

ORIGINAL

In the

Supreme Court of the United States

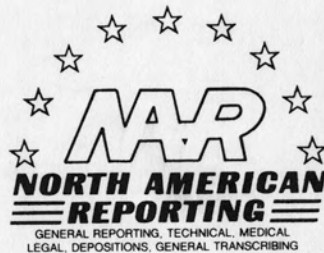
OFFICIAL TRANSCRIPT OF PROCEEDINGS

UNITED STATES RAILROAD RETIREMENT )  
 )  
 BOARD, )  
 )  
 APPELLANT, )  
 )  
 V. )  
 )  
 GERHARD H. FRITZ, )  
 )  
 APPELLEE. )  
 )

No. 79-870

Washington, D.C.  
October 6, 1980

Pages 1 thru 50.



1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - :  
3 UNITED STATES RAILROAD RETIREMENT :  
4 BOARD, :

5 Appellant, :

6 v. :

No. 79-870

7 GERHARD H. FRITZ, :

8 Appellee. :  
9 - - - - - :

10 Washington, D. C.,

11 Monday, October 6, 1980

12 The above-entitled matter came on for oral argument at

13 10:10 o'clock a.m.

14 BEFORE:

15 WARREN E. BURGER, Chief Justice of the United States  
16 WILLIAM J. BRENNAN, JR., Associate Justice  
17 POTTER STEWART, Associate Justice  
18 BYRON R. WHITE, Associate Justice  
19 THURGOOD MARSHALL, Associate Justice  
20 HARRY A. BLACKMUN, Associate Justice  
21 LEWIS F. POWELL, JR., Associate Justice  
22 WILLIAM H. REHNQUIST, Associate Justice  
23 JOHN PAUL STEVENS, Associate Justice

24 APPEARANCES:

25 EDWIN S. KNEEDLER, ESQ., Assistant to the Solicitor  
General, Department of Justice, Washington, D. C.  
20530; on behalf of the Appellant.

DANIEL P. BYRON, ESQ., McHale, Cook & Welch, 1122  
Chamber of Commerce Building, Indianapolis, Indiana  
46204; on behalf of the Appellee.

C O N T E N T S

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ORAL ARGUMENT OF

PAGE

EDWIN S. KNEEDLER, ESQ.,  
on behalf of the Appellant

3

DANIEL P. BYRON, ESQ.,  
on behalf of the Appellee

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EDWIN S. KNEEDLER, ESQ.,  
on behalf of the Appellant -- Rebuttal

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1 P R O C E E D I N G S

2 MR. CHIEF JUSTICE BURGER: We will hear arguments first  
3 this morning in No. 79-870, United States Railroad Retirement  
4 Board against Gerhard Fritz.

5 Mr. Kneedler, I think you may proceed whenever you're  
6 ready.

7 ORAL ARGUMENT OF EDWIN S. KNEEDLER

8 ON BEHALF OF THE APPELLANT

9 MR. KNEEDLER: Mr. Chief Justice, and may it please  
10 the Court:

11 This case is before the Court on direct appeal from  
12 the United States District Court for the Southern District of  
13 Indiana. The District Court held that Section 3(h)(1) of the  
14 Railroad Retirement Act of 1974 is unconstitutional under the  
15 equal protection component of the Fifth Amendment due process  
16 clause.

17 The Court rested this holding on its conclusion that  
18 Congress had no rational basis for excluding members of a certi-  
19 fied class in this case for eligibility for the special benefit  
20 provided under that section.

21 The Railroad Retirement Act provides a system of  
22 retirement disability and survivor benefits for persons who pur-  
23 sue careers in the railroad industry, just as the Social Security  
24 Act provides these benefits for persons who pursue careers in  
25 other industries. Indeed, this Court observed in 1963 in Eichel

1 v. New York Central Railroad Company, quoting a lower court deci-  
2 sion, that the Railroad Retirement Act is substantially a social  
3 security act for employees of common carriers.

4           Railroad retirement and social security have been  
5 separate systems since their inception in the 1930s but over the  
6 years they have been integrated in many respects. Congress inte-  
7 grated the two programs even further when it thoroughly revised  
8 the Railroad Retirement Act in 1974. Section 3(h)(1) at issue  
9 in this case is a product of these further efforts at integra-  
10 tion. That section limits eligibility for what Congress per-  
11 ceived to be a windfall accruing to certain persons who were eli-  
12 gible to receive both social security and railroad retirement  
13 benefits under prior law.

14           Because the relationship between social security and  
15 railroad retirement provides important background for addressing  
16 the issues presented in this case, I would first like to briefly  
17 describe that relationship and the origins of Section 3(h)(1).  
18 I will then explain Appellee's constitutional challenge to  
19 Section 3(h)(1) in this case.

20           Railroad retirement benefits are paid out of a railroad  
21 retirement account established in the Treasury and financed by  
22 payroll taxes imposed on carriers and their employees. In 1951  
23 Congress instituted a financial interchange between this railroad  
24 retirement account and the social security trust fund, which was  
25 designed to place the trust fund in exactly the position it would

1 have been in if railroad work had been covered by the Social  
2 Security Act. Under this financial interchange, funds are trans-  
3 ferred each year from the railroad retirement account to the  
4 trust fund in amount equal to the taxes the carriers and their  
5 employees would have paid if they'd been covered by social  
6 security. In return funds are transferred back from the trust  
7 fund to the account in amount equal to the benefits that would  
8 have been paid to retired railroad workers, their survivors, and  
9 dependents, if railroad work had been covered by the Social  
10 Security Act.

11 The effect of this arrangement was to provide a type  
12 of reinsurance for the railroad retirement system. However, it  
13 became increasingly apparent in the years following 1951 that  
14 this arrangement did not have the desired effect in the case of  
15 employees who were entitled to receive both social security and  
16 railroad retirement benefits, perhaps as a result of having split  
17 their careers between work covered by the one act and work  
18 covered by the other act.

19 QUESTION: You said "perhaps." It would always be the  
20 result of that situation.

21 MR. KNEEDLER: But -- yes; yes. Well, one exception  
22 might be where a person was working full time in the railroad  
23 industry and had moonlighted, in effect, in a social security  
24 job. I suppose that's splitting --

25 QUESTION: He's splitting his career in a different way.

1 MR. KNEEDLER: Right. This -- the problem resulted be-  
2 cause under the financial interchange program, whenever a retired  
3 railroad worker received social security benefits directly from  
4 the trust fund, the reinsurance payment from the trust fund to  
5 the railroad retirement account was reduced by the amount of the  
6 social security benefits. The result was a shortfall in the in-  
7 come to the account necessary to pay the railroad retirement  
8 benefits. But despite this shortfall, the individual beneficiary  
9 for whom that reduction was made remained eligible to receive his  
10 full railroad retirement annuity.

11 This shortfall therefore resulted in a substantial and  
12 accelerating drain on the assets in the railroad retirement  
13 account and was a substantial cause of the serious financial  
14 position of the account by the last 1960s. Aside --

15 QUESTION: What's the -- Mr. Kneedler, under the Social  
16 Security Act standing alone, is there a vested interest in the  
17 particular pattern of payments?

18 MR. KNEEDLER: No, this Court held in *Flemming v.*  
19 *Nestor* that social security benefits are noncontractual and that  
20 Congress may alter or even eliminate them at any time.

21 QUESTION: They can be given and they can be taken  
22 away.

23 MR. KNEEDLER: Exactly, and two terms ago, in this  
24 Court's decision in *Hisquierdo v. Hisquierdo*, the Court applied  
25 this same understanding to the Railroad Retirement Act.

1                   Aside from the financial difficulties that these dual  
2 benefits created, it was also perceived by the late 1960s that  
3 the payment of dual benefits was inequitable because a person who  
4 split his career between railroad and nonrailroad work received  
5 more in combined benefits than a person would receive if he had  
6 spent his entire career in an industry covered by just one act or  
7 the other.

