

ORIGINAL

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 83-240 -

TITLE LAWRENCE COUNTY, ET AL., Appellants v. LEAD-DEADWOOD
SCHOOL DISTRICT NO. 40-1

PLACE Washington, D. C.

DATE October 30, 1984

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IN THE SUPREME COURT OF THE UNITED STATES

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LAWRENCE COUNTY, ET AL., : No. 83-240
Appellants :
v. :
LEAD-DEADWOOD SCHOOL DISTRICT :
NO. 40-1 :

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Washington, D.C.
Tuesday, October 30, 1984

The above-entitled matter came on for oral
argument before the Supreme Court of the United States
at 1:50 o'clock p.m.

APPEARANCES:

ALAN RAYWID, ESQ., Washington, D.C.; on behalf of
Appellants.
LOUIS F. CLAIBORNE, ESQ., Deputy Solicitor General
Department of Justice, Washington, D.C.; on
behalf of United States as amicus curiae.
A. P. FULLER, ESQ., Lead, South Dakota; on behalf of
Appellee.

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

2 CHIEF JUSTICE BURGER: Mr. Raywid, I think you
3 may proceed whenever you're ready.

4 ORAL ARGUMENT OF ALAN RAYWID, ESQ.

5 ON BEHALF OF APPELLANTS

6 MR. RAYWID: Mr. Chief Justice, and may it
7 please the Court, this appeal challenges the validity of
8 a state statute which would alter and redirect the
9 distribution of federal funds payable to local units of
10 government paid for the presence of non-taxable federal
11 land which are located within the jurisdiction of these
12 local units of government.

13 The federal statute known as Payment in Lieu
14 of Taxes, or its acronym, PILT, is perhaps a new concept
15 of awarding federal funds for the non-taxable lands by
16 conferring upon local communities, local units of
17 government, the discretion of how these funds may be
18 best spent to offset the impact caused by the presence
19 of federal lands within their particular communities.

20 It is the result of years of careful study as
21 to how most effectively to offset this adverse impact of
22 federal lands. And it substitutes prior programs of
23 designated use, such as designation for school districts
24 or designation of roads, to allow the discretionary use
25 by these governmental units and with the only caveat

1 that they be for any governmental purpose.

2 The program is rather broad. It goes to 49
3 states.

4 QUESTION: You described the second sentence
5 in the statute, Mr. Raywid, as a caveat; a unit, and
6 they use the payment for any governmental purpose.

7 You see that as a restriction on what the
8 governmental unit may use it for.

9 MR. RAYWID: I'm glad you called me on that,
10 Justice Rehnquist, because no, I do not see that as a
11 limitation at all. And "caveat" is the wrong word.

12 "Any governmental purpose" is perhaps
13 redundant. I think the purpose that that was placed in
14 the statute, to show that it could go for the whole
15 panoply of government services that a local unit of
16 government could make expenditures. Of course it
17 couldn't -- no unit of government can make unauthorized
18 or discriminatory payments.

19 QUESTION: They didn't need Congress to tell
20 them that.

21 MR. RAYWID: They did not need Congress to
22 tell them that. I believe those words -- and I'm glad
23 you asked the question, because I think that merely
24 underscores the breadth of discretion allowable to a
25 local unit of government.

1 QUESTION: Mr. Raywid, the counties are
2 creatures of state government, in a sense. They are
3 created by the state legislature to serve state
4 governmental purposes.

5 Do you think that the state legislature in
6 South Dakota could have passed a law that just told its
7 counties they may not accept any federal aid, period?

8 MR. RAYWID: Perhaps the legislature could
9 have declined altogether the federal aid. This
10 particular state statute, of course, is tiered upon and
11 built upon the federal aid. The federal aid precedes it
12 by three years.

13 But in following your question, the state, of
14 course, is sovereign. The state created the counties,
15 and conferred upon the counties particular authority.
16 It allows for elected officials; it allows for them to
17 devise a budget; it allows them to make allocations
18 between particular governmental responsibilities acting
19 within that county.

20 Now, once having created such an entity under
21 the state constitution of South Dakota, it cannot destroy
22 that entity, except with popular vote.

23 But perhaps the state need not have created
24 this county. Having done so, and having conferred on it
25 governmental powers, the state is obliged to respect

1 those powers the same as anyone else.

2 QUESTION: Obligated by what law?

3 MR. RAYWID: Well, obliged by the precedent of
4 this Court. This Court has instructed federal agencies,
5 for instance, that they need not promulgate regulations,
6 but when they do promulgate regulations, they are
7 obliged to observe them the same as private parties.

8 QUESTION: You are now deducing a principle of
9 federal law that requires the State of South Dakota to
10 adhere to its own statutes?

11 MR. RAYWID: Well, the State of South Dakota,
12 like any other entity, must observe its own laws.

13 QUESTION: But isn't the -- usually, the final
14 authority as to whether a state has observed its own
15 laws is found in the determination of the highest court
16 of that state, is it not?

17 MR. RAYWID: It is indeed.

18 QUESTION: And here, we have a determination
19 of the Supreme Court of South Dakota that what the state
20 has done has consisted with South Dakota law.

21 MR. RAYWID: Well, the State of South Dakota
22 went much further than that. The State of South Dakota
23 interpreted the constitution of the United States and
24 interpreted the statute of Congress in seeking an
25 accommodation, not only between its statutes and its

1 constitution, but with the Constitution of the United
2 States and the congressional statute --

3 QUESTION: It's one thing to say that Congress
4 has mandated these funds to the counties and
5 notwithstanding the relationship between the counties
6 and the state, the Congress wanted the counties to have
7 the final authority to say that.

