

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-1222 & 85-1267

TITLE INTERSTATE COMMERCE COMMISSION, Petitioner V. TEXAS, ET  
AL. and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, ET AL.  
Petitioners V. TEXAS, ET AL.

PLACE Washington, D. C.

DATE December 10, 1986

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x

3 INTERSTATE COMMERCE COMMISSION, :

4 Petitioner :

5 v. : No. 85-1222

6 TEXAS, ET AL. :

7 and :

8 MISSOURI-KANSAS-TEXAS RAILROAD :

9 COMPANY, ET AL., :

10 Petitioners :

11 v. : No. 85-1267

12 TEXAS, ET AL. :

13 -----x

14 Washington, D.C.

15 Wednesday, December 10, 1986

16 The above-entitled matter came on for oral  
17 argument before the Supreme Court of the United States  
18 at 1:48 p.m.

19 APPEARANCES:

20 RICHARD G. TARANTO, ESQ., Assistant to the Solicitor  
21 General, Department of Justice, Washington, D.C.;  
22 on behalf of the petitioners in No. 85-1222.

23 MICHAEL E. ROPER, ESQ., Dallas, Texas; on behalf of  
24 the petitioners in No. 85-1267.

25 FERNANDO RODRIGUEZ, ESQ., Assistant Attorney General

1 of Texas, Austin, Texas; on behalf of the  
2 respondents.  
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C O N T E N T S

ORAL ARGUMENT OF

PAGE

RICHARD G. TARANTO, ESQ.,

on behalf of the Petitioners in No. 85-1222

3

MICHAEL E. ROPER, ESQ.,

on behalf of the Petitioners in No. 85-1267

16

FERNANDO RODRIGUEZ, ESQ.,

on behalf of The Respondents

24



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

2                   CHIEF JUSTICE REHNQUIST: We will hear  
3 arguments next in two consolidated cases, No. 85-1222,  
4 ICC against Texas, et al., and No. 85-1267,  
5 Missouri-Kansas-Texas Railroad Company against Texas.

6                   You may proceed whenever you're ready, Mr.  
7 Taranto.

8                   ORAL ARGUMENT OF RICHARD G. TARANTO, ESQ.,  
9 ON BEHALF OF THE PETITIONERS IN NO. 85-1222

10                  MR. TARANTO: Mr. Chief Justice, and may it  
11 please the Court:

12                  This case concerns one particular form of  
13 mixed train-truck transportation, and whether the  
14 Interstate Commerce Commission could properly allocate  
15 this particular form of mixed service to the system of  
16 rail carrier regulation, rather than the system of motor  
17 carrier regulation.

18                  Specifically, the transportation at issue in  
19 this case is TOFC service, trailer-on-flatcar or  
20 container-on-flatcar service, which involves a rail  
21 portion, during which the trailer or container rides on  
22 a railroad flatcar, and a motor portion, during which  
23 the trailer or container is pulled by motor vehicle.

24                  Even more specifically, this case concerns  
25 only one particular form of TOFC service, a category of

1 what has long been called Plan II service, where the  
2 entire service is provided by an interstate rail carrier  
3 on equipment owned and operated by the rail carrier.

4 The ICC decided in this case that that  
5 particular form of Plan II service should be subjected  
6 to the system of rail carrier regulation, and not to the  
7 system of motor carrier regulation.

8 QUESTION: Mr. Taranto, part of the equipment  
9 is trailer rigs, truck-trailer rigs owned by the  
10 railroad?

11 MR. TARANTO: That's right.

12 QUESTION: So that it travels over the road in  
13 tractor-trailer rigs owned by the railroad; is that it?

14 MR. TARANTO: That's right. That trucks that  
15 pull the trailers or containers on the road in this case  
16 are owned by the rail carrier itself.

17 QUESTION: For you to prevail, we have to  
18 decide that's a form of rail service?

19 MR. TARANTO: You have to decide that that is  
20 transportation provided by a rail carrier within the  
21 meaning of the Staggers Act.

22 My argument today is --

23 QUESTION: Well, that -- that fact is  
24 important to your --

25 QUESTION: They could just as easy said, rail.

1 MR. TARANTO: I'm sorry, Justice?

2 QUESTION: They could just as easily have  
3 said, by rail, instead of saying, by a rail carrier.  
4 Just to confuse us.

5 MR. TARANTO: Well, it is true that the  
6 statute generally uses the term, transportation provided  
7 by a rail carrier in various places. And that it is not  
8 entirely consistent in its use of language.

9 But the phrase, transportation provided by a  
10 rail carrier, under the literal definition of the word  
11 transportation, includes motor vehicle as well as rail  
12 movement.

13 The Interstate Commerce Commission decided in  
14 this case that for the entire portion of TOFC service,  
15 both the motor and the truck portion, that the proper  
16 system of regulation for the entire service is the rail  
17 carrier provisions and not the motor carrier provisions.

18 This case arose as a result of Congress'  
19 passage of the Staggers Act in 1980. That statute,  
20 which extended and furthered the deregulation policies  
21 first put into place in the mid-1970s, made major  
22 changes in the system of rail carrier regulation in the  
23 United States.

