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THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

DKT/CASE NO. 84-233

TITLE PHILLIPS PETROLEUM COMPANY, Petitioner V.
IRL SHUTTS, ET AL.

PLACE Washington, D. C.

DATE February 25, 1985

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IN THE SUPREME COURT OF THE UNITED STATES

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PHILLIPS PETROLEUM COMPANY, :

Petitioner, :

v. : No. 84-233

IRL SHUTTS, ET AL. :

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Washington, D.C.

Monday, February 25, 1985

The above-entitled matter came on for oral
argument before the Supreme Court of the United States
at 1:45 o'clock p.m.

APPEARANCES:

ARTHUR R. MILLER, ESQ., Cambridge, Massachusetts; on
behalf of the petitioner.

JOEL I. KLEIN, ESQ., Washington, D.C., on behalf of
the respondent.

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next in Phillips Petroleum Company against Shutts, et al.

Mr. Miller.

ORAL ARGUMENT OF ARTHUR R. MILLER, ESQ.,

ON BEHALF OF THE PETITIONER

MR. MILLER: Thank you, Mr. Chief Justice, and may it please the Court. The two issues in this case are, first, whether the state of Kansas, consistent with the notions of individual liberty and interstate federalism imbedded in the due process clause and the full faith and credit clause may assert jurisdiction and enter a binding judgment affecting thousands of non-residents of Kansas who have had no contacts with Kansas and whose oil and gas royalty interest claims have absolutely nothing to do with Kansas and when there is no legitimate public policy of Kansas implicated in the action, and second, whether Kansas can indiscriminately apply Kansas law to each and every one of these claims.

The petitioner asserts that the answer to both of these questions is in the negative. In an unbroken line of cases starting with International Shoe and moving through Hanson and Denckla, and most recently

1 further articulated in the Woodson case, for 40 years
2 this Court has established a constitutional requirement
3 that minimum contacts must exist between a party and a
4 state before that state can assert jurisdiction over
5 that party, that there must be a relationship among the
6 defendant, the forum, and the litigation, to use
7 language from those cases.

8 As fully articulated in Justice White's
9 opinion in the Woodson case, that minimum contact
10 standard serves as a principal, realistic, and flexible
11 instrument protecting two values. First is the liberty
12 interest of the individual not to be subjected to
13 litigation in a forum with which he or she has not
14 voluntarily affiliated.

15 The second objective of the minimum contacts
16 test is to limit the authority of each state within the
17 context of the federal system. That means that I as a
18 citizen of Massachusetts, and Mr. Kubbich of Phillips
19 Petroleum as a citizen of Oklahoma, has an individual
20 liberty interest not to be burdened, not to be affected,
21 not to have his property rights or personal rights
22 affected by a state that he has not affiliated with.

23 QUESTION: So this would just -- your
24 submission is that that is just a limit on plaintiff
25 class actions?

1 MR. MILLER: Our position, Justice White, is
2 that although those cases which I have described do
3 speak in terms of the defendant, because the party to be
4 affected in those cases were defendants, that that same
5 principle must be applied to non-resident class
6 members.

7 QUESTION: And it isn't enough just to give
8 them an option to opt-out?

9 MR. MILLER: Absolutely not. This Court has
10 said several times that a cause of action is a property
11 right. It has said that in the Zimmerman case. It has
12 said it in effect in the Mullane case. It has said it
13 in Boddie. It has said it in Rogers.

14 In a sense it has said it in the Dunleavy case
15 many, many years ago, that there really is no difference
16 between my being held liable for \$10 and my claim of \$10
17 being foreclosed by the judicial action of the state of
18 Kansas, that I have an individual liberty interest unless
19 I have affiliated with Kansas. I have a constitutional
20 right to have my property, my claims, my liabilities
21 adjudicated by the sovereignty of my --

22 QUESTION: So a plaintiff class has -- the
23 Constitution requires the plaintiff's class to be
24 limited to those who have some realistic connection with
25 the forum state?

1 MR. MILLER: Well, those members of the
2 plaintiff's class who have voluntarily affiliated by
3 some affirmative act.

4 QUESTION: Right, like the named plaintiffs.

5 MR. MILLER: Like the named plaintiffs or
6 anyone from any state who would wish to join the named
7 plaintiffs in that action.

8 QUESTION: You would require an opt-in
9 procedure in effect?

10 MR. MILLER: We would require, and I believe
11 the constitution requires that there be an affirmative
12 act taken by the non-resident to show a willingness to
13 subject himself to the forum.

14 QUESTION: Even if you are right, I am
15 concerned about the standing of your client to raise
16 that question for one of the 28,000 some odd people who
17 apparently have not come forward to object.

18 MR. MILLER: We base our standing on cases
19 going back to Hansen and Denckla in which a defendant
20 from Florida was permitted by this Court to assert on
21 behalf of an absent trustee the non-jurisdiction of the
22 state of Florida over that Delaware trustee.

23 In that situation, this Court said that those
24 Floridians had a direct, substantial personal interest
25 in the outcome of that jurisdictional question, in part,

1 of course, because the Delaware trustee was declared by
2 Florida law to be indispensable.

3 We believe that the non-resident,
4 non-volitional plaintiff class members are also
5 indispensable parties to their own claims, just as that
6 Delaware trust was indispensable in the Hansen case.

7 QUESTION: Well, if these non-residents are
8 proper parties, you may have to pay them. That sounds
9 like a piece of standing, doesn't it?

10 MR. MILLER: Well, our standing, I believe, is
11 predicated on our own personal interest in this case.
12 We have been subjected in Kansas to a lawsuit and the
13 judgment now in favor of 28,100 plaintiffs. There are
14 only somewhere between 500 and 1,000 Kansas or Kansas
15 leased plaintiffs that would satisfy any of the due
16 process standards.

17 QUESTION: Well, I suppose even now if all the
18 parties were notified that the Phillips attorney is
19 making an argument that you people shouldn't be entitled
20 to share, but please write us a letter now and we will
21 give you some money, I suppose even at this late date
22 there could be some opt-ins, couldn't there?

23 MR. MILLER: If you believe that each of the
24 non-resident class members has a constitutional right to
25 make up his own mind as to whether his piece of property

1 is to be put on the litigation chessboard, then it seems
2 to me that if, to go back to Justice O'Connor's
3 reference to the opt-in class, if Kansas wishes to
4 expand its class action power, then its invitation to
5 non-residents, its invitation to those with whom it has
6 no constitutional affiliation, must come at a moment in
7 time that is meaningful.