8                   QUESTION: But isn't this also true of people who might  
9 spend 20 years with General Electric under social security and  
10 then go into government service and have -- be part of civil ser-  
11 vice retirement?

12                   MR. KNEEDLER: Yes, it is, and the reports on the 1974  
13 legislation do call attention to the fact that this problem of  
14 overlapping benefits does arise in several different situations  
15 and there is no deduction in the manner of this case in those  
16 other situations. But the distinction that was perceived here,  
17 in the committee reports was that the railroad retirement system  
18 is different because it was really designed as a social security  
19 system, a parallel program, and there was a financial interchange  
20 between the two that does not occur, for instance, in the case of  
21 military retirement or federal civil service retirement.

22                   And in addition, in those cases, in federal civil ser-  
23 vice and military, the Government stands as employer to the per-  
24 sons who were receiving the benefit. Here, in this case, the  
25 Government is using its taxing and spending power, or the power



1 to regulate interstate commerce, in collecting revenues and pay-  
2 ing benefits in the private sector. So these differences, I think  
3 think, serve to distinguish why Congress took the first step in  
4 integrating the two programs under the Railroad Retirement Act.

5           Against this background Congress sought in the 1974 act  
6 to integrate the two programs further and to phase out the wind-  
7 fall that was perceived to result from the receipt of dual bene-  
8 fits. First, Congress divided up the basic railroad retirement  
9 benefit that had been paid under prior law into two components  
10 which were discussed in this Court, by this Court, in *Hisquierdo*  
11 two terms ago.

12           The lower tier of those benefits is exactly comparable  
13 to what the person would receive under the Social Security Act.  
14 The upper tier is smaller in amount and computed solely on the  
15 basis of railroad work. In order to eliminate the dual benefit  
16 problem, however, Congress provided that the first tier of bene-  
17 fits, the one that corresponds to social security, would be re-  
18 duced whenever the retired railroad worker received social secu-  
19 rity benefits directly from the trust fund. This eliminated  
20 the windfall, it eliminated the drain on the railroad retirement  
21 account, and it also had the effect of passing through to the  
22 individual beneficiary the reduction that had been made in the  
23 reinsurance payment because of the receipt of social security  
24 benefits.

25           Although these changes were designed to eliminate the

1 dual benefit problem in the future, Congress did include or  
2 carry forward in the 1974 act certain transitional provisions to  
3 preserve this windfall element for certain people who may have  
4 been eligible to receive benefits under both acts prior to 1974.

5 This transitional or "grandfather" type of protection  
6 is provided by Section 3(h) of the Act, the section that is at  
7 issue in this case. Section 3(h) provides yet a third tier of  
8 benefits under the Railroad Retirement Act for certain of the  
9 persons whose first tier was reduced because they were receiving  
10 dual benefits. Thus, in effect, the third tier adds back what  
11 was taken away under the first tier, and the effect is to isolate  
12 in a separate section and as a separate benefit that portion of  
13 the combined social security and railroad retirement benefits  
14 that Congress had perceived to be a windfall or an overlap under  
15 prior law, and the act limits the eligibility for these benefits  
16 to certain individuals who may have been eligible, who would  
17 have been eligible to receive these dual benefits under prior  
18 law.

19 First of all, everyone who is retired and already re-  
20 ceiving benefits under both programs on the effective date of the  
21 act, December 31, 1974, may continue to receive benefits under  
22 both programs, including the windfall element, although this  
23 windfall element is not increased with the cost of living over  
24 time. It's frozen from the date of retirement.

25 For persons who were not yet retired in 1974, however,

1 the standards for determining eligibility for being protected  
2 under the grandfather provisions depend on whether the person was  
3 -- in general, on whether the person was affiliated with the  
4 railroad industry in 1974 or whether he had left the industry and  
5 had started to pursue other work. Employees who were still work-  
6 ing in the railroad industry in 1974 or had what the act terms  
7 "a current connection" with the industry, having worked 12 out of  
8 the preceding 30 months -- the two of them together I would call  
9 an affiliation with the railroad industry -- those persons are  
10 eligible to receive this transitional windfall benefit if they  
11 had completed the necessary ten years of railroad retirement and  
12 the necessary amount of social security work, ordinarily 40  
13 quarters, to complete the eligibility requirements under both  
14 acts by December 31, 1974, when Congress changed the law.

15 In addition to these persons who still had an affilia-  
16 tion with the industry, Congress also included in this category  
17 long-term employees who had 25 years of railroad service even  
18 though they may have left railroad work when the 1974 act went  
19 into effect.

20 Persons who had left railroad work before 1974 but  
21 did not have the 25 years of eligibility were treated differently  
22 under the act. They could receive a windfall element only if  
23 they had satisfied the length of service requirements under both  
24 acts when they left railroad work. And the amount they received  
25 is somewhat smaller. It's under Section 3(h)(2) of the act.

1 It's smaller because the amount of the benefit is calculated on  
2 the basis of what they expected to receive when they left rail-  
3 road work, as opposed to later, in 1974.

4           Thus, if a person left railroad work in 1966, for  
5 example, and had ten years of railroad work but had not yet  
6 worked 40 quarters in social security, he would not be eligible  
7 under the act to receive any windfall or carryover benefit be-  
8 cause it was not until later that he became qualified to receive  
9 social security benefits.

10           The present case, challenging the constitutionality of  
11 these qualification provisions in Section 3(h)(1) was filed in  
12 1976. I believe Fritz was the representative of the certified  
13 class of beneficiaries under the Act who had become eligible to  
14 retire after 1974 when the act went into effect, but before  
15 January of 1977. That happened to be the span the court defined.

16           Persons who were eligible to retire but were not eli-  
17 gible to receive the windfall benefit because they had not  
18 either been affiliated with the railroad industry in 1974 or had  
19 not completed the necessary qualifications under both acts in  
20 whatever earlier year they may have left the railroad industry.  
21 At least -- yes, sir?

22           QUESTION: Are there bills pending in the Congress to  
23 remedy this situation on a generous basis? In other words, to  
24 reextend the benefits?

25           MR. KNEEDLER: There have been bills introduced in each

1 of the three -- I guess, the last two Congresses, and those bills  
2 have not been enacted.

3 QUESTION: Have they made any progress at all as far as  
4 you know?

5 MR. KNEEDLER: They have not been reported out of  
6 committee.

7 QUESTION: It is true that if an employee works only  
8 under one act, that for the same number of years -- as Mr. Fritz,  
9 for instance, that he would receive much less.

10 MR. KNEEDLER: If he worked only under one act in --

11 QUESTION: Under one act. This is your windfall ap-  
12 proach?

13 MR. KNEEDLER: Right, right. If he worked under one  
14 Act -- in other words, the reduction or the exclusion from  
15 eligibility for the windfall element puts him in the same posi-  
16 tion as if he had worked under only one act.

17 QUESTION: Is there any evidence in the record about  
18 labor-management connivance in reaching this result?

19 MR. KNEEDLER: I don't think there's any evidence of  
20 labor-management connivance in -- I think a reading of the  
21 minutes of the negotiating sessions, for example, demonstrate  
22 that the parties, as is typical in negotiating something such as  
23 this -- there's a certain amount of give and take, but there is  
24 no suggestion that I have found that this is motivated by some  
25 animus toward persons who had left the railroad industry.

1 QUESTION: Does the class include people who had  
2 already retired and were eligible for the so-called double-  
3 dipping benefits ?

4 MR. KNEEDLER: No, it doesn't, because they may receive  
5 the equivalent of the full benefits they expected to receive  
6 under prior law, so it's not increased over time.

7 QUESTION: But, as the result of the judgment that that  
8 exception is unconstitutional also, or not?

9 MR. KNEEDLER: That is unclear from the judgment.  
10 The judgment -- the District Court's opinion appears to find an  
11 irrational distinction only on the basis of those people who  
12 were affiliated with the industry in '74 and those who were not.

13 QUESTION: So are you -- well, I'll put it to you this  
14 way, are you attempting to justify a difference between that  
15 group and the other groups, or do you think that that group is  
16 just out of the case?

