any cases other than this one dealing with the problem of whether the payment of a subsidy can ever be a burden on interstate commerce?

MR. RAMSEY: I have no knowledge, and my research did not develop a case which dealt with a bounty payment as such, Mr. Justice Stevens, and I cannot answer you in the affirmative.

QUESTION: On the equal protection point, let me

pursue the same line of inquiry that Justice .. just asked you about. If a Western State is having problems with coyotes and passes a bounty law, which you may or may not be familiar with, so much a head for killing coyotes, is there any constitutional problem if it limits that bounty to its own residents?

MR. RAMSEY: I would say if it -- I may not live in a Western State, but I have watched Gunsmoke enough to have a passing familiarity with the concept. My answer to that would be that so long as there was no invidious discrimination against someone who was a licensed bounty hunter -- this would put it in our category -- if you license a bounty hunter and the guy is in there hunting, you ought to treat him fairly with every other bounty hunter.

QUESTION: Supposing on his license you say, "You are out of State and you can hunt, but you are not entitled to the bounty."

MR. RAMSEY: You would be requiring -- your home State of Arizona, let's say, would require that the coyote be shot in Arizona by an Arizona citizen delivered to an Arizona sheriff, and then you get your \$2 or whatever it may be. I would think you would come back, Mr. Justice Rehnquist, to the essential problem of whether the coyote as such is an article of commerce. Scrap, we think, is fully established on this record.

QUESTION: Well, this is equal protection. I'm saying -

MR. RAMSEY: Equal protection?

QUESTION: Yes.

MR. RAMSEY: As respects equal protection, I think it would be a much closer argument that you could restrict it to the citizens of Arizona and require them to shoot them there, turn them in there, and get the bounty there, and to be citizens of the State in which the coyote was in fact captured, so to speak. But I don't think you could stop me as a Marylander necessarily from coming in there, if I moved in and had a residence as distinct from the citizenship --

QUESTION: What if Maryland wanted to make sure there is enough fresh milk to supply the needs of the citizens and decided that it would subsidize dairy farmers in Maryland, its own dairy farmers in Maryland, and it made it worth their while. But it just won't subsidize the production of milk outside the State of Maryland.

MR. RAMSEY: Yes, sir.

QUESTION: And what it does, then, is to immediately exclude from the market just for economic reasons, there is no formal exclusion, but for economic reasons it excludes from the market milk producers from Virginia.

MR. RAMSEY: Yes, sir.

QUESTION: And the --

MR. RAMSEY: You don't subsidize those milk producers.

QUESTION: Yes, they are just not subsidized, and the milk that used to flow into Maryland from Virginia dair farms no longer flows there, as the result of the bounty, so-called.

MR. RAMSEY: I think, Mr. Justice White, you pose the other side of the problem of the category of commerce clause cases that I rely on.

QUESTION: Here comes the Virginia milk producer in and saying this law burdens interstate commerce.

MR. RAMSEY: I think this Court has dealt with the converse of it, that is to say, where the Virginian wished to come in and buy the Maryland milk in order -- that's the New York Milk Producers case and --

QUESTION: But Maryland doesn't try to keep them out. They say send it all in, you just have to compete in our market, that's all.

MR. RAMSEY: That's right, but --

QUESTION: We think you have good nice fresh milk and if you want to sell it here, sell it. The Virginia fellow says, "I'm awfully sorry, I can't compete with you."

MR. RAMSEY: That's correct.

QUESTION: Because of your bounty.

MR. RAMSEY: He doesn't choose to come in. But that is a supplement which they are giving to their own citizens in that sense. And all I am saying is that when you admit us

to participate in your market, as we have been admitted in the past, that you cannot then impinge on interstate commerce we as one of the leading representatives of interstate commerce separated by a bridge from Maryland, is what it amounts to, and not even a bridge because --

QUESTION: What's wrong with Maryland saying if we want enough automobile processors and enough people who will process these cars, we want enough of them a round to get the job done. And to make sure they are going to get the job done, we are going to give them a little bounty. As long as they've got plants here, then we can make sure they are going to get the job done. We have just been subsidizing our milk farmers and we know how well it works. So we are going to make sure we grow up enough plants inside here to get the job done. We're just not going to give it to anybody else.

MR. RAMSEY: I would think, sir, that then you would be dead on my case in part, and I think you would be guilty of a situation in which the commerce clause would impact.

QUESTION: Not in the milk case, but in the car case.

MR. RAMSEY: Sir?

QUESTION: Well, the State could do it in the milk case but not in the car case.

MR. RAMSEY: I think there are differences between those two illustrations which the Court has posed to me, and I simply submit that on the second of the illustrations which you

gave me, it would be in problems as respects commerce clause. In the first of them you would be further away, but you might be subject to attack, such as in the Hood case and in the Seelig case where you had the retention for own use within own State to the disadvantage of one of the sister States who seek to serve its market out of your available resources. And the Constitution in effect permits us to go from State to State free of improper impediments against our right to deal.

Now, if the Court please, I note that I am in the closing minutes of my presentation, and I would simply return to one additional point made by Mr. Lord in connection with 56 units which he says on the record were wrongfully paid for to Alexandria. I will submit that upon examination of the record, you will not find evidence that Alexandria was paid for any units it was improper to pay it for. These, again, revert to the substance of Mr. Lord's argument that if you pick a car up out of Maryland, that you needs must restrict the right to receive bounty.

Now, for the Court's benefit, in the record, although not printed in your appendix, at record pages 261 through 266, the Court will find specimens of indemnity agreements which were agreed to be the forms which were and had been in use. Upon checking those indemnity agreements accepted by the State of Maryland, you will note that Alexandria Scrap was the only one whose indemnity agreement showed where the vehicle was

picked up. All other indemnity agreements simply showed the license number, the make, and the model. There was nothing, no question raised with respect to where these vehicles had been abandoned in order to accept indemnity agreements from various persons who had participated in the program.