8 If one looks at the class action statute of
9 Kansas, which is virtually but not completely identical
10 to Federal Rule 23, you discover that the notice
11 provided for and the opt-out right and the
12 representation provided for by the Kansas class action
13 statute comes after certification, which we submit is
14 not a rational time at which the non-resident class
15 member can exercise his right to participate or not
16 participate.

17 This case is a classic illustration of that,
18 because three years went by between the institution of
19 the action and the notice to the absent class members.

20 Justice O'Connor asked about our standing.
21 Well, we were the only game in town. You cannot expect
22 the class representative to assert the lack of
23 jurisdiction over 28,000 of his troops. That is
24 unrealistic. You cannot expect the non-resident class
25 members to asser the jurisdiction issue between

1 institution and notice. They have no notice of the
2 case.

3 We were obliged under the normal rules of
4 assertion of threshold defenses to make the
5 jurisdictional objection prior to answer and litigate
6 it, as we did, in a fully adversarial context. I don't
7 think there can be any doubt about the completeness of
8 this issue or the zealotry with which we have pursued
9 this issue. We were forced to assert it when there
10 literally was no one else who would assert it.

11 QUESTION: As a matter of practicality, we
12 really don't have much reason to think that these 28,000
13 people who have been kind of handed a percentage of a
14 recovery on a silver platter are going to have much
15 squawk about it.

16 MR. MILLER: If one views life with 20/20
17 hindsight, Justice Rehnquist, if you ask me or any
18 rational person, would you prefer to have a check for
19 \$10 or not to have a check for \$10, I assume I would
20 take the \$10 every time.

21 But you cannot construct a principle about
22 state court jurisdiction and the legitimacy of Kansas
23 powers with the assumption that the class will always
24 win. If the class losses, then you have the potential
25 that the party in the Phillips position then prevents

1 action to by another member of the class, a
2 non-resident, and seeks to bind that person by virtue of
3 res judicata.

4 QUESTION: On this record, would we be able to
5 determine in how many jurisdictions these 23,000 people
6 are scattered, if each category in each state was to
7 bring a suit in its own state --

8 MR. MILLER: The record --

9 QUESTION: -- in their own state.

10 MR. MILLER: Excuse me, Mr. Chief Justice.
11 The record is clear that there are eleven gas states
12 involved, and that there are class members from each and
13 every state in the Union.

14 QUESTION: There must be more, too. Every
15 state in the Union.

16 MR. MILLER: Every state in the Union is
17 represented by a royalty owner, as well as some foreign
18 countries. Now, one thing should be, I think, very
19 clear. Phillips is not arguing that there cannot be a
20 national class action in a state court. There typically
21 is at least one jurisdiction with the necessary Shoe,
22 Denckla, Woodson contacts to provide a forum.

23 To be sure, the restriction of the forum to a
24 state that would have the requisite minimum contacts
25 with each and every member of the class might reduce the

1 forum shopping capacity of the plaintiff's attorney,
2 but, for example, in this context we believe that quite
3 possibly Oklahoma is such a forum. Second --

4 QUESTION: May I stop you right there for a
5 moment? I must have misunderstood your brief, because I
6 thought most of your arguments would apply even if you
7 had 90 percent of your class in Kansas and your 10
8 percent were non-residents. Isn't there the same
9 problem for those 10 percent as to the fairness to them
10 of being bound?

11 MR. MILLER: Justice Stevens, I think that is
12 right. If you have a member of the class who is
13 unaffiliated in the due process sense, that individual
14 cannot be bound by the forum state absent his or her
15 voluntary participation by using an appropriately
16 crafted --

17 QUESTION: So that your first submission,
18 then, putting aside the choice of -- your first
19 submission, as I understand it, is that unless you have
20 an opt-in procedure or some equivalent, you may not have
21 a class that includes non-residents.

22 MR. MILLER: You may not have a class that
23 will include unaffiliated class members. I do not --

24 QUESTION: By that you mean persons who are
25 not residents of the forum state?

1 MR. MILLER: Persons who have not manifested
2 consent.

3 QUESTION: Right.

4 MR. MILLER: Persons who do not have voluntary
5 affiliation. Persons who do not --

6 QUESTION: To sum up, you either have to
7 opt-in or be a resident to be a class member.

8 MR. MILLER: You either would have to opt-in
9 or be a resident or by some circumstance of fact have
10 voluntarily affiliated by the nature of your
11 transaction.

12 QUESTION: And it would not be enough that you
13 received an adequate notice and you did not respond to
14 it.

15 MR. MILLER: No. Understand that --

16 QUESTION: That would be enough, if I
17 understand your submission, for a resident.

18 MR. MILLER: It would be enough for a
19 resident. It would be enough for a consenting
20 plaintiff. It would be enough, for example, if the
21 non-resident class member had a lease, let's say, a gas
22 lease in that state.

23 Irl Shutts is a perfect illustration. He is a
24 Kansan, but his gas royalty interests are in Texas and
25 Oklahoma. Texas and Oklahoma could assert jurisdiction

1 over him because he has voluntarily affiliated in the
2 due process sense with that state.

3 QUESTION: Why do you suggest that Oklahoma
4 might be able to -- a forum for this entire class?
5 Because that is the -- just because Phillips has its
6 main office there?

7 MR. MILLER: Phillips has its main office
8 there, first of all. Second --

9 QUESTION: Why would that affect the
10 connections of the plaintiffs with the --

11 MR. MILLER: Conceivably, and perhaps your own
12 opinion in the Woodson case suggests perhaps not. The
13 flow of transactions between Phillips and the oil
14 royalty owners, over the years the payments of
15 royalties, the locus of the lease transactions, many of
16 which would be in Oklahoma.

17 But even in a situation in which there were no
18 such single forum, the fact remains that at most, you
19 might have state-based class actions in a few states,
20 depending on what their circumference of jurisdictional
21 reach would be. It is quite possible, and again, I
22 think the choice of law issue has tremendous bearing on
23 this --

24 QUESTION: You are going to argue that, I take
25 it.

1 MR. MILLER: I would hope so, Your Honor. It
2 is quite possible that you wouldn't have precisely the
3 same efficiency of a single nationally based class. You
4 might have to have two, three, four regionally based
5 classes, but certainly efficiency cannot be the be-all
6 and end-all of this.