24 The general findings and policies set forth in  
25 the statute are important to this case, because the

1 state expressly provides that individual provisions of  
2 the entire Interstate Commerce Act must be interpreted  
3 to further the declared national rail transportation  
4 policy.

5 The Staggers -- in the Staggers Act, Congress  
6 expressly found that overregulation had contributed to  
7 the financial plight of the rail industry, and that much  
8 regulation was today unnecessary, largely because  
9 transportation had become much more competitive.

10 It then went on to set out a new national rail  
11 transportation policy, which emphasized deregulation at  
12 the Federal level; maximum possible reliance on market  
13 forces in rail carriers providing transportation;  
14 uniformity between State and Federal regulation; and, in  
15 particular, the promotion of intermodal transportation.

16 Congress went even one step further, and  
17 expressly amended the national transportation policy  
18 that applies to other modes of transportation, to give  
19 the rail policy express priority. That policy must  
20 govern whenever a government action has an impact on  
21 rail carriers.

22 QUESTION: You say, is that explicit in the  
23 statute, Mr. Taranto?

24 MR. TARANTO: Yes, in the very first words of  
25 Section 10101, the general national transportation



1 policy, says that the following shall govern except when  
2 policy has an impact on rail carriers, in which case the  
3 specific rail carrier policy will govern.

4 In its first act pursuant to the Staggers Act,  
5 new -- the Staggers Act new exemption provision, the ICC  
6 determined, in this case, that both the truck and train  
7 portions of rail-provided TOFC service should be exempt.

8 It took this action pursuant to two -- to one  
9 of the two important provisions of the Staggers Act that  
10 is in issue in this case. The exemption provision that  
11 the Staggers Act added to the Interstate Commerce Act  
12 changed what had been the historical practice.

13 Historically, all rail carrier activities were  
14 subject to an extensive system of regulation, covering  
15 the rates charged and most other aspects of rail carrier  
16 activities.

17 In 1976, Congress took one step and granted  
18 the Commission power to exempt activities. But there  
19 was a limit in that provision. Only activities of  
20 limited scope could be exempt.

21 The ICC began considering whether TOFC  
22 service, fell within that exemption, and Congress  
23 specifically noted the potential availability of the  
24 exemption provision as written when it was considering  
25 the Staggers Act.

1 But in the Staggers Act, Congress expanded the  
2 exemption power, and specifically directed the  
3 Commission to examine rail activities to determine when  
4 regulation was no longer necessary to protect shippers  
5 against an abuse of market power.

6 Congress also added to the exemption provision  
7 a specific section designed to promote the exemption of  
8 rail -- of transportation provided by a rail carrier as  
9 part of intermodal service.

10 The second important provision of the Staggers  
11 Act --

12 QUESTION: Mr. Taranto, excuse me for  
13 interrupting, because you answered my question earlier.  
14 But could you again give me that Section -- could you  
15 tell me what page of your appendix or petition that  
16 section is on?

17 MR. TARANTO: I don't believe that the  
18 petition includes the general national transportation  
19 policy.

20 QUESTION: Something that critical was not  
21 included in the relevant statutes?

22 MR. TARANTO: It is included in the statutes;  
23 not in the appendix here. In Section 10101, the general  
24 national transportation policy, which comes just before  
25 10101a, the language I was referring to appears.

1           The pre-emption provision of the Staggers Act  
2           is the second important provision in this case. And  
3           that provision worked an even more fundamental change in  
4           the system of rail carrier regulation.

5           Historically, an interstate rail carrier was  
6           subjected to a dual system of regulation. And  
7           intrastate shipment was initially subjected to State  
8           regulation, with appeal to the Interstate Commerce  
9           Commission, to simplify matters, only if the State  
10          action discriminated against or unduly burdened  
11          interstate commerce.

12          Congress radically altered the balance of  
13          Federal and government authority in the Staggers Act.  
14          After the Staggers Act, a State was permitted to  
15          continue regulation intrastate transportation only if it  
16          did so in accordance with Federal standards and  
17          procedures, and it had obtained certification from the  
18          ICC to continue that regulation.

19          In this case, Texas has been denied  
20          certification. It was denied certification while the  
21          ICC decision that is at issue here was pending in the  
22          Fifth Circuit.

23          The precise chronology is as follows. The ICC  
24          granted the exemption to TOFC service, both the motor  
25          and rail portions, in 1981.

1           That decision was affirmed by the Fifth  
2 Circuit in its American Trucking Association's case of  
3 1981.

4           In the early eighties Texas, like many States,  
5 had provisional authority to continue regulating. And  
6 under that provisional authority, it determined that for  
7 intrastate shipments it retained the authority to  
8 regulate the motor portions of TOFC service.