8 That is certainly an understandable argument
9 based on federal law. But I understood you to make an
10 argument that federal law also somehow requires South
11 Dakota, the legislature to observe the county status
12 because there are provisions in the South Dakota statute
13 -- the South Dakota constitution that require it.

14 MR. RAYWID: Well, I think that what the
15 federal statute attempted to do was to confer authority,
16 discretionary authority for the expenditure of funds on
17 the local unit of government.

18 It then, of course, looked to the state
19 government as to what units of local government had been
20 created. In South Dakota, there is no question but that
21 the State of South Dakota had created counties and
22 conferred upon them general governmental authority.

23 Also, the statute, the federal statute, the
24 PILL statute, distinguished between specific purpose
25 districts, such as school districts or water districts

1 or fire districts that did not have general governmental
2 authority, even though they may not have been placed
3 with authority by the state, and even though they might
4 be governed by elected officials.

5 But, yes, the federal statute does look to the
6 state to say which governmental unit has the local
7 authority and which governmental unit has general
8 governmental authority.

9 QUESTION: Well, you concede, I gather, that
10 the state could have prohibited the counties from
11 accepting any federal aid altogether.

12 Do you think the state could have said that it
13 would readjust any state aid that it supplies the
14 counties to deduct the amount that a county is receiving
15 from the Federal Government under this In Lieu Payment
16 Act?

17 MR. RAYWID: No, Justice O'Connor. I believe
18 very definitely it could not. The federal aid -- it
19 would have to accept the federal aid subject to the
20 conditions imposed by Congress. It is obliged to carry
21 out the purpose and intent of Congress; that is the
22 fundamental precept of the supremacy clause.

23 And this Court has held again and again, in
24 both majority and dissenting opinions, that the purpose
25 and intent of Congress, of course acting within its

1 constitutional authority, is paramount and that the
2 state may not interfere with that purpose and intent.

3 And the fundamental purpose and intent of this
4 act, both by its language and certainly by its
5 legislative history, is to confer upon the counties, to
6 confer upon the unit of local government that allocate
7 funds for a variety of purposes, to decide how that
8 government land has impacted by its presence, and to
9 decide how those funds may best be used.

10 QUESTION: May I ask this question? You say
11 that they created this general government authority of
12 the county. But as I understand the state laws, the
13 county doesn't have general government authority. It
14 has authority with respect to disbursement of funds,
15 according to a formula set by the state.

16 Isn't that right?

17 MR. RAYWID: No, Justice Stevens, --

18 QUESTION: With respect to tax revenues
19 anyhow.

20 MR. RAYWID: -- I don't understand that to be
21 the --

22 QUESTION: Well, aren't they required to
23 expend their tax revenues in certain prorated shares?

24 MR. RAYWID: Well, the county does have
25 limited authority, and it does not have general

1 legislative authority.

2 QUESTION: But it doesn't have any general
3 authority to disburse funds any way it wants, apart from
4 these funds, does it?

5 MR. RAYWID: There are certain units of
6 government, such as primarily the schools --

7 QUESTION: Well, we're talking about the
8 county right now. The county must allocate its tax
9 revenues according to a state-set formula; is that not
10 true?

11 MR. RAYWID: No, Justice Stevens. I believe
12 that is not true. As I understand the process, each of
13 the various recipients, respective recipients of funds,
14 submit to the county their budgets for the year. The
15 county then has some discretion as to what budgets it
16 will accept or whether those budgets have to be altered
17 and adjusted.

18 Then it goes out and raised the money, and
19 then it makes the distribution. But it is not simply a
20 cashier for the various districts. It does exercise
21 some discretion.

22 QUESTION: Some discretion, but isn't that
23 discretion, in some respect at least, limited by state
24 law?

25 MR. RAYWID: Well, indeed it is.

1 QUESTION: What do they want to use the money
2 for in this case? I can't quite figure it out. What
3 does the county want to use the money for that it's
4 being disabled from using it?

5 MR. RAYWID: Well, I believe that the county
6 has, with great reserve, not made any determination as
7 to the use of the funds until it determines the outcome
8 of this litigation.

9 QUESTION: So it's entirely possible the
10 county may decide to distribute the money exactly in
11 accordance with the state law, isn't it?

12 MR. RAYWID: Well, again I differ with you.
13 You mean this particular state law? That is
14 conceivable. It may also --

15 QUESTION: And you must acknowledge, I assume
16 -- say there's a state law against spending money on
17 liquor licenses or something like that. You couldn't do
18 it for that purpose.

19 MR. RAYWID: No. It would be within the
20 governmental purposes as defined by state law. We would
21 concede that.

22 QUESTION: Should the state pass a statute
23 that says you should spend no more than \$10 million on
24 roads in any one county?

25 MR. RAYWID: I do not think that they could

1 place a limitation on the federal funds which had been
2 given to that particular county, and could not do by
3 indirection what they could not do by direction.

4 The purpose of the federal funds -- in that
5 instance, they might have to refund to the Federal
6 Government those funds which the state attempted to
7 proscribe its spending.

8 QUESTION: Even though they were used for a
9 valid governmental purpose of some other kind, such as
10 school?

11 MR. RAYWID: Well, the fundamental purpose of
12 the Act is for this county to decide how these federal
13 lands have impacted upon it, and to spend accordingly.

14 It is in furtherance --

15 QUESTION: Without interference from the state
16 legislature.

17 MR. RAYWID: Without interference by the state
18 legislature.

19 QUESTION: Can you find that in this statutory
20 language?

21 MR. RAYWID: This statutory language would
22 make the county auditor a mere cashier, just to receive
23 the funds and then to disburse them according to a
24 formula. And that would --

25 QUESTION: Are you saying a state does not

1 have the power to say that the county auditor shall be a
2 mere cashier and shall spend the money the way we tell
3 him to? The state has no such power.