7 It would be efficient, for example, if a court
8 like Kansas, which has a party rule structure just like
9 the federal rules, it would be efficient to be able to
10 assert jurisdiction over a third party defendant, to
11 assert jurisdiction over a third party to a counterclaim
12 or a cross-claim, to assert jurisdiction over a
13 necessary or indispensable party, a Rule 19 party.

14 I don't think anyone would ever argue that
15 there is ancillary jurisdiction over these non-parties
16 just because the party structure of the federal rules or
17 the rules of Kansas permitted a procedural device to be
18 used to expand the scope of the action.

19 So, I am mystified as to why through the
20 simple device of saying this is a class action that
21 suddenly the state of Kansas has broader geographic,
22 broader due process reach than the state of Kansas would
23 have over a necessary or indispensable party, over a
24 third party claim, or over an additional party to a
25 compulsory counterclaim or to a cross-claim. No one has

1 ever advanced that proposition in the name of efficiency
2 and economy.

3 The problem is that the modern class action,
4 based solely on common questions -- that is all we have
5 in this case; this isn't a joint interest, it is not a
6 common interest, it is at best a common question class
7 action -- seems to be operating in a way that sweeps
8 aside individual liberty interests, sovereignty problems
9 of interstate federalism, and to turn to the choice of
10 law issue, the question of governing law.

11 On that issue, it seems to me one need only
12 read Allstate Insurance Company versus Hague. This case
13 seems to me to violate totally the plurality opinion in
14 that case. What is required is a significant contact,
15 Requirement Number One, creating state interests,
16 Requirement Number Two, so that it is neither arbitrary
17 nor fundamentally unfair to apply forum law, Requirement
18 Number Three.

19 Petitioner submits that the application of
20 Kansas law across the board in this class action
21 violates each and every one of those three requirements.
22 There is no contact. The only contact this case has
23 when viewed through the eyes of the non-resident class
24 members is the fact that Phillips does business in
25 Kansas.

1 But when you look at a transaction between
2 Phillips, the Oklahoma company, and an Oklahoma royalty
3 owner involving gas in the ground in Oklahoma --

4 QUESTION: May I interrupt for just a second
5 on that question? Supposing we didn't have a class
6 action now, and are just focusing on choice of law, and
7 somebody in Alaska sued your client, presumably got
8 jurisdiction in Kansas, because you do business there.
9 Would you have the same forceful constitutional
10 arguments to applying Kansas law in that lawsuit?

11 MR. MILLER: Justice Stevens, that is this
12 case. Betty -- the Andersons, they are Oklahomans.
13 They are Oklahomans with gas interests in Oklahoma.
14 They have traveled to Kansas to sue Phillips.

15 We submit --

16 QUESTION: And say the Kansas Supreme Court
17 makes an erroneous choice of law decision. Clearly
18 under all principles of choice of law they should have
19 applied Oklahoma law instead of Kansas. Have we ever
20 reversed a state court for making that kind of an
21 error?

22 MR. MILLER: The closest case would be the
23 Yates case and the Dick case, admittedly older cases.

24 QUESTION: Does this give us general review of
25 all choice of law decisions?

1 MR. MILLER: No, I would submit that if you
2 simply apply the tripartite standard that this Court
3 recently announced in the Hague case, that is a
4 legitimate and reasonable limitation on state court
5 choice of law. You need go no further.

6 With great deference, Justice Stevens, I think
7 if we applied the test espoused in your concurring
8 opinion in that case, one would be hard pressed to see
9 what conceivable interest the state of Kansas has in
10 applying its law to a transaction about Oklahoma gas
11 between Oklahomans and a company whose principal base is
12 in Oklahoma.

13 QUESTION: May I ask also, because it helps me
14 focus on the issue, on what particular issues of law do
15 you think it was most outrageous for them to do what
16 they did?

17 MR. MILLER: There are several, Your Honor.
18 First, when you look at the structure of Shutts II, and
19 it is very important to understand that Shutts II and
20 Shutts I are two entirely different cases, they are not
21 the same case in a later manifestation, you see that
22 what the state of Kansas did without citing Hague is
23 literally say, we have jurisdiction here, and absent
24 compelling reasons, we are going to apply Kansas law
25 across the board.

1 And then, in what might be called all fruits
2 are apples approach, the state of Kansas said all of
3 these contracts are the same. The truth of the matter
4 is, all the contracts are not the same. Some of the
5 contracts that Phillips has, particularly with producers
6 as opposed to royalty owners, are no interest contracts
7 that do not call for payment until the end of the
8 suspense royalty period, and explicitly say no interest.

9 We know from the Supreme Court of Texas in a
10 post-Shutts I, pre-Shutts II opinion that the state of
11 Texas would enforce that contract. The state of Kansas
12 chose to ignore that in favor of Kansas's perception of
13 what is fair.

14 Second, the official statutory interest rates
15 in the other states, particularly Texas, the most
16 dominant state, Oklahoma, Louisiana, New Mexico,
17 Wyoming, range between 6 and 7 percent. The state of
18 Kansas chose to use what is called the FERC rate. That
19 is a rate that applies between the interstate pipeline
20 companies and a producer like Phillips. It has
21 absolutely nothing to do with royalty owners.
22 Absolutely nothing.

23 Kansas said its notions of fairness, favoring
24 the royalty owners, caused the application of the FERC
25 rate under Kansas law which averages 11 to 13 percent,

1 whereas we know from the Stahl case that the state of
2 Texas would have applied its statutory 6 percent rate.

3 In short, there was a complete absence of any
4 inquiry as to what the other state laws were.

5 QUESTION: Mr. Miller, could I interject
6 here? Do you understand your opponents to suggest that
7 the federal law should govern in this case?

8 MR. MILLER: I would not go that far, Justice
9 White. I think they view it as a sort of a brooding
10 omnipresence, an influence, and the fault with that is
11 that the relationship between royalty owners and gas
12 producers is state-based, whereas the so-called FERC
13 rate regulates the relationship between the gas sellers
14 and the interstate pipelines.

15 QUESTION: In any event, there were no
16 arguments in the courts below in any of these cases that
17 federal law should govern?