9           The ICC disagreed with that decision by Texas,  
10 and that decision was in turn --

11           QUESTION: (Inaudible) distinguished it,  
12 didn't they?

13           MR. TARANTO: The ICC said that it's 1981  
14 exemption --

15           QUESTION: No, I mean the second -- Court of  
16 Appeals.

17           MR. TARANTO: Yes, when that case went to the  
18 Fifth Circuit, the Fifth Circuit said that the  
19 transportation involved in the earlier case was  
20 interstate transportation; that the shipments there  
21 crossed State lines during the entire -- at some point  
22 during the single TOFC service.

23           In this case, they said a different analysis  
24 is required when the service is purely intrastate. And  
25 the Fifth Circuit determined that intrastate motor



1 portions constituted transportation provided by a motor  
2 carrier, subject to the Motor Carrier Act, which  
3 expressly reserves such activity to State regulation.

4 It is our position that the Fifth Circuit  
5 decision was wrong because it took too simplistic a view  
6 of the statutory scheme, and because it failed to give  
7 the ICC the deference it is due in making an allocation  
8 decision, a decision about where to allocate an  
9 inherently mixed form of transportation in a complex  
10 regulatory scheme.

11 QUESTION: I don't see that the Fifth Circuit  
12 mentioned the provision which you referred me to  
13 earlier. Did the government argue that provision to the  
14 Fifth Circuit?

15 MR. TARANTO: I'm not aware that the  
16 government made any argument based on the express  
17 priority given to the rail carrier policy.

18 We showed in our brief that the language of  
19 the two or three particular provisions at issue in this  
20 case can bear the construction that the Commission gave  
21 it.

22 First of all, the motor vehicle portion of  
23 TOFC service in fact constitutes transportation provided  
24 by a rail carrier, because transportation is given a  
25 broad definition in the statute that encompasses not

1 just rail but also motor vehicle movement.

2 Second, when a rail carrier provides motor  
3 vehicle transportation, as an adjunct to, incidental to,  
4 its rail transportation, it need not automatically  
5 become transformed into a motor carrier. Not all motor  
6 vehicle movement is by definition movement by a motor  
7 carrier.

8 The particular provisions at issue here, of  
9 course, can't be read in isolation, as this Court --  
10 this Court's approach in its American Trucking  
11 Association's case of 1967, we think, took the proper  
12 approach.

13 First of all, the statutory scheme simply does  
14 not divide the world of motor vehicle movement and rail  
15 movement according to the same line that the statutory  
16 scheme is generally divided between motor carriers and  
17 rail carriers.

18 QUESTION: Am I correct that the argument on  
19 which the Fifth Circuit based its decision had not been  
20 presented to the ICC? Is that right? In the  
21 proceedings before the ICC did Texas make the argument  
22 that ultimately prevailed in the Fifth Circuit?

23 MR. TARANTO: The Fifth Circuit rested its  
24 decision on the view that this was transportation  
25 provided by a motor carrier.

1 QUESTION: Right. A motor carrier.

2 MR. TARANTO: The ICC decision in this case  
3 itself does not reflect that -- that argument. I'm  
4 afraid I'm just unaware of what arguments were made in  
5 the proceeding leading up to the ICC decision. The  
6 opinion itself does not reflect that.

7 QUESTION: We don't really know the views of  
8 the ICC on this point?

9 MR. TARANTO: Well, we do know the view of the  
10 ICC that both the motor and truck portion is properly  
11 brought within the rail carrier provisions of the  
12 Interstate Commerce Act.

13 The ICC decision itself does not speak about  
14 the Motor Carrier Act provision. It does speak about  
15 the Motor Carrier Act, but not about the particular  
16 reservation of State authority.

17 QUESTION: Mr. Taranto, Texas was decertified  
18 after some 40 items of disagreement with the Texas  
19 Commission, is that right?

20 MR. TARANTO: Yes, that's right.

21 QUESTION: Has the ICC had the same trouble  
22 with other State commissions in finding them  
23 recalcitrant?

24 MR. TARANTO: As far as I'm aware, Texas today  
25 remains the only State to have been denied

1 certification. There was a long process in which many  
2 States applied for certification. Many of those States  
3 were eventually granted certification. Some in the  
4 course of the application process dropped out, and  
5 decided that they would no longer continue seeking  
6 certification.

7 QUESTION: Of course, it's a large State, and  
8 there's probably a lot of intrastate movement in Texas  
9 that might not be the case in other States.

10 MR. TARANTO: Certainly, Texas is larger than  
11 most States, but other States have an enormous amount of  
12 intrastate movement.

13 QUESTION: (Inaudible) I suppose.

14 MR. TARANTO: Yes. The specific question,  
15 whether Congress has ever addressed itself to whether  
16 truck movement can be encompassed in the rail carrier  
17 provisions has a fairly clear answer.

18 Congress has simply never said anything on  
19 that subject. What Congress has said is that it sought  
20 to promote intermodal transportation, both in the  
21 specific exemption provision of the Staggers Act in  
22 adding, as part of the Motor Carrier Act of 1980, the  
23 promotion of intermodal transportation, to the general  
24 national transportation policy; and in taking a variety  
25 of other actions.