4 MR. RAYWID: The state has no such power when
5 the exercise of that power would entirely gut the
6 purpose and intent of Congress in conferring
7 jurisdiction and discretion on the local unit of
8 government to make such a decision.

9 QUESTION: These payments are in lieu of what
10 would be real property taxes that the government would
11 pay for government-owned land in the county?

12 MR. RAYWID: That is correct in this
13 particular instance. It applies -- the total land
14 acreage is some 450 million acres. In Lawrence County,
15 it comprises over half the county, are federal lands.
16 And they are, of course, removed from the tax base.

17 QUESTION: And there is no question, I take,
18 it, that under South Dakota law, if these lands had been
19 in private hands and taxes had been paid on them, the
20 state legislature could have told Lawrence County how to
21 spend the taxes.

22 MR. RAYWID: No, Your Honor. I believe under
23 the creation of the county system, the county does
24 exercise discretion as to how much taxes it is going to
25 raise. It has a provision in its operating mandate that

1 it cannot spend more than it takes in.

2 It takes -- it receives budgets, as I was
3 explaining previously. It receives budgets. It then
4 allocates what it feels appropriate for each particular
5 governmental service. And then it raises the money.

6 QUESTION: I didn't mean necessarily that the
7 state legislature had adopted such a regimen. But no
8 one questions that it has the power to do so if it isn't
9 granted by federal law.

10 MR. RAYWID: Well, I suppose the State of
11 South Dakota could eliminate its local government
12 altogether and also remove its taxing authority.

13 QUESTION: Or it could tell its counties that
14 out of each dollar of real property tax that you collect
15 at the county level, you assign 60 percent of that to
16 the schools, could it not?

17 MR. RAYWID: It could. It could mandate
18 that. Then it would be up to the Federal Government to
19 decide at that juncture whether this was a general
20 governmental unit with power to exercise such
21 discretion.

22 But clearly, in accommodating, it seems to me,
23 the state statute with the federal statute, which was to
24 give discretion -- and it specifically states in its
25 legislative history and in its implementing regulations

1 that this is not to go to special districts or not for
2 special units of service such as school districts, and
3 it is not to go to states. It is to go to the smallest
4 unit of local government in which that land is located.

5 As I -- this is a program that was some 20
6 years in the study, and by a creature of Congress, a
7 commission created back in 1964, with its report in 1970
8 saying that we should do away with all of the federal
9 land programs that in place that designate the use, that
10 try to determine for particular communities how they can
11 best spend the money, and let those communities decide
12 how they must use the aid.

13 The legislative history and the testimony show
14 such a variance of conditions, disaster, court trials,
15 all kinds of different impact. And more often, the
16 benefits such as from a national park, which receives a
17 number of visitors, which receives a number of
18 expenditures because of the presence of the national
19 park, go not to the local community in sales tax or in
20 corporate income tax, but they go to the state.

21 This was an attempt to direct those fund to
22 where that land was located and because --

23 QUESTION: Can I ask you in this example -- I
24 think it's in the government brief -- a very costly
25 trial because a crime occurs in the county. And then

1 you talk about well, maybe they want to use the money
2 for that purpose.

3 Do you think the state could provide that the
4 costs of exceptionally expensive trials of the character
5 described there shall always be handled with state funds
6 and the trial shall be handled by the state attorney
7 general and no local funds shall be used for such
8 purposes?

9 First I'd ask you could they do that with tax
10 remedies and, secondly, could they do it with these
11 funds?

12 MR. RAYWID: Well, depending upon the state
13 constitution and depending upon the jurisdictional
14 authority, I suppose that the state could assume those
15 funds. I also --

16 QUESTION: They could prohibit the county from
17 spending money for that particular purpose without
18 violating the federal statute.

19 MR. RAYWID: Or could supplement --

20 QUESTION: Just say we will pay for this cut
21 of state funds in this county, as we do throughout the
22 state.

23 MR. RAYWID: Yes, but as the Congress observed
24 and as the Congress noted, states don't do that.

25 QUESTION: Well, but isn't the state the best

1 entity to decide whether it shall be done within its
2 borders or not? Not Congress tell them you have to let
3 the county make this decision?

4 MR. RAYWID: Perhaps the state is the best
5 entity, generally, to make such decisions. But this,
6 mind, you is -- concerns government-owned land. And the
7 management of government-owned land is exclusively
8 within the constitutional power of --

9 QUESTION: Yes, but the statute clearly says
10 the Federal Government shall not say how the money shall
11 be spent. Isn't that clear?

12 MR. RAYWID: The statute clearly confers to
13 the local unit of government, yes.

14 QUESTION: And it clearly disables the Federal
15 Government itself from allocating the funds. Isn't that
16 clear?

17 MR. RAYWID: In that particular section. In
18 that particular section, it wants to pass the discretion
19 to the individual.

20 CHIEF JUSTICE BURGER: Mr. Claiborne.

21 ORAL ARGUMENT OF LOUIS F. CLAIBORNE, ESQ.

22 ON BEHALF OF THE UNITED STATES

23 AS AMICUS CURIAE

24 MR. CLAIBORNE: Mr. Chief Justice, may it
25 please the Court, perhaps I could most usefully begin by

1 descending particulars.

2 This statute, that is, the federal statute,
3 very pointedly directs that the payments be made made to
4 the local government units, the general government units
5 of the locality and not to the state. It would have
6 beer much simpler for the federal payment to be made to
7 the state and to leave the state free to make the
8 distribution as it saw fit.

9 Congress chose to do otherwise, and the
10 legislative history tells us why. There had been an
11 experience of making payments to the state with a view
12 to the state's redistributing the funds to the affected
13 locality, and all too often the state had failed to
14 redistribute in the way Congress had expected.