18 MR. MILLER: No, absolutely none. I do not
19 believe there is a problem here of --

20 QUESTION: Preemption.

21 MR. MILLER: -- preemption or federal common
22 law or anything of that kind.

23 QUESTION: Thank you.

24 MR. MILLER: We have tried to indicate,
25 Justice Stevens, in our reply brief that we are not

1 talking about harmless error here. At the moment, the
2 interest liability imposed on Phillips is approximately
3 \$6.5 million.

4 We estimate that the application of the
5 applicable statutory interest rates of the other states
6 and the recognition as Texas would recognize the
7 no-interest contracts would reduce that \$6.5 million
8 liability to something under \$2 million, perhaps as low
9 as \$1 million.

10 So, I think it is fair to say that Phillips
11 feels aggrieved by the indiscriminate application of
12 Kansas law to transactions that are not transitory the
13 way the national risk coverage in Allstate was. This is
14 gas in the ground. This is a contract about gas in the
15 ground, being Oklahoma, or in Texas. It is not a
16 national risk.

17 I would like to reserve the remainder of my
18 time.

19 CHIEF JUSTICE BURGER: Mr. Klein.

20 ORAL ARGUMENT OF JOEL I. KLEIN, ESQ.,

21 ON BEHALF OF THE RESPONDENTS

22 MR. KLEIN: Mr. Chief Justice, and may it
23 please the Court, the standing issue in this case is not
24 merely whether Phillips may raise the constitutional
25 rights of others, but whether Phillips may raise the

1 rights of absent class members to defeat a recovery in
2 their favor that was obtained against Phillips.

3 QUESTION: Mr. Klein, did the respondents
4 challenge petitioners' standing to raise this question
5 over non-resident plaintiffs in the Kansas courts?

6 MR. KLEIN: Yes, we did, Your Honor. We
7 challenged that in the Kansas courts.

8 QUESTION: And did the Kansas courts
9 nevertheless reach and resolve the jurisdiction
10 question?

11 MR. KLEIN: The Kansas courts did reach and
12 resolve the jurisdictional question.

13 QUESTION: Well, is that sufficient, then, for
14 us to exercise discretion to reach it under Craig versus
15 Boren?

16 MR. KLEIN: Absolutely not, Your Honor. This
17 Court has made clear that state court determinations of
18 standing do not confer jurisdiction in this Court. It
19 made clear in Tileston, and of course the term before
20 last in Massachusetts General Hospital and the City of
21 Revere case the Court said that state courts are not
22 bound by the limitations on standing that this Court is
23 bound by.

24 And of course this Court always assesses its
25 jurisdiction, and this standing doctrine is a part of

1 its jurisdiction independently, and that is, no matter
2 what the state court does, it applies federal principles
3 here.

4 QUESTION: And you think this Court doesn't
5 even have discretion to reach the issue?

6 MR. KLEIN: I do not think -- on established
7 case law it doesn't, Your Honor, and I think the reason
8 is that no case has ever gone in this direction. Let me
9 make something clear. It is somewhat confused by the
10 argument we have just heard. There is only one
11 constitutional right at issue here. That is the right
12 of the action class member to object to jurisdiction in
13 Kansas.

14 Now, when a case comes to this Court, that
15 class member has received a complete recovery against
16 Phillips, and here is what Phillips is saying to him.
17 We are going to take your right, we are going to take it
18 to the Supreme Court, we are going to protect your
19 right, and the result of it is, we take away your
20 recovery.

21 QUESTION: Well, Mr. Miller's argument is that
22 that isn't always going to happen, and in a case where
23 the defendant prevails, there may be some problems with
24 the absent plaintiff.

25 MR. KLEIN: There may be, Your Honor, and in

1 that case I assume we may hear from them. They will
2 press their own rights then.

3 QUESTION: But how do you decide this sort of
4 an issue when the time comes for a motion to certify at
5 the beginning of the case in the state court?

6 MR. KLEIN: Well, at the beginning of the case
7 in the state court, in Kansas as in the federal court,
8 all parties have a right to raise the issue. But it is
9 entirely different after judgment, and that is true,
10 Justice Rehnquist, with respect to a defendant. Let me
11 give you an example.

12 A defendant comes into court. He makes a
13 special appearance and contests jurisdiction. The court
14 rules he has jurisdiction. They proceed to the merits.
15 The defendant wins on the merits. The plaintiff can't
16 appeal and say we wouldn't have had jurisdiction. Once
17 there is a judgment, the equation changes.

18 Now, Phillips says in this Court, it says we
19 have suffered injury. That satisfies the case in
20 controversy requirement. But this Court has made clear
21 time and again injury alone is not sufficient to invoke
22 jurisdiction. Everybody up here seeking a reverse of
23 judgment has suffered injury. That is by definition the
24 case.

25 In order to reverse the judgment, you have to

1 invoke your rights, or in limited circumstances the
2 rights of an allied party, such as when the Court has
3 said a doctor can use a patient's rights, but never, in
4 no case, and Phillips cites none, has the Court
5 suggested that a party could raise his adversary's
6 rights.

7 QUESTION: So you say that even though the
8 defendant prevailed on the merits in this case, the
9 defendant either before or after judgment can never
10 raise the rights of an absent plaintiff.

11 MR. KLEIN: The defendant can raise them at
12 the outset of litigation. That is what Kansas law
13 allows them, Your Honor, and I think if you read the
14 federal rules, the federal courts allow that. But it is
15 an entirely different matter, it must be, once the
16 person has a judgment, to say you are going to raise his
17 rights.

18 Anybody can raise a right and then waive it
19 later. That is the nature of the right, and that is
20 effectively what is going on here.

21 QUESTION: Are you conceding, Mr. Klein, that
22 before judgment they did have standing to say it is
23 unfair for you to sue me when I couldn't get a binding
24 judgment against you?

25 MR. KLEIN: I am conceding that under Kansas

1 law, that is --

2 QUESTION: No, as a matter of constitutional
3 law.

4 MR. KLEIN: Not as a matter of constitutional
5 law.

6 QUESTION: Article III standing, isn't it --
7 don't I have the right to argue it is unfair to me for
8 you to be suing me when I can't get a binding judgment
9 if I win? That is basically their argument, as I
10 understand it.