17 MR. KNEEDLER: No, I think -- I think there are degrees  
18 -- Congress was drafting a grandfather clause here, and there are  
19 degrees or --

20 QUESTION: Must you defend that particular group,  
21 though, that particular exception?

22 MR. KNEEDLER: Well, I think perhaps that exception  
23 is --

24 QUESTION: People who have already retired and are --

25 MR. KNEEDLER: I think that's perhaps the strongest --

1 QUESTION: But is the issue here or not, that issue?

2 MR. KNEEDLER: I don't believe that issue is here, no,  
3 because the District Court perceived the inequity to be only the  
4 difference between those who qualified who were not retired but  
5 were in the railroad industry in '74.

6 QUESTION: Mr. Kneedler, you described as the people  
7 who were not entitled to participate in the windfall benefit,  
8 you gave an example of the person who had ten years of railroad  
9 service and less than 40 quarters of social security. I had  
10 understood -- maybe I'm wrong on this -- that if a person had  
11 ten years of railroad service and 40 quarters of social security  
12 service, but no 1974 connection, he would also not receive the  
13 windfall benefit.

14 MR. KNEEDLER: He would receive it if he had completed  
15 those 40 quarters and the ten years of railroad service in the  
16 year that he left the railroad industry. In other words, what  
17 the act does is look at your affiliation with the industry: did  
18 you become qualified when you were still affiliated with the  
19 industry, either in '74 -- for those people who were in the in-  
20 dustry when the act was passed -- or in an earlier year when they  
21 were affiliated, the last year in which they were affiliated with  
22 the industry, if they left before that time?

23 So, what in effect the act does is protect only those  
24 dual benefits that were earned while the person was still in the  
25 industry, not those of somebody who left and then earned the

1 right to dual benefits by taking on social security work.

2 QUESTION: I see. So that if you have a person who in  
3 1966 had ten years of service in both industries, but one of them  
4 got the ten years social security service first and the other one  
5 got the ten years railroad retirement service first, railroad  
6 service first, one would get the dual benefit and the other would  
7 not.

8 MR. KNEEDLER: Well, I -- it doesn't matter who gets  
9 it first, if the person who was qualified under both in 1966, he  
10 would get this windfall --

11 QUESTION: And if 1966 marked his tenth year of non-  
12 railroad work, he would not get it, but if it marked his tenth  
13 year of railroad work he would get it?

14 MR. KNEEDLER: Only if -- this is only true if 1966 is  
15 his last year of railroad work. That's what you're looking at.

16 QUESTION: I mean -- well, no.

17 MR. KNEEDLER: So that's what --

18 QUESTION: In one example, the last year was 1965, say,  
19 and then --

20 MR. KNEEDLER: Okay.

21 QUESTION: -- he did his tenth year of --

22 MR. KNEEDLER: In 1966?

23 QUESTION: Yes.

24 MR. KNEEDLER: No, he would not be eligible, because  
25 he'd --



1 QUESTION: If he did it just the converse, railroad  
2 work, last year 1965, social security work, last year 1966, he  
3 does not get it?

4 MR. KNEEDLER: Right.

5 QUESTION: But if the other -- if the '65 and '66 are  
6 transposed, he does get it?

7 MR. KNEEDLER: That's right.

8 QUESTION: Then you -- and you do purport to defend  
9 that distinction?

10 MR. KNEEDLER: That's right. Because what -- essen-  
11 tially what Congress did was preserve the benefits that -- the  
12 larger benefits under Section 3(h)(1) are for those who were  
13 still affiliated with the industry in 1974 and those who had 25  
14 years of service. Congress -- the reports on the bill say that  
15 these people had the strongest equities and the report submis-  
16 sions by the Joint Committee for Labor and Management said that  
17 this -- indicated that this equity was because they still had an  
18 attachment, affinity for the industry. But Congress did not  
19 totally exclude the possibility of eligibility for people who  
20 left before 1974. It simply dealt with them under a different  
21 section, and said they too can be eligible as long as they  
22 accrued their entitlement to dual benefits when they were still  
23 in the railroad industry. If they left and then went out and did  
24 their social security work afterward, then they did not accrue  
25 their dual benefits while they were still in the industry.

1 QUESTION: If a person who had ten years of -- would  
2 qualify the way I described a moment ago, in addition had a cur-  
3 rent connection in 1974, would that increase his benefit? In-  
4 crease his dual benefit?

5 MR. KNEEDLER: He would be --

6 QUESTION: He wouldn't have -- I see, he couldn't have  
7 retired from the railroad industry under that hypothesis be-  
8 cause --

9 MR. KNEEDLER: Right; that's right. Because he comes,  
10 because he came back in in 1974.

11 The distinction drawn here furthers a number of the  
12 statutory purposes of the act, and since this does not, since  
13 this act does not exclude on the basis of a suspect category,  
14 or exercise of a fundamental right, it is sufficient that the  
15 category be rationally related to legitimate Government purposes.

16 Now, first, this Court stated in *Hisquierdo* two terms  
17 ago, citing the committee reports on the act in the 1930s, that  
18 the purpose of the act was to provide retirement benefits for  
19 persons who were pursuing careers in the railroad industry, and  
20 so to provide them with the opportunity to live out the closing  
21 years of their life in comfort. Well, the line drawn under  
22 Section 3(h)(1) accomplishes this purpose because when the act  
23 was passed the persons who were pursuing their careers in the  
24 railroad industry were those who were still affiliated with it,  
25 or people who had spent 25 years in the industry by that time had

1 pursued the major portion of their careers in the industry. The  
2 other people who had left the industry were pursuing their ca-  
3 reers elsewhere.

4 Second, in a related purpose of the act, which was  
5 also identified in Hisquierdo, was to provide an incentive for  
6 older workers to retire and thereby to open up more job oppor-  
7 tunities for younger workers and more rapid advancement. Section  
8 3(h)(1) is consistent with this purpose as well, because it is  
9 only necessary to provide an incentive to retire for people who  
10 are still in the railroad industry. For people who have left  
11 there would be no -- even if the windfall benefit was an incre-  
12 mental incentive to retire, their retirement would not open up  
13 jobs for younger workers.

14 The third purpose that is served is the one that I  
15 previously mentioned and one that's furthered by any grandfather  
16 provision, and that is trying to accomodate the equities of per-  
17 sons who may have been affected by a change in the law.

18 QUESTION: Well, does it encourage anybody to return to  
19 the railroad industry?

20 MR. KNEEDLER: Well, the act does provide that if a  
21 person returns to the industry after 1974 and had a current con-  
22 nection with the industry when he retired, then he is also eli-  
23 gible to receive a windfall benefit.

24 QUESTION: So this is sort of -- has a counter influ-  
25 ence as far as opening up positions in the railroad industry?

1 It brings people back to it, older people back to it?

2 MR. KNEEDLER: Well, if they came back in the industry  
3 they would be eligible for the windfall benefit which would then  
4 create an incentive for them to retire, so even if they did come  
5 back, it creates an incentive for them to retire and therefore  
6 actually furthers the purpose of the act.

7 QUESTION: But while they're there there's no vacancy?

8 MR. KNEEDLER: That's right. There is no vacancy.  
9 That's true.

10 QUESTION: Or a vacancy was filled?

11 MR. KNEEDLER: That's correct. Of course, in some of  
12 these cases the person who came back may have been someone who  
13 was laid off or had been laid off for a fair amount of time, or  
14 his former railroad employer went out of business, something of  
15 that nature. And so, when he came back, his equities might be  
16 quite strong because the act still requires that he have com-~~plet~~  
17 pleted his ten years of railroad service and his social security  
18 service before 1974.

19 QUESTION: What standard do you think we have --  
20 judging this case by? Do you think you've finished your case  
21 when you say, here is what Congress was trying to accomplish?  
22 Here's what they did, (a), (b), and this is what they were trying  
23 to accomplish by it?