15 Accordingly, on this occasion, Congress very
16 clearly said we distrust the state. We will pay
17 directly to the affected county. It is our intention
18 that they be reimbursed for the burdens our land
19 management imposes on them, and that the money remain
20 there.

21 QUESTION: Mr. Claiborne, what were the
22 consequences of the state statute here as to these
23 particular funds? What was the result when the state
24 statute was applied

25 MR. CLAIBORNE: It is true that in this

1 instance, Justice Rehnquist, the state statute did not
2 require the funds to be expended outside the geographic
3 area of the county, but it did require that 60 percent
4 of those funds be allocated to a school district, a
5 school district whose needs were in no way increased by
6 the presence of federal land.

7 On the contrary, the federal land is forest
8 land, for the most part, which is --

9 QUESTION: But the school district is,
10 nonetheless, in the county.

11 MR. CLAIBORNE: Yes. But had that land been
12 taxed, had it been sold to individual, had it been
13 subject to taxation, presumably families would have
14 lived on it and the school burden would have been
15 increased accordingly.

16 Therefore, it would have been appropriate to
17 increase the allocation to the school district. Here,
18 it is wholly inappropriate to allocate 60 percent of
19 these federal funds which do not merely stand in lieu of
20 the taxes, but which were intended to compensate for
21 quite different burdens which federal ownership of the
22 land imposes, as distinguished from private ownership of
23 that same land.

24 Now, the point of having the payments go to
25 the county and not to the state is importantly injured,

1 if not destroyed, when the state is free to seize those
2 monies as soon as they reach the country treasury, and
3 redistribute them as it sees fit.

4 We might as well have given the money directly
5 to the state.

6 QUESTION: Mr. Clairborne, I don't
7 understand. They haven't seized any money. They're
8 just saying how it shall be spent within the county.
9 Maybe it's a wasteful to spend, but I just don't
10 understand the analogy to diverting the money out of the
11 county which led to the enactment of the statute.

12 MR. CLAIBORNE: One aspect: If the state had
13 power to allocate the money, it is difficult to see why
14 that power was limited geographically. If you read the
15 statute as requiring the payment to the county so that
16 the county will have discretion as to how to spend it,
17 that is one thing.

18 If we say that state law can supplant the
19 county's discretion, then why is the state law limited
20 to redistribution within a geographic area? Nothing in
21 the statute would lead us to that intermediate
22 conclusion.

23 Either the state is ousted, as the dissenting
24 justices of North Dakota Supreme Court put it, but
25 Congress was very clear that their noses were not to be

1 intruded into this arrangement involving only
2 supplemental federal funds as between the federal and
3 local governments.

4 There is a -- I'm sorry.

5 QUESTION: Go ahead. Finish.

6 MR. CLAIBORNE: There is another aspect of
7 this statute which leads us in the same direction, which
8 is the second part. Justice Rehnquist quoted the
9 provision of the federal statute which says the unit of
10 local government may use the payment for any
11 governmental purpose.

12 Now that, too, was no accident. Previous
13 federal statutes had earmarked the funds. Congress
14 decided this time we will not do that. We will not do
15 that because we recognize that the needs vary from
16 county to county, from year to year, and depending on
17 the kind of federal ownership involved.

18 QUESTION: But it's one thing for Congress to
19 say that we're not going to try to supervise the
20 expenditure of these funds. And it's another thing to
21 say that the statute goes further and sets the counties
22 up against the state.

23 MR. CLAIBORNE: Indeed, Your Honor. But it
24 would be strange for Congress to have withheld its hand,
25 contrary to prior practice, with a few to accommodating

1 the flexibility that is needed from place to place, from
2 time to time, depending on the kind of ownership, only
3 to permit the state's heavy hand to come down with a
4 uniform rule that destroys that flexibility which
5 Congress was anxious to create and preserve.

6 QUESTION: Let me try and hypothetically -- it
7 may clear it up for me; it may not. Suppose, instead of
8 the Federal Government making this grant, it was the
9 Ford Foundation or the Rockefeller Foundation said we're
10 going to give you six million dollars a year for these
11 purposes.

12 There's no federal supremacy issue there. But
13 wouldn't that condition be enforceable?

14 MR. CLAIBORNE: If that condition had been
15 announced in advance and the state had accepted --

16 QUESTION: Well, aren't you suggesting that
17 there's a condition announced in this statute?

18 MR. CLAIBORNE: Indeed. And Your Honor's
19 analogy seems to me sound; that is, that if the money is
20 accepted on those conditions, those conditions are
21 enforceable no matter who the grantor may be.

22 Now, finally, as an indication that this state
23 statute does offend the federal purpose, one looks to
24 Section 3 of the Act. This case concerns Section 1
25 which involves the bulk of the funds, but Section 3 is a

1 special provision which says in the event a national
2 park or a wilderness is created out of land which was
3 taxed just before and which is now removed from the tax
4 roles, for five years there shall be a payment which
5 will substitute for the taxes which have been lost.

6 And there, Congress directs that the
7 allocation be as the taxes were the previous year,
8 partly to the school district and so forth.

9 Now, what South Dakota has done is said we
10 will impose the Section 3 formula on Section 1 funds,
11 thereby destroying the whole point of Congress's making
12 the difference.

13 Now, that is a plain indication of how hostile
14 these two provisions are.

15 Now, one might wonder why the Federal
16 Government cares, whether we're not simply intruding
17 ourselves in a family argument between a county and a
18 school board.

19 The government cares, first, because Congress
20 had in mind benefitting a locality and not whatever
21 agency of government the state might choose to benefit.
22 The least populous counties probably have the least
23 voice in the state legislature and therefore they are
24 not likely to failure.