11 MR. KLEIN: Their argument is that --

12 QUESTION: They could not get a binding
13 judgment against the absent plaintiffs even if they win
14 on the merits.

15 MR. KLEIN: But they have no constitutional
16 right. They will get a binding judgment in this case.
17 Their right is protected, Justice Stevens. As soon as
18 each class member receives his judgment, they will have
19 a binding --

20 QUESTION: Now that you have won, but in
21 advance of the decision on the merits, their position,
22 as I understand it, is, it ought to be a two-way
23 street. If you win, you will pay, but if you lose, they
24 ought to be protected by res judicata against
25 relitigation.

1 MR. KLEIN: No, but that -- it is not a
2 two-way street once we have won, Your Honor, because
3 they are taking my rights. That is the basic Parklane
4 versus Shore. The two-way street argument is basically
5 a mutuality argument.

6 QUESTION: But that is certainly their
7 argument.

8 MR. KLEIN: But their argument is wrong.

9 QUESTION: Well, I don't happen to agree with
10 you.

11 QUESTION: And, Mr. Klein, is it a matter of
12 Article III standing or prudential standing?

13 MR. KLEIN: Well, I think the Court has
14 confused those concepts, Your Honor, but I think it is a
15 matter that is, in some cases the Court refers to the
16 right to invoke others' rights as Article III standing,
17 such as in Warth, and in other cases they refer to it as
18 prudential standing.

19 QUESTION: Well, it would seem here within the
20 meaning of Article III standing that there is a case or
21 controversy, and you have someone who is well able to
22 litigate the issue, and that it is more a matter of
23 prudential standing if there is a problem at all.

24 MR. KLEIN: But, Justice O'Connor, when you
25 say well able to litigate the issue, mind you, they have

1 a directly antagonistic interest to the rights of the
2 party they are trying to protect. Just in thinking
3 about this, we would not normally suppose that the right
4 person to stand before the Court and protect the rights
5 of absent class members was its adversary.

6 And the reason we have this doctrine, the
7 whole doctrine was created, which is a jurisdictional
8 limitation, as this Court has made clear, on the Court's
9 activity, the reasons we have it are two. One, because
10 the party is usually the best proponent. In this case,
11 we can assume that Phillips is the worst proponent.
12 They have an antagonistic interest.

13 And second, and the Court says this opinion
14 after opinion, a party may in fact, who enjoys the
15 rights, a party may want to waive those rights. He is
16 entirely free, and he doesn't have to either waive them
17 at the outset or never again.

18 Now, when a party comes to this Court with a
19 judgment in its favor, can we simply assume, I submit,
20 that that party would waive the rights? They are his
21 rights. They are not Phillips' rights. He says, no, I
22 have no interest in pursuing it.

23 Now, there will be a case, there will be a
24 case before this Court where an absent class member will
25 assert his own rights. That has happened in more than

1 half a dozen cases. When you have that case, you have a
2 real case. You have the party saying my rights were
3 violated. The judgment should not bar me.

4 On the other hand, you have a defendant
5 protecting his judgment, saying, no, your rights weren't
6 violated, you should be included. That's the way this
7 issue should be framed.

8 QUESTION: But that takes two lawsuits to
9 litigate, doesn't it? You are saying the defendant can
10 lose its rights in just one lawsuit, but it has to
11 prevail in two lawsuits in order to establish res
12 judicata.

13 MR. KLEIN: Not necessarily. In many cases
14 class members will intervene if they --

15 QUESTION: But let's ones who don't intervene
16 and simply --

17 MR. KLEIN: Your Honor, every case makes clear
18 when you have a situation of an absent party it will
19 always take two lawsuits to resolve the issue of res
20 judicata. Let me suggest even if this Court today rules
21 for Phillips, that will not be res judicata for the
22 absent class member. It will be stare decisis. But the
23 absent class member cannot be precluded in the first
24 litigation. That is clear in this Court's cases.

25 QUESTION: How about if there were an opt-in

1 procedure required as a matter of --

2 MR. KLEIN: Well, that is simply the question
3 of the merits, whether opt-in would bind him or not.
4 What I am saying is, they don't have the standing to
5 raise the claim.

6 QUESTION: Well, I understand that, but if
7 they did, and if it were resolved that opt-in was
8 required, I suppose then you end up with a res judicata
9 situation.

10 MR. KLEIN: Well, but if it is resolved as we
11 submit, now that we turn to the merits, Justice
12 O'Connor, if it is resolved that opt-out is sufficient,
13 they will be bound, and we frankly think they are
14 bound. We don't think somebody who stays out of a
15 litigation with an opt-out opportunity and then comes in
16 years later and says I wasn't bound is going to have a
17 very good claim.

18 But let's turn to the merits, because I think
19 this shows --

20 QUESTION: Well, how about the opt-out person,
21 member of the class who in fact never got the notice?

22 MR. KLEIN: In this case that didn't occur.
23 Anyone to whom notice wasn't delivered, Justice
24 O'Connor, they were struck from the class, so it had to
25 be people who received notice. But even these questions

1 show why this case is a bad vehicle to resolve it.

2 There are questions about, what about if you
3 didn't get the notice? Suppose he got it late. How
4 about counterclaims? How about court costs? All of
5 those matters are not in this case. We have to
6 conjecture about them. None of them were presented.

7 If we have a case from a class member, we will
8 hear exactly what the graveman of his complaint is. And
9 it is clear that this Court doesn't decide cases on
10 conjecture, and that is what Phillips is asking you do
11 to, especially when you have a party who wants a
12 conjecture in the wrong direction.

13 So let me turn to the merits, because again,
14 the rule here is to protect the absent class member, not
15 to protect Phillips, but I think you look at the rule
16 that Phillips espouses, you will see that in the name of
17 the absent class members Phillips is shielding itself
18 from litigation.

19 Now, the Kansas courts provided all class
20 members with the following protections. First, adequate
21 representation through the named plaintiffs and their
22 counsel. Second, first class mail notice that had to be
23 delivered describing the action. Third, a right to
24 participate in person or through that person's counsel.
25 And fourth, a right to opt-out simply by signing a form

1 included with the notice and sending it to the Court.

2 Predictably, Phillips argues that that is
3 enough. It says there must also be a showing of minimum
4 contacts between the non-resident class member in the
5 forum.

6 Phillips reaches this conclusion, we submit,
7 by ignoring significant and almost obvious differences
8 between plaintiff class members and defendants,
9 differences that we believe justify a different
10 constitutional due process approach to protecting the
11 rights of both groups.