1           When one turns, finally, to the general rail  
2 carrier policy set out in the Staggers Act, nothing  
3 could be clear that -- than that the ICC decision in  
4 this case furthers that policy.

5           The ICC decision here furthers the  
6 deregulatory policy; the policy of ensuring -- of  
7 eliminating disparities between Federal and State  
8 regulation; and the policy of promoting intermodal  
9 transportation.

10           It is our view that because there is nothing  
11 specifically in the statute contrary to the ICC  
12 construction of the statute; and because the ICC  
13 decision here furthers the national rail transportation  
14 policy; that the ICC decision was correct, and that the  
15 Fifth Circuit decision should be reversed.

16           I would like to reserve the remainder of my  
17 time for rebuttal.

18           CHIEF JUSTICE REHNQUIST: Thank you, Mr.  
19 Taranto.

20           We'll hear now from you, Mr. Roper.

21           CRAL ARGUMENT OF MICHAEL E. ROPER, ESQ.,

22           ON BEHALF OF THE PETITIONERS IN NO. 85-1267

23           MR. ROPER: Mr. Chief Justice and may it  
24 please the Court:

25           The issue before this Court is the narrow

1 question of whether Congress delegated power to the ICC  
2 to exempt the motor portion of intrastate TOFC  
3 transportation provided by a rail carrier.

4 There is no dispute that the ICC does have,  
5 and did properly exercise, the power to exempt both the  
6 motor and rail portion of transportation provided by a  
7 rail carrier, when that transportation was on a  
8 interstate basis.

9 Likewise, there is no dispute that the ICC  
10 could and did exempt the rail portion of intrastate  
11 TOFC-COFC transportation provided by a rail carrier.

12 Railroad petitioners, all of whom are  
13 interstate rail carriers operating in Texas, concur in  
14 the analysis made by the government, and that will not  
15 be repeated here, hopefully.

16 Instead, my primary focus will be on what the  
17 practical effect of the decision below will be, if that  
18 decision is allowed to stand.

19 Petitioning railroads will suffer real and  
20 tangible harm if the motor portion of intrastate TOFC  
21 transportation provided by a rail carrier, is subject to  
22 regulation by the Railroad Commission of Texas.

23 While it is true that petitioners are not  
24 presently engaged in a large amount of that type of  
25 transportation, one reason for that is the uncertainty

1 created by the decision below.

2 Railroad petitioners view complete intrastate  
3 TOFC-COFC transportation as a necessary component of  
4 their ability to be fully effective competitors in the  
5 State of Texas and other large States where there is a  
6 potential for long-haul transportation by rail.

7 The major effect of the decision below will be  
8 to prevent railroad petitioners from competing with  
9 intrastate motor carriers.

10 Texas has essentially conceded in its brief  
11 that its aim is just that, to protect intrastate motor  
12 carriers from competition.

13 One wonders why Texas is so concerned about  
14 protecting an industry, when that industry apparently is  
15 not itself concerned.

16 The Texas intrastate motor carriers have not  
17 appeared at any stage of this case before the ICC or the  
18 courts.

19 We believe it is safe to assume that motor  
20 carriers would have contested this matter if they were  
21 truly fearful of this competition.

22 In any event, railroads will not be able to  
23 effectively compete because of the higher costs and less  
24 flexibility associated with transportation that is  
25 partially regulated and partially deregulated.

1 QUESTION: I don't really understand that.  
2 You can't have it both ways. Either it's -- you're  
3 saying, it's important to you, but it's not important to  
4 them. It seems to me if it's important to you, it ought  
5 to be important to the Texas motor carriers, too.

6 MR. ROPER: Well, you would think so --

7 QUESTION: You're going to make money and  
8 they're not going to lose any. It really doesn't work  
9 that way, it seems to me.

10 MR. ROPER: We will be able -- if the motor  
11 portion is deregulated as the rail portion, we will be  
12 able to provide additional competition.

13 QUESTION: And the Texas truckers must lose  
14 money. I mean, it seems to me you have to pick one  
15 argument or the other.

16 Maybe the Texas truckers just trust the State  
17 of Texas to preserve their interests.

18 MR. ROPER: Well, given the history of the  
19 Railroad Commission, I could certainly understand why  
20 they would put that trust there.

21 But in any event, I don't think it's  
22 necessarily an either/or situation.

23 TOFC-COFC transportation involves the movement  
24 of usually two trailers or containers on one flatcar.  
25 Under the TOFC exemption adopted by the ICC, a portion



1 of the movement must be over the rail in order for the  
2 rail carrier to be able to provide over-the-road motor  
3 vehicle service in its own trucks.

4 Both interstate and intrastate TOFC-COFC  
5 shipments move on the same flatcars, in the same trains,  
6 and receive the same physical handling.

7 However, if the decision below stands, the  
8 intrastate TOFC-COFC shipments will be subject to  
9 economic regulation by the RCT, Railroad Commission,  
10 while the interstate shipments will be exempt from  
11 economic regulation.