25 The government was concerned that those who

1 suffered the burden from our presence be the ones who
2 benefitted from our funds.

3 The government also, since these funds were
4 meant to recompense for burdens imposed by us, felt some
5 degree of duty to see to it that the funds were
6 available and used for providing the services that our
7 lands required.

8 And, duty aside, our self-interest was that
9 the counties have the funds available and that they not
10 be deflected to the school board or elsewhere, but that
11 they be available to furnish the services to our lands
12 which otherwise we would have to contract and pay for
13 elsewhere.

14 QUESTION: Yes, but the county could choose
15 not to furnish any services to your lands, the way the
16 statute is written, could it not?

17 MR. CLAIBORNE: It is so. And Congress had to
18 choose whether flexibility or trust with respect to the
19 county was most appropriate.

20 Congress took it that the county could be
21 trusted in its special relationship with the federal
22 managers to expend at least a measureable portion of
23 those funds on providing the services to the federal
24 lands.

25 And let me say in the day-to-day management of

1 the federal lands, there is a relationship between the
2 federal managers and the county officials. That
3 relationship is indispensable to the success of the
4 federal land program. It is one which is measurably
5 aided by the presence of federal funds to compensate for
6 the burdens the government imposes, but it is only
7 useful if the county is assured that those funds are not
8 deflected or confiscated or otherwise directed by the
9 state to be used elsewhere.

10 CHIEF JUSTICE BURGER: Mr. Fuller.

11 ORAL ARGUMENT OF A. P. FULLER, ESQ.

12 ON BEHALF OF THE APPELLEE

13 MR. FULLER: Mr. Chief Justice, and may it
14 please the Court, this case doesn't deal with a whole
15 lot of things. It doesn't deal with a sovereignty; we're
16 dealing with a county government. We are not dealing
17 with where the "in lieu of" money is to be paid. The
18 money is paid to Lawrence County, and that's where it
19 should be paid.

20 We're not asking the Secretary of Interior to
21 make "in lieu of" payments to the school district. We
22 are not asking that these payments be used for anything
23 but governmental purposes. We're not dealing with the
24 Secretary of Interior putting restrictions on the use of
25 this money from the federal level. That's not in here.

1 We're not dealing with any other statute
2 because the State of South Dakota is the only state that
3 has a statute like this. The Arkansas statute dealt
4 with all school monies in the Denning case; all school
5 monies that come to the state shall be distributed to
6 the schools.

7 Well, in the Denning case, it specifically
8 pointed out in the decision that, assuming arguendo,
9 that the monies are for school. We are not even
10 claiming that they're school monies.

11 We are not dealing with a statute nor a
12 ' regulation which prohibits the county from distributing
13 these monies to the school districts. What we are
14 dealing with is a statute that gives the counties, as
15 well as many state statutes under Title VII of the South
16 Dakota Code, direction and guidance and powers and
17 responsibilities.

18 QUESTION: Well, isn't the purpose of South
19 Dakota's statute in this instance to assure that school
20 districts get a share of the federal payments in lieu of
21 taxes?

22 MR. FULLER: I think that's the practical
23 effect.

24 QUESTION: Well, is that the purpose of the
25 statute, do you suppose?

1 MR. FULLER: I don't -- I was not present when
2 the statute -- when 511 --

3 QUESTION: Can you think of some other purpose
4 that the statute might have?

5 MR. FULLER: There are other governmental
6 entities that the county distributes money to, like
7 water conservance of the subdistricts, or water
8 districts, conservance of subdistricts, fire districts,
9 and other governmental entities that gather the money.

10 But as to the reason that the legislature
11 passed this, I think you must recall, in the section,
12 the section deals with "in lieu of" monies. In other
13 words, the state also pays in lieu of tax monies. And
14 the amendment added the word "federal." So that all
15 federal and state "in lieu of" monies would be
16 distributed by the auditor as all tax revenues were then
17 distributed, which is the counties --

18 QUESTION: Which would assure a portion of it
19 going to school districts.

20 MR. FULLER: Yes. Practically speaking, yes.
21 It does assure that. It's not 60 percent, so that we
22 understand that.

23 QUESTION: Does that purpose conflict with the
24 congressional intent, do you suppose?

25 MR. FULLER: Well, now I don't think so. I

1 don't think -- the statute says the county may use the
2 money for any governmental purpose. It does -- the
3 school district is not saying that the county is to use
4 the money for school purposes or fire protection
5 purposes or police protection or road building. It's
6 any purpose, any purpose that to the county seems fit
7 and appropriate is the way they, under Title VII of our
8 code, can handle the money.

9 I have to agree, though. The practical effect
10 is that the monies do -- some of the monies, not
11 necessarily 60 percent -- it's whatever the budgetary
12 amount of money that a school district needs for the
13 next year.

14 QUESTION: Why doesn't your view, then, amount
15 to a windfall from the school district? You already
16 have 60 percent, and presumably that's all the school
17 district needs.

18 Now, if additional federal funds have to go to
19 the school districts, it's 60 percent plus.

20 MR. FULLER: Well, there's nothing magic about
21 the 60 percent. You know, it varies, depending on --

22 QUESTION: Well, sure. But whatever figure it
23 is, the schools in your county are being maintained
24 without this federal infusion of funds, are they not?

25 MR. FULLER: Correct.

1 QUESTION: Well, then anything that goes to
2 the school district from the federal funds is a windfall
3 to is.

4 MR. FULLER: That would be true --

5 QUESTION: Perhaps an unneeded one.

6 MR. FULLER: Well, that I can't answer.

7 QUESTION: Well, that's what you want.

8 MR. FULLER: Your Honor --

9 QUESTION: You're here representing the school
10 district.

11 MR. FULLER: That's correct, Your Honor. Your
12 Honor --

13 QUESTION: Isn't that true of all government
14 services, that they are budgeted for them, and whatever
15 the federal windfall is, it's prorated for all these
16 services?