12 Now, a defendant, of course, rarely wants to
13 be in court at all, and certainly we know, we take it as
14 a given that when he is opposing jurisdiction, he
15 doesn't want to be in that court. If he did, and
16 Phillips neglects this with its interstate federalism
17 argument, and it neglects the Court's holding in
18 Insurance Company versus Ireland, if the defendant wants
19 to be in a court, he is free to come in at any time
20 irrespective of the federalism arguments.

21 Now, starting from that premise -- you have to
22 realize every minimum contacts case so far has started
23 from the premise that the party doesn't want to be in
24 court. When you start from that premise, what the Court
25 has said, there are limits as to which courts we can

1 require him to litigate in.

2 Now, let's turn to a plaintiff class member.
3 A plaintiff class member doesn't face the exposure that
4 a defendant faces. He has not made an objection.
5 Instead, the fact is, a class member has a claim that he
6 wants asserted. He wants to have it heard. What is the
7 problem? The problem is, when the small claimant has a
8 claim, the costs of litigation are so high that he is
9 prohibited, in effect, from asserting his claim.

10 Now, as this Court has recognized in Deposit
11 Guaranty versus Roper and elsewhere, the class action is
12 designed to overcome that hurdle, to facilitate the
13 plaintiff's access to court. Thus the class action, in
14 contrast to what a defendant faces when he goes into
15 court, the plaintiff faces no risk and no cost unless he
16 prevails, in which case a portion of his fee is paid for
17 the attorneys.

18 Now, given that circumstance, the plaintiff's
19 circumstance, it is impossible, we submit, that a
20 minimum contacts requirement could protect him. Rather,
21 what it will do is limited the potential forums that he
22 can have his claim heard in, and he will be in a
23 different position from the other plaintiffs in cases
24 like Keeton versus Hustler who, because they have large
25 claims, can go to their forums.

1 Now, in the present case, for example,
2 Phillips says, and we agree, that most of these class
3 members would not meet the minimum contacts test in
4 Kansas. As a result, their claim in the name of
5 protecting their rights would have been barred from this
6 case.

7 Now, it may be that there would have been
8 other cases filed. It may be we can speculate that
9 because Phillips is in Oklahoma, sort of, that would be
10 okay. All of that is speculation. The fact is that the
11 large majority of these people would have been denied
12 their day in court.

13 Now, Phillips says, and we agree, a class
14 member may have an interest in not involuntarily being
15 brought into a particular class. The reason he might
16 have that interest is, he might want to assert a claim
17 on his own. Or he might want to join another class
18 action, or for whatever reason. But Kansas recognizes
19 that interest. It provides an opt-out procedure that is
20 clear and easy.

21 Once again, Phillips says the opt-out
22 procedure is not adequate. It instead would require an
23 opt-in procedure. Unfortunately, the large body of
24 scholarly and judicial opinion that has looked at the
25 area has decided almost unanimously that an opt-out

1 procedure better protects the class members than an
2 opt-in procedure.

3 Thus, the federal rules and virtually every
4 state court's rules require an opt-out procedure. They
5 do so not to harm the absent class member but to help
6 him.

7 Judge Kaplan, then Professor Kaplan, who is a
8 recorder for the rules, he explained the way this came
9 about. He said, we have to be especially concerned
10 about the relatively small claimant. He said, this is
11 somebody, if he is not included in the class, is likely
12 to have no opportunity to have his claim heard.

13 He said nevertheless a small claimant is often
14 unsophisticated, and as a result of what he called
15 timidity or ignorance or unsophistication about business
16 or legal matters, might decline to execute an opt-in
17 forum, but that person should be protected in the class,
18 and yet it is that person in the name of protecting his
19 rights that Phillips would knock out from this class
20 action altogether.

21 And Phillips would then suggest to the Court,
22 well, the solution is that there be a few others, or
23 maybe one other, or there be one with an opt-in
24 provision, but if there is an opt-in provision, and
25 Professor Kaplan and everybody else who has looked at

1 the matter is right, then that opt-in provision won't
2 protect people, and whether or not there will be other
3 actions we have no idea.

4 QUESTION: You say it won't protect people.
5 It will certainly protect them from having jurisdiction
6 exercised over their claim contrary to their wishes.

7 MR. KLEIN: An opt-out provision protects
8 that, too, Justice Rehnquist.

9 QUESTION: What is it about the opt-in
10 provision that you say doesn't protect --

11 MR. KLEIN: The exact reason that it was
12 chosen, and that is, there are some people, small
13 claimants who really as a matter of unsophistication may
14 not check the box, but these are people who every
15 state's rules, virtually every state's, protect by
16 including them in the class.

17 QUESTION: But how does it protect them to
18 include them?

19 MR. KLEIN: Because it gives them a chance to
20 have their claim adjudicated. They can lose nothing.
21 They have a claim. It gives them a chance to be
22 included in the class. There can be no harm to them.
23 If they lose, it costs them nothing. But this really
24 gives them the benefit of the process.

25 QUESTION: Well, you know, they could lose

1 several things, I suppose. You know, they might have a
2 claim adjudicated in a jurisdiction they didn't want
3 to. They might have it adjudicated by a poor lawyer,
4 that sort of thing.

5 MR. KLEIN: Well, that is true, but, Justice
6 Rehnquist, it assumes that there would be other cases
7 out there. These are small claimants. They are not
8 going to be able to bring their own case. That is why
9 they choose opt-out.

10 QUESTION: What is the typical size of the
11 claim?

12 MR. KLEIN: In this case?

13 QUESTION: Yes.

14 MR. KLEIN: A hundred dollars.

15 QUESTION: A hundred dollars?

16 MR. KLEIN: A hundred dollars. Right. So
17 these are not people -- and it is to protect their
18 interests that you have an opt-out rule. That is why
19 everyone does it. I mean, is it conceivable --

20 QUESTION: I can see how an opt-out rule gets
21 you a lot more plaintiffs. I can't see how it
22 necessarily "protects" the absent plaintiffs the way you
23 are talking about.

24 MR. KLEIN: It protects them by facilitating
25 the chance for them to have their claim litigated,

1 people who would otherwise not execute the form and
2 therefore never get a chance to have their claim, these
3 people in this case. They are not going to get their
4 own lawyer. There were not other class actions out
5 there. So it protects them in that it gives them a fair
6 shot to have their claim litigated.