And I thank the Court very much.

MR. CHIEF JUSTICE BURGER: Do you have anything further, Mr. Lord?

REBUTTAL ARGUMENT OF HENRY R. LORD ON
BEHALF OF APPELLANTS

MR. LORD: I think I have a couple of minutes remaining.

MR. CHIEF JUSTICE BURGER: Yes, you have, about 6 minutes.

MR. LORD: Thank you, your Honor.

I would like to pick up on a point raised by Mr. Justice Blackmun and Mr. Justice Stevens relating to the commerce clause.

The State's position is that this case stands alone because -- first of all, it doesn't relate to the milk industry, as all the other cases seem to. Secondly, because this is a subsidy program established by the State of Maryland. And the argument presented here, I think is unique in this Court, namely, that a subsidy program established by the State that has yielded enormous sums of money, no matter how split up

that money has been at the whim of the plaintiff in this case, now claims that it is receiving less than it was receiving before.

You have to look at this 1974 amendment as part and parcel of the 1969 legislation, and indeed all the amendments to that legislation, and treat it as if everything passed at one time, and then apply the test under commerce clause and equal protection to it, and the State submits that the statute passes muster under both equal protection and commerce clause.

Now, also under the commerce clause -- the real market here is not eight-year old hulks abandoned in Maryland and titled in Maryland. The market is, in the antitrust sense, scrap. That is the commerce.

Now, there is no burden on interstate commerce as such here. There is an alleged burden on one who allegedly participates in a State commerce, namely, the plaintiff. Now, Pike v. Bruce Church Company is a perfect case in point to illustrate what I am about to say. Those facts lead to the conclusion that it's an incidental burden which is permissible, we submit, and as long as local, legitimate public interest are served, this dovetails the equal protection argument and the commerce clause argument. And in fact, if you want to see large industries that were hit in the pocketbook, don't look at Alexandria Scrap because they haven't established it. Look at the American Can Company who closed up its Washington

plant when Oregon passed a law which says that you can't get a rebate on one-way cans any more. Look at Procter & Gamble, a case cited in our reply brief in the Seventh Circuit, which attacked the city of Chicago's antiphosphate ordinance. There there is a demonstrable financial loss in the short run and immediate. It's not demonstrated in this record, and I don't want to quarrel with this record, because what's before the Court is in effect something --

QUESTION: In most cases the programs were not discriminatory.

MR. LORD: The allegations, your Honor, in those cases were that they were discriminatory because --

QUESTION: The Court found otherwise.

MR. LORD: The Court found otherwise, but there were some serious allegations because of the distances from the market that, for instance, the American Can case particularly, you simply could not compete effectively in that market because you are too far away from it.

Similar secondary arguments were raised. In the Procter & Gamble case there was a secondary effect on all the markets outside of Chicago. The Court found that that didn't present a commerce clause claim.

Now, I do want to say something about this point of the office of this company, because I hadn't thought it would become so important, but it has. The brief states that the

office of Alexandria Scrap in Maryland in fact is on Ellsworth Drive in Silver Spring, and it's the home of the president. They don't even call it --

QUESTION: What did the three-judge court find?

MR. LORD: The three-judge court found that there was an office in Maryland in compliance with the --

QUESTION: And that they were subject to process here.

MR. LORD: And that's the point I want to come to right now.

QUESTION: Didn't they find that?

MR. LORD: They certainly did, your Honor.

QUESTION: Are we going to disagree with that about Maryland law?

MR. LORD: I certainly think you can, your Honor.

QUESTION: I know we can, but do we do that normally?

MR. LORD: I don't know that you do, but I don't know that a three-judge court reaches out and takes an issue that was never argued and never was below.

QUESTION: It's still their construction of Maryland law.

MR. LORD: That's true, but it's not a fact-finding; it's a legal finding, and it's simply wrong. And I don't see why your Honors can't review that fact-finding.

QUESTION: We normally don't disagree with local

courts on local law, do we?

MR. LORD: No, you don't, your Honor, but this is a Federal court interpreting Maryland law on a point never raised.

And tied to that, Mr. Justice Brennan, is the fact that very ardently below Alexandria urged -- and it's all over the record below -- that it was not doing business in Maryland. And this ties back, of course, to the --

QUESTION: Do they have a license?

MR. LORD: They have a license, your Honor, but that's not doing business.

QUESTION: And what does the license show the office to be?

MR. LORD: The license shows a Maryland address, I think.

QUESTION: Which is the same one --

MR. LORD: The Silver Spring address.

QUESTION: One time you recognize them as having an office, and now you say they don't, and it's the same State of Maryland.

MR. LORD: An office for 14th amendment purposes is what I am talking about here doing business, your Honor. And I submit that this simply doesn't qualify. That's the one alleged contact in Maryland.

QUESTION: Do they have a license to do business?

MR. LORD: They have a license to accept money in Virginia from the bounty program.

QUESTION: To do business.

MR. LORD: Not to do business.

QUESTION: Is the license in the record?

MR. LORD: The license is in the record.

QUESTION: I'll find it.

MR. LORD: They are an out-of-State processor not doing business in Maryland.

What I started to say before is that at the behest of the court below, the State's motion for dismissal for lack of a substantial Federal question was converted into a cross-motion for summary judgment. The State sees no need to remand this case. The State stands now, as it did then, on that motion to dismiss. Neither of the two constitutional arguments raised by the plaintiff will survive scrutiny.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 2:28 p.m., oral argument in the above-entitled matter was concluded.]