24 MR. KNEEDLER: Yes, I do. Congress, for the reasons  
25 I've explained, clearly had substantial reasons for doing what it

1 did, and under this Court's decision --

2 QUESTION: None of them included dissolvency or did all  
3 of them? Did -- was one of the purposes to make the fund sol-  
4 vent, or to keep it solvent?

5 MR. KNEEDLER: Yes, by all means, and to exclude cer-  
6 tain people, to narrow the class of people who were going to  
7 continue to receive dual benefits.

8 QUESTION: Would that have been a -- would that always  
9 be enough?

10 MR. KNEEDLER: Yes, I believe that would

11 QUESTION: Like, every other name in the phone book?

12 MR. KNEEDLER: Well, as long as Congress did it with  
13 some rational approach. I suppose it couldn't take every other  
14 name and give it to every other name, and not to the other  
15 persons, but Congress certainly did it in an ordered fashion.

16 And the rational basis approach I've suggested is par-  
17 ticularly appropriate in a case like this because the benefit  
18 we're talking about here is not one that was designed to meet an  
19 identifiable need that Congress saw on behalf of the benefi-  
20 ciaries, as is the case with most welfare or social security  
21 benefits, or even most benefits under the Railroad Retirement  
22 Act. This benefit was a conceded anomaly that occurred under  
23 prior law solely by virtue of the fact that Congress decided to  
24 have two parallel social security-type programs rather than com-  
25 bining them into one comprehensive program.

1           So, this is not a situation where eliminating the bene-  
2 fit in the future for any category of persons can be presumed to  
3 have denied them of a benefit tailored to satisfying particular  
4 needs.

5           If there are no further questions --

6           QUESTION: I have one further question, counsel.

7           Supposing we've got two men who both retired age 65, on their  
8 65th birthday. And each of them has worked ten years in the  
9 railroad industry, and ten years in social security work, but  
10 not in the railroad industry. And one of them for the two weeks  
11 before he retired was a railroad man and the other one for the  
12 two weeks before he retired was a non-railroad man. One gets  
13 the double benefit and the other does not. Explain how that's  
14 rational.

15           MR. KNEEDLER: Well, on the basis of your hypothetical,  
16 you said, for two weeks before?

17           QUESTION: Right.

18           MR. KNEEDLER: If the person who was the two weeks --

19           QUESTION: They both retired in 1970, at their 65th  
20 birthday.

21           MR. KNEEDLER: In 1970?

22           QUESTION: Yes.

23           MR. KNEEDLER: Well, in -- if they retired before the  
24 effective date of the act, if they retired before 1974, they  
25 retain their full --

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QUESTION: I see.

MR. KNEEDLER: They retain the windfall element. This only affects persons who retire after the effective date of the 1974 act, people who are not yet retired.

QUESTION: I see. And if in my example, then, one of them continues to, doesn't -- actually retires later on, it depends on which industry he's in when he retires?

MR. KNEEDLER: Well, no; it depends on which industry he was in in 1974. If he was in the railroad industry in 1974, he gets the windfall element. If he was not in the industry in 1974 but he comes back to the industry and retires from railroad work, he gets the windfall benefit.

QUESTION: Yes.

QUESTION: While missing the very -- qualifying for social security in the first place, you have to have worked for -- well, I don't know whether it's a certain number of quarters or a number of years and made a certain minimum amount of money, and I suppose there are some people who come awfully close but just don't make it.

MR. KNEEDLER: That's right. In a statute such as this any eligibility criterion involves questions of line-drawing where people on one side of it have what may appear to be almost as strong equity as those people on the other side. The Congress has to deal in categories of persons in a vast program like this and the categories drawn here are based on reasonable grounds.

1 No further questions?

2 MR. CHIEF JUSTICE BURGER: Mr. Byron.

3 ORAL ARGUMENT OF DANIEL P. BYRON

4 ON BEHALF OF THE APPELLEE

5 MR. BYRON: Mr. Chief Justice, and may it please the  
6 Court:

7 The correct issue of this appeal is this: did the  
8 District Court commit error when it found that the Congress's  
9 elimination of plaintiffs' then-vested retirement benefits  
10 denied them equal protection under the law?

11 Based upon the undisputed record made below, the Dis-  
12 trict Court, we submit, rightly concluded that the 1974 act's  
13 classification which is here involved was utterly irrational.  
14 It is my intent here to emphasize several of the primary reasons  
15 why the classification is indeed irrational.

16 Number one: I want to take up the point that we make  
17 in the briefs about this being contrary, the classification be-  
18 ing contrary to the actual purposes of the act. Number two: I  
19 want to take up briefly the fact that they are contrary to the  
20 Railroad Study Commission's recommendations made to Congress  
21 pertinent to resolving solvency problems relevant to the act.  
22 And number three: the fact that regardless of the above, the  
23 distinction made in the act between the pertinent vested classes  
24 here to be discussed is in and of itself irrational.

25 First, the classification is contrary to the actual and



1 declared purposes of the 1974 act. Congress expressly declared  
2 in the purposes section of the report, twice, its intent to pre-  
3 serve all retirement benefits which were then vested under prior  
4 law. Indeed, the Railroad Board itself, the defendant in this  
5 cause of action, assured Congress of this during the hearings on  
6 this bill.

7 QUESTION: Well, Mr. Byron, how can you say that when  
8 in fact it's conceded that the legislation if read according to  
9 its meaning has the effect that you claim is unconstitutional?

10 MR. BYRON: I say that because the Railroad Board it-  
11 self assured Congress that our class was included.

12 QUESTION: But the Railroad Board isn't vested with the  
13 legislative power of the United States, it's Congress.

14 MR. BYRON: No, but I think it is easy to understand as  
15 we go through the legislative history here why Congress thought  
16 they were including everyone, but nevertheless did not; that the  
17 plaintiff's class was actually exempted. You're absolutely cor-  
18 rect that Section 3(h) does exclude the plaintiffs by its opera-  
19 tion. However, I would think it defies logical analysis to read  
20 Section 3(h)(1) and -(2) and understand who might be, who might  
21 lose their vested benefit.

22 In fact, the act does not speak of vesting at all, and  
23 when you look at the committee reports, they never mention di-  
24 vestment. The reports mention the concept that everybody who had  
25 then, were then vested under both systems, social security and

1 railroad retirement, was actually covered under the act. And  
2 they make it a primary purpose of the act. And then they go on  
3 to say -- because I pick up the point that the defense has made  
4 -- that this is a windfall. And they seem to be critical of the  
5 fact that this is a so-called windfall -- which, by the way it is  
6 not. But they seem to be critical of that.

7 Congress put in the primary purposes section of this  
8 statute, Congress said, "Dual beneficiaries cannot be criticized  
9 because they relied upon the law as it then existed." And that's  
10 exactly what our people do. They fit squarely within the pegs  
11 of any equities that were discussed by Congress.

12 QUESTION: Mr. Byron, do you suggest that a statute  
13 enacted by the Congress is constitutionally vulnerable because  
14 some erroneous information was submitted to the Congress?

15 MR. BYRON: Mr. Justice, I've -- I'm suggesting that in  
16 part based on the Delaware Tribal Systems v. Weeks, the note by  
17 Justice Stevens, I believe, in there, that while the motives of  
18 Congress, for example, is not -- does not -- germane to the  
19 decision here. However, it has some relevancy as to what are the  
20 legislative objectives of the statute. So I'm saying it has  
21 some relevancy; however, it is not a dispositive factor.

22 I think the concern here is the fact that this is  
23 written into the primary purposes section of the statute and  
24 they continue to pound away at the point that the Congress does  
25 not mean to criticize dual beneficiaries. And if they really

1 meant that, then they would not have meant to divest our rail-  
2 roaders, who were actually covered under both laws and had fully  
3 performed ten to 25 years of railroad service and were inactives  
4 and had then gone out.