12 The example discussed in railroad's opening  
13 brief is illustrative of the problem. That example  
14 concerned a shipper making an intrastate shipment from  
15 Houston to Texarkana, Texas, and a shipper making a TOFC  
16 shipment from Houston to Texarkana, Arkansas.

17 The rail carrier chosen by the first shipper  
18 would move the trailers over its tracks to Dallas, and  
19 then would have to obtain either a certificate to  
20 operate as a motor carrier to move the trailers to  
21 Texarkana, Texas, or would have to use another  
22 certificated motor carrier for that portion of the move.

23 The interstate shipper, using --

24 QUESTION: Yes, but isn't the anomaly present  
25 if you were just a motor carrier and you didn't have a

1 rail involved? One going to Texarkana, Texas is  
2 subject to the Texas Commission. One going across the  
3 State line is subject to the Interstate Commerce  
4 Commission.

5 MR. ROPER: That is true, but in this case,  
6 Congress has form a different form of regulation.

7 QUESTION: I understand. But I don't think  
8 the anomaly adds much to your argument is all I'm  
9 saying.

10 MR. ROPER: Well, I think it's illustrative of  
11 the problem you have with the dual regulatory system,  
12 that Congress has concluded was too much of a burden on  
13 the rail carrier industry. And that's why they did what  
14 they did.

15 It is interesting to note that Texas did not  
16 dispute the validity of this example, but rather stated  
17 that the disparity was condoned by Congress.

18 We believe that statement to be erroneous.  
19 Because Congress, in adopting the Staggers Act,  
20 specifically found that separate State and Federal  
21 regulatory policies were to be eliminated.

22 Congress therefore preempted State regulation  
23 of intrastate rail transportation except to allow  
24 certified States to regulate in accordance with Federal  
25 standards and procedures.

1 Texas, of course, because of its  
2 decertification, does not even have that power. If the  
3 decision below stands, the policy of uniformity between  
4 Federal and State regulation will be frustrated.

5 That result would be contrary to the stated  
6 policy in 49 U.S.C. 10101a of assuring that intrastate  
7 regulation is consistent with Federal standards.

8 We also believe that the decision belows  
9 conflicts with this Court's holding in the  
10 Transcontinental Gas Pipe Line case. As this Court  
11 held, once the Congress has decided not to regulate in  
12 an area such as economic regulation, the States are not  
13 free to step in and regulate.

14 Texas is attempting to do just that by  
15 asserting that the ICC does not have the power to exempt  
16 the full intrastate TOFC transportation provided by a  
17 rail carrier.

18 The Staggers Act expressly adopted the policy  
19 to rely on market forces, rather than economic  
20 regulation. And we believe Texas' attempt to frustrate  
21 that policy is contrary to the holdings in Transco.

22 QUESTION: It did -- the Act does exempt  
23 intrastate transportation by motor, doesn't it?

24 MR. ROPER: By motor?

25 QUESTION: Yes. By motor carrier?

1 MR. ROPER: No --

2 QUESTION: What is the phrase that the Fifth  
3 Circuit relied upon?

4 MR. ROPER: Well, the Fifth Circuit said that  
5 the ICC and Congress had to be talking only about  
6 interstate transportation when they were talking about  
7 motor and rail portions.

8 QUESTION: Well, isn't there language in the  
9 act that allows States to regulate intrastate motor  
10 transportation?

11 MR. ROPER: Yes, there is. Yes, there is.  
12 But this is not transportation provided by motor  
13 carriers.

14 QUESTION: Well, that's where the argument is  
15 really. Because if it is transportation provided by  
16 motor carriers, it isn't subject to that kind of market  
17 forces analysis that the other forms of motor  
18 transportation are?

19 MR. ROPER: Not to the degree, although the  
20 1980 Motor Carrier Act, I think, did loosen up the  
21 regulatory control significantly for interstate motor  
22 carriers.

23 But it is our position that the statute that  
24 was adopted by Congress, where they said, transportation  
25 provided by a rail carrier, is exactly covering this



1 type of transportation.

2 These are all rail carriers. It is  
3 transportation provided by these rail carriers. And  
4 beyond that, the first portion of 49 U.S.C. 10505 talks  
5 about matters relating to transportation provided by  
6 rail carriers.

7 And this is certainly a matter that relates to  
8 transportation provided by a rail carrier. You must  
9 have a prior or subsequent move over the rail in order  
10 for this exemption to apply.

11 So I don't think it's -- the construction of  
12 the statute, you know, is clear that transportation  
13 which, as defined in the Interstate Commerce Act, does  
14 include motor vehicle, when it's transportation provided  
15 by a rail carrier, it falls exactly within the statute.  
16 And that is our position.

17 That's all I have. Thank you.

18 CHIEF JUSTICE REHNQUIST: Thank you, Mr.  
19 Roper.

20 We'll hear now from you, Mr. Rodriguez.

21 ORAL ARGUMENT OF FERNANDO RODRIGUEZ, ESQ.,

22 ON BEHALF OF THE RESPONDENTS

23 MR. RODRIGUEZ: Mr. Chief Justice, and may it  
24 please the Court:

25 For well over 50 years the Railroad Commission

1 of Texas has regulated intrastate motor carriage, within  
2 the State of Texas.