17 MR. FULLER: That's what I was going to say.
18 But thank you. You see, the county can give that
19 windfall, if you want to call it a windfall, to the
20 school district now; but let's say the statute's not
21 there, they could. The statute is there; they get a
22 proportion share of that. The county can get the
23 windfall.

24 You know, there are many governmental
25 services, any governmental service, many things that

1 would then receive this governmental windfall. It also,
2 when the money goes to the school district, it's in lieu
3 of real estate taxes, and real estate taxes are where
4 the revenues are generated to support the school
5 districts, support the counties, support the
6 municipalities, and all these other local governmental
7 entities.

8 QUESTION: That's what I say. This is not an
9 ordinary windfall; this is in lieu of taxes.

10 MR. FULLER: That's right. It's in lieu --

11 QUESTION: Well, that's not an ordinary
12 windfall. Windfall is where they give you something
13 you're not entitled to.

14 MR. FULLER: Well, but Congress -- I have to
15 agree with what he's saying if the definition is proper,
16 because Congress is giving the counties that money.

17 QUESTION: In lieu of taxes.

18 MR. FULLER: Right. But Congress did not have
19 to pass that act because the county or the school
20 district cannot tax those federal lands.

21 QUESTION: Another thing: Doesn't the
22 legislative history suggest at least that Congress was
23 somewhat concerned about what states did sometimes with
24 these kinds of grants, in lieu of taxes and other types
25 of grants, and they wanted to vest the control entirely

1 in the county. Isn't that what Congress said?

2 MR. FULLER: Congress was concerned about all
3 the things you mention. And that's why they gave the
4 money to the county government, okay?

5 The county is merely distributing, as the
6 statute says, as they distribute other tax money. Now,
7 it seems to me that if the distribution of other tax
8 money is fair, reasonable, and equitable under
9 situations of budgets and other matters, that this money
10 is also being distributed in the same manner.

11 QUESTION: Mr. Fuller, you raised the question
12 about the 60 percent a couple of times in your -- who
13 determines, what governmental body determines the
14 percentage of tax revenues that shall be given to the
15 school district?

16 MR. FULLER: No governmental entity, because
17 it's through the budgetary process. You have a county
18 or a school --

19 QUESTION: Is it a county budget or a state
20 budget?

21 MR. FULLER: It's a school budget and a county
22 budget.

23 QUESTION: So that the county has a voice in
24 determining the allocation of tax revenues. Is that
25 correct?

1 MR. FULLER: It's very limited, because our
2 South Dakota Supreme Court has ruled that when a school
3 district comes before the County Board of Equalization
4 and they need X number of dollars, the county cannot
5 arbitrarily reduce the assessed valuation so that the
6 school district will not have the monies to function.

7 QUESTION: Yes, but what I mean is, the
8 decision as to what percentage -- is the percentage the
9 same in every county throughout the state?

10 MR. FULLER: Oh, no. No.

11 QUESTION: So that the percentage that's in
12 effect in the county in dispute here is really largely
13 governed by what happens in that county.

14 MR. FULLER: Oh, absolutely.

15 QUESTION: And all the state has said is,
16 you've got to follow the same percentage for other funds
17 in that county.

18 MR. FULLER: That's right. Anything that's
19 paid to you in lieu of real estate taxes, you just flip
20 the percentages in and apply the same proportions.

21 QUESTION: Yes, but the 60 percent, the 60
22 percent results from the fact that the school district
23 makes up its own budget, and in a sense is a taxing
24 authority itself. And it goes to the county and says
25 here's what we need and here's what the assessment

1 should be.

2 MR. FULLER: That's correct. But --

3 QUESTION: And the county, as you say, has
4 very little to say about it. I mean the county -- what
5 is it - Board of Commissioners or --

6 MR. FULLER: No -- yes, the Board of
7 Commissioners.

8 QUESTION: The Board of Commissioners has very
9 little to say about it.

10 MR. FULLER: They have very little to say
11 about --

12 QUESTION: They can't cut the school district
13 back.

14 MR. FULLER: They cannot cut the school
15 district back. The mill levies are set by state
16 statute. Assessed valuations are set by counties.

17 QUESTION: I take it, if you prevail -- if you
18 prevail, you can predict that the counties are going to
19 get certain money and that you won't have to assess as
20 high as you would have if you weren't going to get the
21 federal money.

22 MR. FULLER: That's correct.

23 QUESTION: So you'll be saving all of the
24 people in the school district money.

25 MR. FULLER: Correct. That's the bare bones

1 practical effect of the money. And the county, you see
2 -- that's why it's a political deal. The county
3 receiving the windfall can then also lower their mill
4 levies, so that then the taxpayers in the county --

5 QUESTION: Is the entire county covered by one
6 school district or another?

7 MR. FULLER: There are three school -- excuse
8 me -- there are two complete school districts within
9 Lawrence County and a portion of another school
10 district. So there are a two and a fraction.

11 QUESTION: Every piece of non-government land
12 is covered by a school district?

13 MR. FULLER: In Lawrence County?

14 QUESTION: Yes.

15 MR. FULLER: Yes. There's governmental land
16 in every school district in Lawrence County.

17 QUESTION: So if the government wins -- if the
18 government wins this case, it's just that what everybody
19 in the county would have had to be assessed to pay the
20 county expenses, they won't have to be assessed as much.

21 MR. FULLER: That's right.

22 QUESTION: So how much difference will it make
23 as to who -- in terms of taxpayers -- what taxpayer
24 group shall benefit and whatnot?