5 But the point I wanted to make was the Railroad Board,  
6 after reviewing the final bill as it pertains to 3(h), in their  
7 written statement to Congress two of the three Railroad Board  
8 members said this, and I ask the indulgence of the Court to just  
9 give a very short quote: "It is sufficient to state here that  
10 existing rights to such benefits will not be adversely affected  
11 by this bill."

12 This was the recommendation of the Commission on  
13 Railroad Retirement and this bill so provides, and this bill  
14 does just the opposite. That was the written testimony of Rail-  
15 road Retirement Board members Neal Speirs and Wythe Quarles at  
16 the Senate hearings on this bill at page 289.

17 QUESTION: Well, then that turns back to what were  
18 existing benefits or vested benefits at that time, does it not?

19 MR. BYRON: Yes. Vested benefits as of the date of  
20 changeover to the new act, which was December 31, 1974.

21 QUESTION: You're not suggesting the act doesn't,  
22 shouldn't be read as doing what the District Court said was  
23 unconstitutional?

24 MR. BYRON: I don't understand the question, Mr. Jus-  
25 tice.

1 QUESTION: Well, you -- the act did hurt your client?

2 MR. BYRON: Fine -- yes.

3 QUESTION: Yes. There's no question that on its face  
4 it does.

5 MR. BYRON: No, Mr. Justice, what --

6 QUESTION: You're not suggesting construing it other-  
7 wise?

8 MR. BYRON: No, and in fact, there is no question about  
9 that. Unfortunately, when you read through 3(h)(1) and 3(h)(2)  
10 you can come to no other conclusion. However, it is so complex  
11 that it defies logical analysis unless you have an understanding  
12 of the legislative history. The reason why you understand this  
13 is because you see the labor-management negotiations that went  
14 on prior to the time that the bill was provided to Congress.

15 QUESTION: Well, nevertheless, this is what the act  
16 does.

17 MR. BYRON: Yes. There is no question.

18 QUESTION: And it does that, and the question is whe-  
19 ther -- let's just assume there wasn't a fragment of legislative  
20 history. I suppose you would -- you still have the problem of  
21 saying that it's irrational.

22 MR. BYRON: Well, Mr. Justice, there is this question  
23 about the rational connection to the legitimate objectives of the  
24 statute, but the objectives if the statute were to cover our  
25 class. Then, if the act does the contrary, it is irrational

1 because the connection must be connected --

2 QUESTION: Why? Why? Which is irrational? The act  
3 isn't. Maybe the, maybe somebody's statement about what the  
4 purposes were is erroneous.

5 MR. BYRON: As I understand equal protection analysis,  
6 we're looking at the legislative goals of Congress and our con-  
7 cern here is, what did Congress really -- legislative intent,  
8 and what did Congress really intend to do here?

9 QUESTION: What better source is there than the sta-  
10 tute itself for finding out what Congress wanted it to do?

11 MR. BYRON: The written primary purposes of the bill  
12 contained in the House and Senate reports which say contrariwise.

13 QUESTION: You say they would override the express  
14 declaration -- the enacted legislation would?

15 MR. BYRON: Given the complexity of 3(h)(1) and  
16 3(h)(2) I would submit, yes, and in further response, President  
17 Jerry Ford at the time vetoed this legislation in large part be-  
18 cause of the failure to understand the great complexity of the  
19 act. In fact, I might just parenthetically --

20 QUESTION: Whose failure to understand it?

21 MR. BYRON: Pardon?

22 QUESTION: Whose failure to understand it?

23 MR. BYRON: President Ford said that it defied analy-  
24 sis, essentially, in his veto message to Congress. And he with  
25 the veto was overridden by a great a margin. In fact, it came

1 up in the Carter-Ford debates --

2 QUESTION: Congress did it twice.

3 MR. BYRON: Pardon?

4 QUESTION: Congress did what you say it really didn't  
5 intend to do twice.

6 MR. BYRON: Right. Because what they --

7 QUESTION: Both by two-thirds vote.

8 MR. BYRON: That's right, Mr. Justice. What you have  
9 to understand is that they thought they were doing something  
10 other than what they actually did when they wrote 3(h) and  
11 3(h)(1). What we're saying is that -- we're not saying the  
12 Railroad Board deceived, that they read the bill and its purposes  
13 to --

14 QUESTION: After the President says, you really don't  
15 understand what you're doing, they said, we understand perfectly  
16 what the act says, and passed it and overruled his veto.

17 MR. BYRON: But, but, Mr. Justice, no one raised the  
18 question, the veto message did not say, we have a divestment  
19 problem here. Because you could not perceive it. The committee  
20 reports do not speak of divestment. In fact, the committee  
21 reports suggest that the Railroad Study Commission which  
22 reported to Congress after analyzing the act for two years --  
23 reported on June 30, 1972 -- that everyone was to be protected,  
24 and I think, when you read through the legislative history and  
25 the primary purposes section, you would understand why Congress

1 thought they were doing what the Railroad Study Commission told  
2 them to do, because --

3 QUESTION: Let me ask you -- approach it another --  
4 suppose it was perfectly clear from the legislative history that  
5 Congress intended to do what the act says on its face and suppose  
6 -- I suppose you would still be here arguing that it was irra-  
7 tional.

8 MR. BYRON: Yes, because -- that's right, Mr. Justice,  
9 because we are submitting without question that there is no  
10 rational distinction between the similarly situated vested  
11 classes, those with ten to 25 years of service.

12 QUESTION: Aren't these really the -- isn't this really  
13 what you have to win on here if you're going to win?

14 MR. BYRON: Mr. Justice, I'll take a win on any partic-  
15 ular point, that or any other. But I think it is correct, that  
16 is, one of our points of analysis here to be discussed. I want  
17 to mention, though, the Congress's other goal. The question was  
18 put to Mr. Kneedler about the conserving of fiscal resources as  
19 being a basis, a sine qua non for actually having this statute  
20 pass muster with the Supreme Court. That is not enough,  
21 obviously, because if it were you would be saying that every  
22 congressional cutback would avoid and be immunized from scrutiny  
23 under the equal protection clause. And that's not what we're  
24 saying, and I don't think Mr. Kneedler is saying that either.  
25 I think he is saying we still, you must still find rationality

1 on this, and there is still equal protection analysis. We are  
2 not here arguing a toothless standard.

3 But on this question of conservation of fiscal re-  
4 sources, it's very interesting because the Railroad Study Com-  
5 mission reported to Congress, concerned itself with the elimina-  
6 tion of a 9 percent actuarial deficiency, and that is well and  
7 fine. However, that was not resolved or furthered by the elimina-  
8 tion of the plaintiff's benefits. Instead, these benefits were  
9 confiscated so as to help fund other unrelated benefits that were  
10 liberalized. The liberalization caused the deficiency to esca-  
11 late to 12 percent, contrary to the very purpose that they were  
12 negotiating on this act.

13 The 3 percent increased deficiency which was created  
14 by the Joint Labor-Management Negotiating Committee was funded  
15 in part, as we point out in our briefs, by a tradeoff of the  
16 plaintiffs' benefits. And that, we submit, is contrariwise to  
17 what they were supposed to be doing to resolve the actuarial  
18 deficiency. And the act's classification was also contrary to  
19 the Study Commission's recommendations to Congress in two ways.

20 Number one, the Commission strongly and repeatedly  
21 urged the retention of all vested rights to retirement benefits  
22 as of the new proposed changeover date, which would be December  
23 31, '74. The Commission also repeatedly stated that any  
24 liberalization of benefits must -- and this is one of the few  
25 times the Commission used the word "must" -- they said, "must"



1 must be accomplished without impairing any presently vested  
2 rights. Further, they emphasized that liberalizations under  
3 this act can only be funded by an increase in taxes on employer-  
4 employee sufficient to pay for the liberalizations. And that  
5 makes every sense in the world, because Congress was trying to  
6 resolve an actuarial deficiency, not create a greater one.