3 That regulation has been active. That  
4 regulation has been vigorous. But I submit to the Court  
5 that at the same time, that regulation has been  
6 even-handed, and has been entirely in keeping with the  
7 legislative mandate under which the Railroad Commission  
8 operates.

9 That legislative mandate was given to the  
10 Commission by the Texas legislature.

11 In early 1984, the ICC, acting pursuant to  
12 what it considered to be its jurisdiction and authority,  
13 exempted from regulation the motor carrier portion of a  
14 totally intrastate TOFC shipment.

15 I agree with Mr. Roper that the question in  
16 this case is simply this: Did the ICC have the  
17 jurisdiction under its statutes, under the sections in  
18 its statutes, to exempt the motor carrier portion of a  
19 purely intrastate TOFC shipment, or, as the State of  
20 Texas contends, is there a countervailing force to that?

21 The State of Texas contends -- Mr. Chief  
22 Justice, I think that was the question you were asking  
23 just a moment ago -- that Section 10521b is an express  
24 limitation on the power of the ICC to regulate  
25 intrastate motor carriage.

1 QUESTION: May I just ask at that point,  
2 suppose that instead of granting an exemption, the ICC  
3 had felt there was a danger that the railroad would have  
4 a monopoly and would gouge the shippers, and wanted to  
5 regulate rather than exempt the entire TOFC or whatever  
6 you call it combined type of service, including the  
7 intrastate motor carriage portion.

8 Your position is, they couldn't have done that  
9 either.

10 MR. RODRIGUEZ: Your Honor --

11 QUESTION: What is your position on that?

12 MR. RODRIGUEZ: Justice Stevens, we're still  
13 talking about a purely intrastate movement?

14 QUESTION: Correct. You'd have the same --

15 MR. RODRIGUEZ: Yes, Your Honor.

16 QUESTION: -- transportation at issue. But  
17 instead of ordering the State to exempt, the ICC had  
18 said, we'd like to regulate this, because we're afraid  
19 the railroad's going to gouge the shippers?

20 MR. RODRIGUEZ: Yes, Your Honor, we contend  
21 that under 10521b, which is the express reservation of  
22 power to the States, the ICC -- the ICC simply has no  
23 jurisdiction --

24 QUESTION: You'd say they didn't have  
25 jurisdiction there either?

1 MR. RODRIGUEZ: Yes, Your Honor, that's  
2 correct.

3 In short, this is clearly a case that involves  
4 preemption or not preemption. And that being the case,  
5 we have to apply the principles of preemption.

6 Now we recognize -- the State of Texas  
7 recognizes -- that Congress' authority to regulate  
8 interstate commerce is plenary. If there is a rational  
9 connection between the intrastate commerce which they  
10 seek to regulate and interstate commerce, as long as  
11 they choose a reasonable method, which comports with  
12 Constitutional limitations, they can regulate those  
13 intrastate commerce type of movements.

14 QUESTION: Textually, your argument comes down  
15 to the argument that this transportation is not being --  
16 is being provided by a motor carrier rather than by a  
17 railroad; isn't that what it all boils down to?

18 MR. RODRIGUEZ: That's what it all boils down  
19 to, Justice Scalia.

20 QUESTION: Well, it seems to me it's being  
21 provided by a railroad.

22 MR. RODRIGUEZ: Well, Your Honor, is a truck  
23 not a truck simply because it has Burlington Norther or  
24 MKT on the side, when that truck provides the same type  
25 of service which John Doe Freight Lines provides?



1           Our contention is that you do not -- you  
2       consider what section of the statute you come under by  
3       looking at the type of transportation provided. You do  
4       not look at who owns the particular type of vehicle.

5           If it is motor vehicle transportation as  
6       defined by the statute in 10102 --

7           QUESTION: Then how could you get ICC  
8       jurisdiction over the motor carrier portion of  
9       interstate transportation. Do you assert that the ICC  
10      doesn't have jurisdiction over that either?

11          MR. RODRIGUEZ: No. Yes, they do, Your  
12      Honor. The ICC does have jurisdiction over interstate  
13      motor carriage. Essentially --

14          QUESTION: But supposing only the rail portion  
15      is interstate and the motor portion is intrastate.  
16      Under your view who has jurisdiction?

17          MR. RODRIGUEZ: Well, Your Honor, I think  
18      that's an interstate movement. I think that would be an  
19      interstate movement.

20          A purely intrastate movement would be  
21      something like a movement by truck from Brownsville,  
22      Texas to Houston, at which point it is placed on a  
23      flatcar. The flatcar goes to Dallas, at which point the  
24      trailer comes off the flatcar, is attached to a truck,  
25      and is carried to, say, Wichita Falls.

1           It's a purely intrastate movement. That's the  
2 type of movement we're talking about in this case. If  
3 there's a leg of that transportation that crosses State  
4 lines, then we're talking about an interstate movement,  
5 and that's not involved here.