7 Now, if I might in the time remaining, I would
8 like to address the choice of law issue that has been
9 raised here. Now, Phillips objects to the choice of law
10 by the Kansas Supreme Court on the grounds that its
11 application to the claims of the non-resident class
12 members violated the principles set forth in this
13 Court's decision in Allstate versus Hague.

14 Now, in Allstate, the Court made clear that in
15 deciding whether a state may apply its law to a dispute,
16 it does not matter that another state might have an
17 interest or even a greater interest in that dispute. As
18 the Court said, the forum court is allowed to apply its
19 law when it has a significant contact or contacts
20 creating state interests such that, and this is the
21 important part, such that the application of its law is
22 neither arbitrary nor fundamentally unfair.

23 Now, to clarify our position and to state it
24 briefly, Kansas's contact with Phillips is
25 constitutionally sufficient in the circumstances of this

1 case, especially in light of the fact that the law it
2 chose to apply was by no means parochial, but rather was
3 borrowed directly from a federal regulatory program that
4 actually led to the dispute in question in this case.

5 Now, the plurality opinion in Allstate --

6 QUESTION: May I just ask, does your position
7 require this to be a class action? Would you make the
8 same argument with my individual from Alaska who sued on
9 an Oklahoma lease?

10 MR. KLEIN: Absolutely.

11 QUESTION: What if the lease -- it is clear
12 there would be expected Oklahoma law to apply, and in
13 Oklahoma he wouldn't have gotten any interest at all? I
14 don't know if that is true of Oklahoma. It seems to me
15 there is an argument that in one state you wouldn't have
16 gotten any interest. Texas, I guess it is.

17 MR. KLEIN: I suggest -- let me say I think,
18 Your Honor, it would not make a difference. When you
19 say there is an expectation that the law would always
20 apply, that expectation can be put in the agreement.
21 Phillips never put that expectation in the agreement.

22 Now, in Allstate there was an expectation in
23 that sense, I think, as the plurality and Your Honor's
24 opinion suggested, there was an expectation that the
25 matter would be resolved by state law --

1 QUESTION: You are saying that a party like
2 Phillips, unless it puts it in the agreement, it cannot
3 rely on the normal rule of the place where the contract
4 is made that this will be governed by, say, everybody
5 expects that rule to apply?

6 MR. KLEIN: Well, I think when you say --

7 QUESTION: How would they have ever
8 anticipated in my Alaska-Oklahoma example that Kansas
9 law would apply?

10 MR. KLEIN: I think the question is not
11 whether they would anticipate it. I think the question
12 is whether the Constitution prohibits Kansas from
13 applying its law.

14 I think as the Court realized in Allstate,
15 that in an interstate situation --

16 QUESTION: Doesn't there have to be a reason
17 for Kansas to apply its law, or do you say there doesn't
18 even have to be a reason?

19 MR. KLEIN: I think there is a reason here. I
20 think there are two reasons. The first reason is,
21 Phillips does business, big business, in Kansas. Now,
22 Kansas confers the authority. It has no right on its
23 own measure to come in and do business. The state
24 confers the authority for it to do business.

25 Now, it has been recognized by this Court that

1 when a corporation is doing business within a state, the
2 state has an interest not only in the corporation --

3 QUESTION: That is -- any time you get
4 jurisdiction over the defendant in a state, it is all
5 right for that state to apply its own law?

6 MR. KLEIN: Well, I think you have to look at
7 the facts of the case.

8 QUESTION: What is the second interest? You
9 said there were two reasons.

10 MR. KLEIN: Well, the second interest has to
11 do with the law that was chosen, Justice Stevens.

12 QUESTION: That is is a particularly fair
13 choice.

14 MR. KLEIN: It was an especially fair choice,
15 and not only that, it was not simply a fair choice in
16 the sense it was a good rule, but it was chosen out of
17 the federal regulatory system that created the problem.
18 Let me explain that for a second.

19 QUESTION: If it were perfectly clear that in
20 one of these other states they would have not chosen
21 that law, but they would have chosen a rule that says no
22 interest at all, would you still be able to make the
23 same argument?

24 MR. KLEIN: Yes, sir. My argument would be
25 based on --

1 QUESTION: Even though the royalty -- even
2 though the governing papers said no interest, there will
3 be no interest in these suspended royalty payments?

4 MR. KLEIN: I think --

5 QUESTION: Suppose the contract were perfectly
6 clear, and I understand it to be asserted here that if
7 this case had been tried in some other states, they
8 would have followed the provisions of the contracts.

9 MR. KLEIN: I dispute that, but I don't think
10 it is helpful. I think let's operate on that
11 assumption.

12 QUESTION: Yes, all right.

13 MR. KLEIN: My point is that as long as it
14 doesn't violate the standard in Allstate, it doesn't
15 have to apply in other states' law, and that is clear.
16 Now, Allstate said that with this --

17 QUESTION: So Kansas would be perfectly free
18 as far as you are concerned to say, well, we know that
19 that provision is in the contract forbidding interest,
20 but we just won't follow that provision in the
21 contract.

22 MR. KLEIN: No, no --

23 QUESTION: It is contrary to our law.

24 MR. KLEIN: No, at that point you get to the
25 question which I think is fair, Justice White, is, is it

1 parochial, is it arcane? After all, why are there
2 limitations on a choice of law? This Court hadn't
3 decided --

4 QUESTION: Well, what about my question then?
5 Here is, in this case, it is shown to the Court that
6 there are some contracts with royalty owners that would
7 bar interest, just no interest, it just provides right
8 in the contract no interest.

9 MR. KLEIN: That would --

10 QUESTION: Now, could Kansas then apply its
11 law and say we are going to disregard that?

12 MR. KLEIN: That wasn't shown in this case.
13 If it were shown, I think that would raise an issue of
14 parochialism that I think might well raise a choice of
15 constitutional violation, but that was not shown in this
16 case, and if there is a question on that, I think that
17 it is appropriate to look at the Texas law. But the
18 question, what is --

19 QUESTION: Well, don't the respondents make
20 the argument that the applicable law in some of the
21 states in which the leases were made would result in a
22 different amount of interest?

23 MR. KLEIN: They do make that argument, yes.

24 QUESTION: And we don't know but what that
25 might be true for purposes of our decision, right?

1 MR. KLEIN: That's correct, Justice O'Connor.

2 QUESTION: You must be arguing that it doesn't
3 make any difference.

4 MR. KLEIN: For this point it doesn't make a
5 difference, but that is clear from Allstate. That is --
6 there is not one law that has to be chosen. I mean,
7 Minnesota and Wisconsin had diametrically opposed laws
8 on stacking. A contract was entered into in Wisconsin.
9 The law was applied in Minnesota. The court found
10 sufficient contacts, and of those contacts, a
11 significant one was the fact that the insurance company
12 was doing business in both states.