7           But the JLMC, but what happened here is, you sent the  
8 fox out to guard the chicken coop. And the fox goes out and  
9 creates another 3 percent deficiency and the only way you can  
10 get that job done is to, in the words of the JLMC, "hit" or  
11 eliminate the plaintiff class because they're inactives and they  
12 don't have to answer to the unions anymore. Now, the distinc-  
13 tion here --

14           QUESTION: Mr. Byron, are you arguing -- it seems to  
15 me you're arguing that any cutback that didn't either exclude  
16 all vested benefits or no vested benefits would have been uncon-  
17 stitutional?

18           MR. BYRON: No, I am not.

19           QUESTION: But is -- well, the presentation to Congress  
20 was, we're going to preserve all vested benefits, and you seem  
21 to place great emphasis on the vesting concept.

22           MR. BYRON: Yes, I do, because, you see, the JLMC in  
23 the colloquies they engaged in in Congress assured Congress  
24 everyone was being vested. And secondly, the Commission recom-  
25 mended that. They saw the distinction here but --

1 QUESTION: I understand all that, but as soon as you  
2 admit that Congress could have constitutionally cut back on some  
3 of the vested benefits, it seems to me your whole argument is  
4 beside the point, the only argument you've made thus far, is  
5 beside the point.

6 MR. BYRON: Mr. Justice, it is not -- the -- because  
7 we're looking at what the legislative objectives in this particu-  
8 lar reported bill and statute are. In other words, if there's  
9 actual legislative goals and objectives of this act, and this  
10 distinction does not further but is contrary to those goals, then  
11 I submit that under equal protection analysis we must have a win  
12 on that point.

13 QUESTION: And that the goal you're relying on is the  
14 goal to preserve all vested benefits.

15 MR. BYRON: Yes, and that was the goal of Congress.

16 QUESTION: Any cutback on that would have been incon-  
17 sistent with that goal.

18 MR. BYRON: Yes; now, that's just -- that's one argu-  
19 ment. However, I think the point is here that if Congress had  
20 not considered this point, then I'd say that our point would not  
21 be well taken. But Congress here really meant to make the  
22 dividing line between the vesteds and the non-vesteds. And they  
23 did that because the Railroad Board told them that was what was  
24 being done and the JLMC told them that's what was being done,  
25 and they also believed they were following the Commission

1 recommendations when in fact they were not because of the Sec-  
2 tions 3(h) and 3(h)(1).

3 QUESTION: Mr. Byron, who misled Congress? You say  
4 that the Board determined this, someone else determined something,  
5 and you determined that 135 people didn't understand that?

6 MR. BYRON: Yes. Ah --

7 QUESTION: Who misled them?

8 MR. BYRON: In my opinion, the JLMC.

9 QUESTION: In your opinion? In what record can you  
10 point to your opinion? Or is this your gut reaction?

11 MR. BYRON: That is not my gut reaction. It is in  
12 our brief at various points where we point out that colloquies  
13 -- and let me explain. This, you know, it's a good --

14 QUESTION: Well, do you take the position that Con-  
15 gress was misled?

16 MR. BYRON: Yes, and I think that helps explain --

17 QUESTION: And then can't you oblige and say by whom  
18 or by what?

19 MR. BYRON: And "by whom" is the JLMC. And I don't  
20 think the Railroad Board intentionally deceived Congress. How-  
21 ever, they assisted this deception by stating that our people  
22 were covered when they in fact were not and everybody went about  
23 passing a statute without the understanding that --

24 QUESTION: Who got them to do that?

25 MR. BYRON: Well, they asked the JLMC to negotiate the

1 statute. And --

2 QUESTION: Mr. Byron, following up on my brother  
3 Marshall's question, you've referred several times to the state-  
4 ment of primary purposes of the act.

5 MR. BYRON: Yes.

6 QUESTION: Where does one find that? I've looked in  
7 the U.S. Code and I've looked in the statutes at large. Is it a  
8 part of the enacted legislation?

9 MR. BYRON: It's not. It's in the report of the House  
10 and the report of the Senate, and it's a --

11 QUESTION: Oh, is it -- it's not a statement of pur-  
12 poses contained in the legislation itself?

13 MR. BYRON: No. It's stated in the report, and it  
14 says, here in the front, first page, "Principal purpose of the  
15 bills," in the second paragraph.

16 QUESTION: What you're saying then is that Congress  
17 made some mistakes.

18 MR. BYRON: Yes, but not just made a mistake. I'm  
19 saying, further, that Congress thought they were including our  
20 class when they actually weren't because they saw, everybody saw  
21 the dividing line here between vesteds and non-vesteds, and the  
22 problem here is that the actuarial deficiency was not resolved  
23 by our class. The problem was that they went out and made the  
24 deficiency from 9 percent to 12 percent and then used our class  
25 as part of the tradeoff to fund the other 3 percent. But I think

1 -- I want to get to this point about the real distinction here,  
2 the rational distinction between the classes, because we're only  
3 talking here about a distinction based on timing. It's a new  
4 timing requirement, you see, that divided the vesteds, the simi-  
5 larly situated vesteds, between -- all of us, all of the vesteds,  
6 had 10 to 25 years of railroad service and ten years of social  
7 security, thereby earning a full dual benefit. However, and for  
8 the first time ever, Congress in 3(h)(1) and 3(h)(2) brought  
9 about this new current connection requirement and gave four dif-  
10 ferent ways in which our people who were vested back on December  
11 31, 1974, could continue to be vested under the new act.

12 ~~Actually~~ Actually, what that is is a divesting rule, and the  
13 Government concedes that only timing of their prior railroad  
14 service is the question here involved. And this new timing re-  
15 quirement, you understand, amounted to a changing of the vesting  
16 rules ex post facto, i.e., after the game was played and the  
17 benefit had been earned and acquired. Its sole purpose as the  
18 legislative history we've put in our brief shows, the sole pur-  
19 pose was to "hit" and to "eliminate" the inactive railroaders  
20 who had no -- that the unions, they felt, had no allegiance to  
21 anymore. Somebody had to go, in their opinion, and that was not  
22 true, because as we've said, it was only true because they  
23 raised the deficiency to 12 percent.

24 Timing has nothing to do with the extent or the length  
25 of the railroaders' credited service. It has nothing to do with

1 the earning or the gaining of the retirement benefit. It is non-  
2 sensical, in fact. The timing distinction is not based on  
3 character of service, length of service, or the amount of the  
4 contributions of the employer or the employee. A railroad re-  
5 tirement benefit, as the Commission noted, is earned on the  
6 basis of past service and past contributions, not present service  
7 or some so-called tenuous connection like present affinity --

8           QUESTION: Mr. Byron, isn't it true that in a lot of  
9 pension situations a person who retires with 20 years of service  
10 in 1974 will get a higher pension than someone who retired with 20  
11 years of service in 1970, say, simply because there's been a deci-  
12 sion to increase benefits; and therefore the timing of the date  
13 of retirement has a rational -- provides a rational explanation  
14 for why you get a higher benefit?

15           MR. BYRON: Well, I can't -- I'm not familiar with the  
16 hypothetical I've never seen that --

17           QUESTION: But would that be irrational? Say there's  
18 inflation and say that people amend their plan in 1974 and say  
19 that from here on people who have 25 years of service will get a  
20 greater benefit than they used to get, than the people used to  
21 get who retired two years ago? Isn't that all that's really  
22 happened here? Because you're just saying the railroad service  
23 is the more valuable benefit, more valuable criterion for eli-  
24 gibility, and that happens to come later. Therefore, you get a  
25 higher benefit.

1 MR. BYRON: No, that is incorrect, in our opinion.  
2 That what we were saying here is that -- we're talking about past  
3 earned retirement benefits, we're not talking about getting a  
4 new benefit or an additional benefit.

5 QUESTION: Put the vesting concept to one side. I un-  
6 derstand you are objecting to the vesting. But if there had been  
7 no vesting here, would my hypothetical be any different?