6           QUESTION: But Mr. Rodriguez, if the motor  
7 portion of interstate TOFC movements can be exempted,  
8 why doesn't that necessarily mean that the motor portion  
9 of intrastate movement is also transportation by a rail  
10 carrier?

11          MR. RODRIGUEZ: Justice O'Connor, that's --  
12 you've essentially grasped what this case is all about.  
13 That is what it comes down to.

14          The ICC contends that under the definition,  
15 that the definition is so broad that it includes this  
16 type of traffic. We contend that it does not for a  
17 number of reasons.

18          Number one, there is a specific statutory  
19 expression of power reserved to the States in 10521b,  
20 which says specifically, that nothing in this statute is  
21 meant to take away intrastate motor carriage regulation  
22 from the States; that's a paraphrase.

23          But more importantly, transportation as  
24 defined in Section 10102 -- I think it's section 25 --  
25 does not mean what they say it means for a number of

1 reasons.

2 Number one, it's a recodification of the prior  
3 statutes in which the definition of transportation was  
4 different for motor carrier, water carrier, and freight  
5 forwarding.

6 Number two, it's in the disjunction; it is not  
7 in the conjunctive. It talks about X, Y, Z, or a  
8 different type of transportation.

9 Finally, Your Honor, transportation is defined  
10 broadly because it is used in the statute in many  
11 different contexts.

12 Clearly to me, and to the State of Texas, it  
13 has -- while it's defined broadly, it means different  
14 things in different contexts. And that's why it's much  
15 too simplistic to say that transportation provided by a  
16 rail carrier includes any other type of ancillary  
17 transportation such as motor carrier traffic, which a  
18 railroad might seek to provide.

19 QUESTION: Well, if there's some question  
20 about it, don't we owe some deference to the ICC as the  
21 Agency administering the Staggers Act?

22 MR. RODRIGUEZ: Your Honor, I would agree that  
23 some deference is due the ICC. But once again, we have  
24 a countervailing force because we're apply preemption  
25 analysis to this type of case.

1           When we have -- when we deal with a  
2 Congressional grant of authority to regulate interstate  
3 commerce that involves the State, in which the State is  
4 being preempted from a function which it has  
5 traditionally done, the cases say that there has to be a  
6 clear expression of intent on the Congress to do that.

7           And I think that comes about because the  
8 States are essentially different creatures. They are  
9 not like a private party. That is why we have a Tenth  
10 Amendment, and that's why we have an Eleventh  
11 Amendment. They stand in different stead than a private  
12 party.

13           I think there is something of a problem in  
14 that when we talk about Tenth Amendment cases, the  
15 Garcia case complicates things somewhat.

16           Previously, we had thought -- we who represent  
17 the States had thought that there was a body of law  
18 which included --

19           QUESTION: Mr. Rodriguez, can I interrupt you  
20 just a second?

21           MR. RODRIGUEZ: Yes, sir.

22           QUESTION: Are you making a Constitutional  
23 argument in this case, or is it just a question of  
24 statutory construction?

25           MR. RODRIGUEZ: Well, it's a question of



1 statutory construction, Your Honor. But to do that, I  
2 think I need to refer to the type of preemption analysis  
3 that's done in an interstate commerce case.

4 QUESTION: But you would not contest the power  
5 -- if everything were spelled out just as the  
6 government, your opponent, says it is, you wouldn't  
7 contest the power of Congress to deregulate this  
8 particular kind of transportation?

9 MR. RODRIGUEZ: Absolutely not, Justice  
10 Stevens. If Congress said, tomorrow, we want intrastate  
11 motor carriage either exempted from regulation or given  
12 to the ICC, we'd have no case. We concede that.

13 QUESTION: Doesn't the Staggers Act do just  
14 about that?

15 MR. RODRIGUEZ: Just about that, Your Honor.  
16 That's the key phrase.

17 If you look at the statutory -- or the  
18 legislative history of the Staggers Act, there is  
19 clearly an intent on the part of Congress to improve the  
20 financial position of the railroads. We do not contest  
21 that.

22 There is an intent on Congress to avoid, as  
23 much as possible, the system of dual regulation which  
24 applied to the railroads. We do not contest that.

25 But the Staggers Act, Justice Marshall, was an

1 accommodation. There were those in Congress at the time  
2 that simply wanted to exclude the States from any and  
3 all regulation.

4 And Senator Broyhill's compromise, which is --  
5 which found its way ultimately into the statute, was  
6 that there will be different levels of regulation.

7 They did do away with much of the red tape.  
8 But the States can still regulate intrastate rail  
9 carriage, as long as they comply with the standards  
10 which the ICC sets.

11 Even if they comply with the standards which  
12 the ICC sets, an appellant can take a decision from a  
13 State regulatory body to the ICC on the grounds that it  
14 contravenes an ICC policy.