25 MR. FULLER: Well --

1 QUESTION: I know that the taxpayers in the
2 school district will be taxed less if you win.

3 MR. FULLER: Correct. And no one knows
4 whether the people in the county -- you see, not -- I
5 would say that the county will receive -- they won't
6 lose anything either. They won't lose anything and the
7 school district won't lose anything, except for --
8 there's political considerations here. And they're
9 serious at our local level, and that is who's taxing
10 us? Is it the county taxing us or is it the school
11 district taxing us?

12 And that has political significance at the
13 local level. So yes, it is important for all -- for
14 distribution of this money to be equitably distributed
15 as the county does it now, so that it's spread; it's
16 spread the same as all other tax dollars, and there's no
17 harm to anyone.

18 QUESTION: Mr. Fuller, where do the schools in
19 your state derive their money from anyway?

20 MR. FULLER: From real estate taxes.

21 QUESTION: From real estate taxes in the
22 school district or in the county, or both?

23 MR. FULLER: In the school district.

24 QUESTION: And you have a general sales tax in
25 South Dakota, state sales tax?

1 MR. FULLER: Yes.

2 QUESTION: And does the state appropriate any
3 of their sales tax fund either to the county or to the
4 school districts?

5 MR. FULLER: Not specifically. We do have
6 state aid to the local school districts, yes, based upon
7 numbers of pupils in classrooms, classroom size?

8 QUESTION: That state aid comes from the sales
9 tax and the state income tax?

10 MR. FULLER: It comes from all state
11 revenues. We don't have a state income tax. We do have
12 a state sales tax, and we have other taxes.

13 QUESTION: Now, does your state legislature
14 specifically appropriate money for the public schools?

15 MR. FULLER: Yes.

16 QUESTION: That money goes directly to the
17 school districts?

18 MR. FULLER: Yes.

19 QUESTION: But it goes by -- they make up the
20 amount that goes to each particular school district.

21 MR. FULLER: Correct.

22 QUESTION: Based on some formula?

23 MR. FULLER: Formula.

24 QUESTION: Well, what if some district is
25 getting money from the Federal Government? Do they

1 reduce it?

2 MR. FULLER: No, sir. They do not. That has
3 absolutely -- it's totally independent from any federal
4 aid.

5 QUESTION: But the school district would
6 reduce its own taxes.

7 MR. FULLER: And so will the county.

8 QUESTION: Yes.

9 QUESTION: Does the school district have
10 authority to levy taxes itself?

11 MR. FULLER: Yes.

12 QUESTION: Real estate taxes?

13 MR. FULLER: Yes.

14 QUESTION: And, in addition, the county levies
15 a real estate tax also?

16 MR. FULLER: Correct.

17 QUESTION: It's not unlimited.

18 MR. FULLER: No, no. It's not unlimited.
19 It's based upon assessed valuation which can be no
20 greater than 60 percent of the full and true value, as
21 determined by the county, times a certain mill that we
22 -- certain different governmental entities have
23 different mill levies, which is a formula.

24 QUESTION: Back to that one. Just who is
25 losing on this?

1 MR. FULLER: Well, if we don't get the money,
2 we will.

3 QUESTION: Does the taxpayer lose?

4 MR. FULLER: Does the taxpayer lose?

5 QUESTION: Yeah. Will he have to pay more
6 taxes?

7 MR. FULLER: He may.

8 QUESTION: How?

9 MR. FULLER: Again, depending upon the
10 governmental needs of the specific time, if the county
11 needs a great deal of money, then yes. If they don't
12 have the windfall --

13 QUESTION: This is political. Is there
14 anything in there, other than politics?

15 QUESTION: I may be asking the same question
16 differently. Who's going to get the money if you
17 don't? I still don't understand.

18 MR. FULLER: Pardon me?

19 QUESTION: Who is going to get the money if
20 you don't? Your opponent doesn't seem to know. He
21 seems to acknowledge it's possible they'll divvy it up
22 exactly as the statute proposes.

23 MR. FULLER: Well, I don't think so, because
24 the school district has gone to the county on numerous
25 occasions, asking them to please do what the state

1 statute says, and they continue to say we don't have
2 to. We can do anything we want with the money.

3 QUESTION: Did they ever tell you what they're
4 going to do? Are they going to just raise their
5 salaries?

6 QUESTION: What have they been doing with it?

7 MR. FULLER: The money has been held in
8 escrow, gathering interest

9 QUESTION: They certainly wouldn't spend it on
10 the school district, I take it.

11 MR. FULLER: One never knows. Maybe we could
12 change our lobbying techniques and get it. But they
13 have told me they will not give us the interest, Your
14 Honor.

15 QUESTION: Is there any way they could send it
16 back to the other U.S. taxpayers?

17 (Laughter.)

18 QUESTION: I mean you interest me on that.

19 MR. FULLER: Well, we'd like to keep it in
20 Lawrence County and we'd like to keep it at our school
21 district, where it should be, and it should be
22 distributed at the same.

23 I frankly think that Lawrence County is making
24 much to do about nothing. If they'd just do what the
25 statute says, we could go on about our business. And it

1 doesn't conflict --

2 QUESTION: Which statute?

3 MR. FULLER: The state statute. It doesn't
4 conflict. There's no conflict in the statute. It's not
5 an obstruction to the federal scheme of things. The
6 money is going to be distributed for governmental
7 purposes.

8 QUESTION: But you said when the county --
9 when they come to the school board, the school board
10 refuses -- or is it the county that you said -- the
11 county refused to do what the state statute purports to
12 compel them to do.

13 MR. FULLER: Correct.

14 QUESTION: That's the political aspect that
15 you are talking about.

16 MR. FULLER: Correct. Maybe they want to
17 build a bridge or a road.

18 QUESTION: Well, it's also their position that
19 they're not only free, but obligated, to refuse to do
20 that, if they're going to take the federal money.
21 That's their position, as I understand it.