8 MR. BYRON: Well, that might be the case if there were  
9 no vesting or no actually having earned it, but if you're talk-  
10 ing about non-vesteds, they're in a different category and that's  
11 a different situation. But what our concern is that these peo-  
12 ple have earned their vested retirement benefit. It was vested  
13 under prior law at that time. In fact, the Government, the  
14 Railroad Board, had a benefit pamphlet, the last one before the  
15 act was February, 1974. In that benefits pamphlet, they said,  
16 if you have ten years of railroad service, you have a "permanent"  
17 right to this benefit. Now, I submit that having this destroyed  
18 and emasculated in the way it has been is not the same, or the  
19 equivalent of a permanent right to a benefit. They relied on  
20 the Government. And what did they get for their reliance? They  
21 lost this so-called windfall.

22 And it is not a windfall. A windfall is an unexpected  
23 sum of money. This was expected. This was relied upon by these  
24 people. It is a windfall only because the Railroad Study Commis-  
25 sion said it's an excess dual benefit if you assume, arguendo,

1 that both benefits were earned under social security. But, of  
2 course, since they were not earned under social security, the  
3 hypothetical doesn't stand up and so the windfall is not there.  
4 It's not a real windfall, it's not a gratuity that these people  
5 were being given. It was an earned retirement benefit.

6 QUESTION: Can you distinguish in fundamental terms  
7 between the Railroad Retirement Act and the Social Security Act  
8 as to purpose and objective?

9 MR. BYRON: Yes, Mr. Justice.

10 QUESTION: What are the distinctions?

11 MR. BYRON: As the dissent --

12 QUESTION: They're contributory, aren't they?

13 MR. BYRON: They're both contributory. However, social  
14 security contributions were half that of the railroad retire-  
15 ment. Secondly, as the dissent pointed out in Hisquierdo, the --

16 QUESTION: How would the amount affect the vested or  
17 non-vested aspect?

18 MR. BYRON: In this way: as the Railroad Board pam-  
19 phlet showed, if you have past service, plus in addition to that  
20 made the necessary contributions over those particular years of  
21 past service; then you earned your permanent right to the bene-  
22 fit. So, it was a key or an element to earning the benefit.

23 Now, I wanted to take up the argument of the Govern-  
24 ment about what is this great rational distinction between these  
25 ten to 25-year vesteds?



1 QUESTION: Would you still be here if they -- if the  
2 law had been changed so as to destroy all of the windfalls?

3 MR. BYRON: Because the act had been --

4 QUESTION: Suppose all vested benefits had been ter-  
5 minated?

6 MR. BYRON: Your Honor, I'd have a different class.

7 QUESTION: Well, you'd have quite a different class.

8 MR. BYRON: And I'd have a much more difficult problem.  
9 And I -- no question about that.

10 QUESTION: So this reliance business, that doesn't  
11 carry the day, does it?

12 MR. BYRON: It -- it assisted --

13 QUESTION: The fact of vesting in reliance, in that  
14 statement in the pamphlet?

15 MR. BYRON: Yes. That helps carry the day. I mean,  
16 all of this taken together --

17 QUESTION: But it wouldn't if they'd --

18 MR. BYRON: Well, no, I disagree with that.

19 QUESTION: If they'd really been mean about it, it  
20 wouldn't.

21 MR. BYRON: No, I disagree in the sense that if I had  
22 that class to come here and present --

23 QUESTION: -- you'd have a tough case.

24 MR. BYRON: -- I'd certainly be arguing that.

25 QUESTION: But you'd have a tough case.

1 MR. BYRON: I'd have a tougher case than I've got right  
2 here. The reason is because they say this current connection  
3 rule and the work-in-1974 rule is intended to favor career rail-  
4 roaders who have greater equities, or as they put in their reply  
5 brief, a greater stake to dual benefits. But the protected  
6 class has no more career time than the plaintiffs' divested class  
7 and they have no greater "stake" than our railroaders. They  
8 have, number one, no greater contributions; they have no greater  
9 length of service; and they have no greater vesting basis. In  
10 fact, they have the same exact amount of time, ten to 25 years.

11 But this rule, I submit, is antithetical to a career.  
12 It speaks of a current connection, not a career connection. No  
13 one is calling this the career connection rule. Nor was it ever  
14 suggested in Congress or anywhere else that it might be. It  
15 says, for example, all you need to do is have a 1974 connection  
16 and you can then disregard any career notion that you might  
17 have.

18 Of equal importance, of course, is that neither  
19 Congress nor the JLMC ever suggested such a connection between  
20 the rule and a career during all the negotiations under the act.  
21 Now, of course, trying to make career railroaders out of 10-year  
22 men -- and the question was put to Mr. Kneedler; I think it's a  
23 good question -- is contrary and antithetical to the purposes of  
24 the act ever since 1937. This is so because a major purpose of  
25 the act is to encourage older workers. They don't say career

1 workers, they say older workers -- to retire so as to encourage  
2 younger workers to take their place, and to do this in a de-  
3 clining employment industry. It moved from 1,280,000 back in the  
4 old days to -- in the 1970s -- to 500-and-some thousand. It's  
5 now in the 400,000-level. Plaintiffs' departure --

6 QUESTION: All of these things certainly are persua-  
7 sive that Congress acted unwisely, possibly even unfairly. But  
8 how do we find out about the statute except by reading the  
9 statute, if the language is clear?

10 MR. BYRON: We find that out by looking at the House  
11 and the Senate reports, and --

12 QUESTION: If the language is clear?

13 MR. BYRON: The language is not clear. You know, I  
14 understand that if you take the legislative history -- if you  
15 take the legislative history, and you look at what the Railroad  
16 Study Commission said, and you understand that Congress's de-  
17 termination for dividing the classes was a vested basis, then  
18 it's clear that our class was to be included. But even -- but  
19 as I'm saying, assuming arguendo regardless of that fact, the  
20 point is, there is no rational distinction here because we are  
21 not arguing here over a welfare benefit, for example, or a gra-  
22 tuity, or an unexpected sum of money. This is not a new benefit  
23 that's being awarded. And

24 And I want to mention, just very briefly, the fact  
25 that historically the current connection use is negated here,

1 because it was never used in connection with the basic retire-  
2 ment benefit, and it was never used as a divesting mechanism,  
3 which is what it's used here for. It has only been used in con-  
4 nection with a brand new supplemental benefit or some other new  
5 benefit to be awarded. And we wouldn't complain if that were the  
6 case. But that is not the case here. This is not, we're not  
7 talking about trying to get some additional benefit that we're  
8 being denied. We're asking for a benefit that our class already  
9 had. It was always a reward for an additional benefit, so they  
10 -- historically, it has never been used in the context here.  
11 And indeed, of course, the Railroad Study Commission never con-  
12 sidered it and Congress never really addressed it in the ~~hearings~~  
13 hearings.

14 Now, we mention several other points that we feel  
15 heighten the irrationality of the statute here involved, in-  
16 cluding the reliance on benefits and the vested nature of them.  
17 We also point out that the age and inability of our railroaders  
18 to rework their careers -- because, you see, they're all of ad-  
19 vanced age -- they cannot relive their lives; they cannot recoup  
20 their loss by some other means of employment. For our rail-  
21 roaders, the loss comes about at a point when it's too late for  
22 them to say, well, I guessed wrong, and I've got to go back.  
23 They can't do it. But, of course, there is no encouragement  
24 under this act to get them back.

25 In summary, let me say that to reverse the decision of

1 the District Court in this case would be to say that the plain-  
2 tiffs, whose working lives are essentially over, guessed wrong  
3 as to that most finite and once-only resource, their own working  
4 years and lives; that what they were told by Congress were the  
5 requirements for vesting, and what they were told would be their  
6 reward for staying with the industry for ten years --

7 QUESTION: Mr. Byron, could you give me an example so  
8 I'll understand it better of a man who could have made a differ-  
9 ent choice in the past and qualified?