13 Now, this Court said as long ago as 1908 that
14 a state could prevent a corporation from practicing,
15 from doing business within its jurisdiction if it
16 committed an antitrust violation in another jurisdiction
17 that had no impact in the home jurisdiction, so a state
18 does have an interest, a recognized interest in
19 preventing or in regulating a corporation's dealings
20 with other states.

21 QUESTION: Well, I suppose you would make the
22 same interest -- make the same argument if it turned out
23 to be a fact that here are 100 royalty owners who reside
24 in a certain state, and their royalty contracts provide
25 for a higher rate of interest than the Kansas court

1 awarded.

2 MR. KLEIN: I assume the same argument would
3 be made, and if Phillips prevailed on that, I assume
4 that would withstand choice of law. But let me also go
5 to the specifics.

6 QUESTION: Well, could Kansas apply its own
7 rate of interest, or not?

8 MR. KLEIN: I think it could. Yes, sir.

9 QUESTION: Despite the governing law for a
10 higher rate in another state?

11 MR. KLEIN: If there were a clear contractual
12 obligation, then I think you do raise the arbitrary and
13 fundamentally unfair. That is the test. Now, here,
14 let's look at what they did, because I think it is
15 important to understand that.

16 There is a federal price approval system that
17 deals with retroactive prices for gas. Because of that,
18 we have suspense royalties. That is the reason we have
19 the problem in this case. The federal government says,
20 if you hold the money, you have to pay interest to the
21 fellow you sold it to at this specific rate if we
22 disallow the price.

23 That is the system. As a result of that, they
24 hold the royalty owner's money, exactly as if they had
25 held the producer's money, exactly. And what does the

1 Kansas court say? We will apply that federal
2 principle. The federal law created it. We will apply
3 it.

4 There is nothing arcane or provincial. In
5 fact, Phillips itself uses that exact rate when it
6 demands interest from royalty owners in the precise
7 circumstances.

8 When you take those facts, we submit that
9 there was nothing arbitrary and unfair in the Kansas
10 court uniformly applying the law that it did, enshrined
11 in Kansas law, to the identical claims of the class
12 member.

13 Thank you.

14 CHIEF JUSTICE BURGER: Do you have anything
15 further, Mr. Miller?

16 ORAL ARGUMENT OF ARTHUR R. MILLER, ESQ.,

17 ON BEHALF OF THE PETITIONER - REBUTTAL

18 MR. MILLER: Yes, Mr. Chief Justice.

19 We believe on the standing question that the
20 Article III requirement is clearly satisfied by the
21 impact of this Kansas judgment on Phillips. The
22 question of so-called third party standing, which has
23 been raised by several of the Justices, is a prudential
24 doctrine, pure and simple, be applied to assure the
25 necessary adversarial and concreteness in the case.

1 In Craig versus Boren, Justice Brennan,
2 writing for the Court, said that these prudential
3 objectives cannot be furthered here where the lower
4 court already has entertained a relevant constitutional
5 challenge.

6 In such circumstances, a decision by us to
7 forego consideration of the constitutional challenge to
8 the statute by injured third parties would be
9 impermissibly to foster repetitive and time consuming
10 litigation under the guise of caution and prudence.

11 As this Court well knows, this issue was up
12 here two and one half years ago in Miner versus
13 Gillette. At that time, the party in the position of
14 Phillips was told, you have no final judgment.

15 Now to be told that you have no standing, and
16 to wait for the hypothetical collateral attack to occur
17 while the states are reaching inconsistent results on
18 this issue -- keep in mind that New Jersey and
19 Pennsylvania take a different view, take the view that
20 Phillips is asserting here -- leads to destabilization
21 in the national class action context at the very moment
22 in time when this phenomenon is mushrooming.

23 So, we believe that there clearly is standing
24 from a prudential point of view.

25 Second, let me remind the Court that it has

1 said that the issue of jurisdiction is analytically
2 prerequisite to the issues of procedure. That
3 statement, analytically prerequisite, is from Rush
4 versus Savchuk, where you had a nominal defendant.

5 This Court in Baldwin years ago, most recently
6 in Bank of Ireland, said that an individual is free to
7 ignore proceedings. The right to ignore proceedings is
8 taken away by saying that Kansas can assert jurisdiction
9 over non-resident, non-volitional class members.

10 In the Churry case years ago, and again in
11 Bank of Ireland just a couple of years ago, this Court
12 said that a state cannot conclude interested parties by
13 the mere assertion of its own power.

14 QUESTION: I suppose your argument would be
15 also directed against a federal class action, Rule 23.

16 MR. MILLER: A Rule 23 diversity-based class
17 action as it is currently constituted, I believe that
18 you have the same Fourteenth Amendment problems that we
19 are asserting here.

20 QUESTION: Yes.

21 MR. MILLER: What respondent is saying is that
22 Kansas wants to help the small claimant. God bless
23 Kansas for doing it. But there are many ways Kansas can
24 do it without shoving aside the individual liberty
25 interests, the interstate federal interests, let alone

1 the choice of law sovereignty interest.

2 Kansas could create a legitimate opt-in and
3 invite people to come in. Kansas could sweeten the
4 class action pot by awarding as a statutory matter
5 treble damages. It could provide punitive damages to
6 encourage it.

7 If Kansas is really interested in the small
8 claimant, it could create a parens patrii action. That
9 is for Kansas to do, not for this Court to do.

10 QUESTION: Are you suggesting the risk of sort
11 of a Reno syndrome when Reno, Nevada, had all the
12 divorces for a while?

13 MR. MILLER: Yes, I think, Mr. Chief Justice,
14 that the image in this field is known as the magnet
15 jurisdiction. Here Kansas is dictating oil and gas
16 policy to the nation in the guise of what it believes is
17 fair.

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

20 (Whereupon, at 2:42 o'clock p.m., the case in
21 the above-entitled matter was submitted.)
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23
24
25

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:

#84-233 - PHILLIPS PETROLEUM COMPANY, Petitioner V. IRL SHUTTS, ET AL.

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

BY Paul A. Richardson

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