22 It's not just a political position. They
23 claim they have not only a legal right, but an
24 obligation not to live up to the federal -- to the state
25 statute, if they to spend it for something else.

1 MR. FULLER: I'm going to disagree with that.

2 QUESTION: You don't think that's their
3 position?

4 MR. FULLER: No. I think the county believes
5 that they could give all this money to the school
6 district if they wanted to.

7 QUESTION: Yes, but I just said one of their
8 positions is that they have a legal right not to spend
9 it that way.

10 MR. FULLER: That's correct.

11 QUESTION: So it just isn't a political
12 position. They claim they have a legal right under the
13 federal statute.

14 MR. FULLER: Correct. And they're claiming
15 that the federal statute is supreme and is in conflict
16 with the state statute, and that's where I and the
17 school district can't necessarily see the conflict.

18 QUESTION: Well, that's why you're here, I
19 guess.

20 MR. FULLER: That's correct.

21 The county is governed by the constitution of
22 the State of South Dakota. They are not a sovereignty
23 unto themselves. Article IX of our constitution creates
24 counties -- excuse me, it does not create counties, it
25 allows the legislature to create counties. And the

1 legislature has created Lawrence County and 60-some odd
2 other counties in South Dakota.

3 They are creatures of state government, and
4 under Title VII of our statutes, they have been given
5 the powers that our legislature has allowed them to
6 have. And this is a statute similar to all other
7 statutes. It gives counties guidance, instruction as to
8 what they should do, and that's all the statute does.

9 It just seems that if counties, in their
10 process, distribute monies in a fair, reasonable, and
11 prudent way on an annual basis, that a statute that
12 directs them to continue that proposition with federal
13 in lieu of tax monies is not in conflict with the
14 federal statute that is presently before this Court.

15 QUESTION: Except that the county has
16 different ideas from the state; isn't that so?

17 MR. FULLER: The county -- well, the state is
18 not telling them how to spend the money. The county
19 decides that at the local level. They are just saying
20 do it the way you do it.

21 QUESTION: Are you suggesting that the state
22 statute doesn't put any constraints on them?

23 MR. FULLER: You're talking about -- yes, it
24 tells them about vouchering and bonding and bonds of
25 indebtedness and all that. Sure, there are

1 constraints. But these are expenditures. These are tax
2 monies in and these are disbursements out, Your Honor.
3 And counties have pretty much general latitude as long
4 as they're paying the bills that are authorized by law.
5 The restrictions aren't that great.

6 CHIEF JUSTICE BURGER: Very well.

7 You have about three minutes remaining Mr.
8 Raywid.

9 ORAL ARGUMENT OF ALAN RAYWID, ESQ.

10 ON BEHALF OF APPELLANTS - REBUTTAL

11 MR. RAYWID: This is the only statute in the
12 country that seems -- or the only state in the country
13 that seems it is necessary to make some reallocation.

14 Mr. Justice White asked whether this will be a
15 windfall for the taxpayers of that county. That
16 certainly was not the purpose.

17 The purpose in granting discretion for the
18 presence of these lands was that the benefits would
19 redound to the landholder, the United States of
20 America. And the funds are those from the taxpayers of
21 the United States of America.

22 No other state has felt it necessary to take
23 away this local discretion. Arkansas attempted, in a
24 somewhat different manner, and Arkansas failed. So
25 there is no necessity to instruct the county.

1 And this Court, in an unbroken line of
2 decision since Chief Justice Marshall, has held that the
3 purpose and intent of intent of Congress in trying to
4 accommodate both state and federal statutes, must look
5 to the intent and purpose of Congress.

6 There is no doubt in this question that
7 Congress is acting in a field in which it has
8 authority. This is land management, given to it by the
9 Constitution, and it also involves the spending power of
10 Congress under what conditions Congress would impose.

11 Certainly, the legislative history and, we
12 would submit, the Act itself says that its main purpose
13 and intent is to confer upon counties discretion.

14 The South Dakota statute -- and indeed if it
15 is upheld, other states would follow -- removes that
16 discretion, supplants the local community where the
17 lands are located --

18 QUESTION: Would you agree that it doesn't
19 entirely remove the discretion, because the basic
20 allocation is at least partially determined by the
21 county itself?

22 MR. RAYWID: Well, first of all, the county in
23 the year before receipt of these funds tries to budget
24 its needs.

25 QUESTION: And it probably in doing that can

1 anticipate it will be getting some federal funds in the
2 following year.

3 MR. RAYWID: Well, not necessarily. And
4 probably Lawrence County certainly did not. It
5 allocates the funds to meet the budgets for the coming
6 year. Then, following that --

7 QUESTION: But it does participate in the
8 decision whether the school district will get 60 or 39
9 or 59 percent of the tax revenues.

10 MR. RAYWID: Indeed, it's instrumental in --

11 QUESTION: So it does have a part in the
12 allocation of these funds, too, then.

13 MR. RAYWID: Well, it would have to be using a
14 crystal ball or some kind of a mathematical formula, of
15 which I'm not aware, in order to find out what the
16 Secretary of Interior is going to allocate for this
17 particular county, and find out how that works in the
18 equation -- which is totally apart from the purpose and
19 intent of Congress.

20 Thank you.

21 CHIEF JUSTICE BURGER: Very well. Thank you,
22 gentlemen. The case is submitted.

23 (Whereupon, at 2:45 p.m. o'clock, the case in
24 the above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

83-240 - LAWRENCE COUNTY, ET AL., Appellants v. LEAD-DEADWOOD SCHOOL DISTRICT

NO. 40-1

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

(REPORTER)

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