10 MR. BYRON: Yes. I believe you touched on it before  
11 when you said that if you flip-flop, if you have social security  
12 first and railroad retirement second, you qualify and get the  
13 dual benefit. However, if you did it conversely and had rail-  
14 road retirement first and was encouraged, actually -- because  
15 the act was trying to encourage these workers to leave, so our  
16 people followed the purpose of the statute. They left, and now  
17 they've lost their benefit because of it. Now, they would not  
18 vest.

19 QUESTION: Well, they didn't lose the railroad benefit  
20 that it vested.

21 MR. BYRON: Yes --

22 QUESTION: And they did get the social security --  
23 what did they -- and they did get additional benefits by addi-  
24 tional work in the social security program, didn't they?

25 MR. BYRON: No, no. We're talking about the same dual

1 -- in other words, we're using two people, the same, both enti-  
2 tled to a full dual benefit. That means he gets, you know, a  
3 benefit because of ten to 25 years in the railroad service and  
4 another benefit because he had 40 quarters of social security.  
5 Now, the one who did his conversely, or who was lucky enough to  
6 work one day in 1974 on the railroad --

7 QUESTION: I understand that. But we're talking,  
8 you're talking about the choice, that he was kind of misled.

9 MR. BYRON: Right. That's it.

10 QUESTION: And it is true that at the time he left  
11 railroad service he knew he was going to get a lesser benefit,  
12 or did he? I'm trying to place --

13 MR. BYRON: No, no. He did not.

14 QUESTION: Is the railroad service always more --

15 MR. BYRON: No, and they followed -- the benefits pam-  
16 phlet said they had a permanent right to it.

17 QUESTION: I see.

18 MR. BYRON: But they -- so, they did not, and what  
19 they're saying is, there's an excess of --

20 QUESTION: What did Hisquierdo case say about that  
21 contract you've been talking about, that pamphlet?

22 MR. BYRON: Well, Hisquierdo did not bring it up. And  
23 in fact --

24 QUESTION: It said it wasn't contractual, didn't it?

25 MR. BYRON: It said -- yes, the majority said it was --

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QUESTION: It was not contractual.

MR. BYRON: -- noncontractual, the dicta did.

QUESTION: Well, where do you get a contract?

MR. BYRON: Well, I'm not saying -- I'm not here arguing under the due process component. I'm arguing under the equal protection component. I --

QUESTION: But you are arguing contract?

MR. BYRON: Well, I'm saying it's something that can, certainly. -- It's certainly something more than a gratuity or a welfare benefit, and I think -- you know, I take note, Mr. Justice, that in some of your analyses under the equal protection analysis, that the kind of property that is involved here --

QUESTION: I'd be very interested --

MR. BYRON: -- has some bearing.

QUESTION: I'd be interested if you'd give me one that was a majority opinion.

MR. CHIEF JUSTICE BURGER: Your time has expired.

MR. BYRON: I see my time is up.

MR. CHIEF JUSTICE BURGER: Your time has expired, Mr. Byron.

MR. BYRON: Very well.

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

ORAL ARGUMENT OF EDWIN S. KNEEDLER

ON BEHALF OF THE APPELLANT -- REBUTTAL

1 MR. KNEEDLER: Just several points I wanted to make.  
2 We submit that it is not necessary to look beyond the plain  
3 meaning of the language of the act to determine that the Appellee  
4 class was excluded, but if it were, the committee reports on  
5 page 12 of each report could not be clearer. They both say it  
6 in identical language, "Under the bill" -- referring to the peo-  
7 ple who had left the railroad industry before '74 -- they would not  
8 receive a dual benefit upon retirement unless they also had fully  
9 qualified under social security by the close of the year prior  
10 to '75 in which they left railroad service.

11 If they had so qualified under both systems at that  
12 point, however, they would receive dual benefits. So Congress  
13 plainly knew what it was doing. Secondly, Appellee suggests  
14 that all, that Congress really had to take an all-or-nothing  
15 approach. It either had to wipe out what he refers to as  
16 vested benefits, which I think are more properly referred to as  
17 an expectation of receiving benefits under prior law. Congress  
18 had the choice of either wiping them all out or wiping none of  
19 them out, and could not take a middle course.

20 The Congress was faced with a serious financial prob-  
21 lem in the railroad retirement account. And Congress tried to  
22 accommodate the financial needs of the system against what are  
23 inevitably degrees of equity among people who may have had ex-  
24 pectations under prior law.

25 The concept of reliance really has no basis here,



1 because as was pointed out in Hisquierdo these benefits are not  
2 contractual. Railroad retirement is a direct parallel of social  
3 security, and this Court made clear in Flemming that Congress  
4 can change those. Anyone who was, who had enough --

5 QUESTION: Mr. Kneedler, I understand the legal argu-  
6 ment based on Flemming. Let me just be sure I understand the  
7 practical argument your opponent makes about a man not being  
8 able to live his life over again. Is it correct that in, say,  
9 1965, a man who had ten years of railroad service and therefore  
10 had vested rights under that service could have been motivated  
11 to retire from railroad service with the expectation that he  
12 would supplement his retirement income by earning social  
13 security benefits which Congress has now taken away from him?  
14 That is correct, is it not?

15 MR. KNEEDLER: Well, I think it's -- yes I think it's  
16 conceivable that persons could have done that.

17 QUESTION: Well, he would have been carrying  
18 out the purpose of the Railroad Retirement Act when he  
19 did it, because part of the purpose was to encourage  
20 early retirement.

21 MR. KNEEDLER: Well, yes, but not in the --  
22 I mean, the purpose is to -- is -- ~~talk about an early retirement.~~  
23 retirement. It suggests going on the retirement  
24 rolls.

25 QUESTION: Or getting out of the railroad business.

1 MR. KNEEDLER: Well, by retiring. I mean, that's what  
2 the Railroad Retirement Act is directed at, in this context, is  
3 retiring. Easily --  
4 retiring. Easily -- what you're referring to is --

5 QUESTION: Well, it would have been consistent with  
6 their purpose to go to work as, say, a milkman or a baker  
7 driver or something else, wouldn't it?

8 MR. KNEEDLER: That's right, but --

9 QUESTION: So that these people that I am discussing  
10 in my hypothetical did fulfill the purpose of retire-  
11 ment, whole retirement program by leaving with the  
12 understanding they would get more money under social  
13 security?

14 MR. KNEECLER: Yes, it is -- I mean, it's conceivable  
15 that there could be people who did that, but I think it would  
16 be a considerable leap to say that --

17 QUESTION: I understand. You're not conceding that  
18 that --

19 MR. KNEEDLER: -- I concede that that would be the  
20 majority of the persons in the class. And Congress can, I  
21 think, legislate on the basis of what it could presume to be  
22 the characteristics of the class as a whole rather than, rather  
23 than in certain individual cases.

24 QUESTION: Why wouldn't that be a typical person?  
25 Seems to me I've given you a typical example of a class member,  
haven't I?

1 MR. KNEEDLER: He may have had an expectation but in  
2 terms of that being the motivating factor for his leaving the  
3 railroad industry, I think that I don't really know --

4 QUESTION: It's certainly not unreasonable. I know a  
5 lot of people in the Navy, for example, who calculate their re-  
6 tirement benefits by different choices. And if he knows he's  
7 earned his railroad benefit and he can increase his social  
8 security benefit, why wouldn't that be a perfectly rational,  
9 normal motivation, one we should assume he made?? You say it's  
10 legally irrelevant. I understand that.

11 MR. KNEEDLER: Right.

12 QUESTION: Going on, why should we --

13 MR. KNEEDLER: No, I -- of course, I think that just  
14 goes back to whether he had an expectation under prior law.

15 QUESTION: You are saying, well, maybe he did but it's  
16 too bad. Congress can be rough on these people if it wants to.

17 MR. KNEEDLER: That's right.

18 QUESTION: Yes.

19 MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The  
20 case is submitted.

21 (Whereupon, at 11:10 o'clock a.m., the case in the  
22 above-entitled matter was submitted.)  
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CERTIFICATE

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No. 79-870

United States Railroad Retirement Board

v

Gerhard H. Fritz

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