15 But furthermore, there is still that specific  
16 expression of -- or that express reservation of powers  
17 to the States in 10521b. And that is what the Fifth  
18 Circuit went off on in this case, and that is what we  
19 contend prevents the ICC from exerting regulatory  
20 control --

21 QUESTION: (Inaudible) which --

22 MR. RODRIGUEZ: No, Your Honor, they haven't.

23 QUESTION: The ICC is better able to interpret  
24 that Act than you or the Fifth Circuit.

25 MR. RODRIGUEZ: To a certain extent, I would

1 agree, Your Honor. There is a measure of deference  
2 which is owed the ICC.

3 But that measure of deference disappears when  
4 you have an express statutory reservation of power, as  
5 you have in 10521b.

6 QUESTION: (Inaudible.)

7 MR. RODRIGUEZ: Well, that's all part of the  
8 same Act, Your Honor.

9 The point I was trying to make, Justice  
10 Stevens, when I was talking about the Garcia case, is  
11 that previously we had thought that in an interstate  
12 commerce case, when you're talking about interstate  
13 commerce, Congress can legislate against the States, can  
14 intrude upon what normally would be considered State  
15 sovereignty, as long as there is no Constitutional  
16 impediment to that.

17 After Garcia, where we are now told that there  
18 are no traditional notions of what is a government  
19 function, that in fact we have to participate in the  
20 political process to safeguard whatever prerogatives we  
21 would like to have, we are left essentially between a  
22 rock and a hard place.

23 We have to go -- we have to depend on Congress  
24 not to overregulate. And yet we have to go to Congress  
25 to preserve our own prerogatives.

1           What that says to me -- and we also are still  
2       acknowledging the facts that States are different; that  
3       they constitute or they hold a special position in our  
4       Federal system.

5           QUESTION: Well, I don't think it's correct to  
6       say you go to Congress to preserve your power to  
7       regulate. What you're saying is, your adversaries did  
8       not persuade Congress to take that power away from you.  
9       And they say that the statute clearly did take it away  
10      if you read it literally.

11          MR. RODRIGUEZ: That's correct. That's  
12      correct.

13          QUESTION: But you didn't have to have the  
14      initiative to go to Congress to preserve your  
15      regulatory. You're really saying they didn't accomplish  
16      what they say they did.

17          MR. RODRIGUEZ: Well, in part that's true,  
18      Your Honor. And perhaps the States were lucky in that  
19      this particular section, 10521b, is in the statute,  
20      particularly in light of what Garcia v. San Antonio  
21      Metropolitan Transit Authority says.

22          The point of all this, Your Honor, is that --

23          QUESTION: Of course that 10521b says except  
24      as provided in these other sections. And those are the  
25      very sections that the ICC relies on as taking it away,



1 isn't it?

2 MR. RODRIGUEZ: No, Justice Stevens, I think  
3 you're talking about the three sections which are  
4 specifically referred to in --

5 QUESTION: 11501e and -- yes.

6 MR. RODRIGUEZ: Those three sections refer to  
7 intrastate motor carriage of passengers. Those talk  
8 about busses.

9 QUESTION: I see.

10 MR. RODRIGUEZ: They do not talk about  
11 intrastate motor carriage of property.

12 QUESTION: Oh, no, the question is whether  
13 this is intrastate transportation provided by a motor  
14 carrier. That's what 1025b(1) exempts. So you still  
15 boil down to the question, is this transportation  
16 provided by this railroad, quote, transportation  
17 provided by a motor carrier, within the meaning of  
18 10521b.

19 MR. RODRIGUEZ: I think probably that's  
20 correct, Your Honor. What that leads us to, then, is a  
21 question of statutory interpretation.

22 QUESTION: Right. Is this a rail carrier or a  
23 motor carrier?

24 MR. RODRIGUEZ: And is our statutory  
25 interpretation better than the ICC's?

1           In this particular case -- clearly; I mean I'm  
2 here to win the case -- I submit that ours is the best  
3 interpretation.

4           And I think ours is the best interpretation  
5 because it goes and turns on the plain meaning of the  
6 words.

7           To my way of thinking, the ICC's  
8 interpretation, how they get to what constitutes  
9 transportation provided by a rail carrier, is tortured  
10 and arduous.

11           Our interpretation, on the other hand,  
12 basically is very clear. It says a truck is a truck,  
13 and a train is a train.

14           QUESTION: And they say a railroad is a  
15 railroad.

16           MR. RODRIGUEZ: They say a truck is a  
17 railroad, Mr. Chief Justice.

18           At some point -- at some point I think you  
19 have to look at the common meaning of words. If you  
20 look at Section 10102, I think there are four  
21 definitions which basically foreclose this issue.

22           I've already gone over section 25 which  
23 defines transportation.

24           The next one I'd like to discuss is Section  
25 10102, Sections 12 and 13, which talk about what is a

1 motor common carrier, and what is a motor contract  
2 carrier.

3 And essentially both of those are persons who  
4 hold themselves out to the public to provide motor  
5 vehicle transportation for compensation over highways.

6 QUESTION: That isn't the issue. The issue  
7 is, what is transportation by a motor common carrier,  
8 and what is transportation by a railroad? Does it mean  
9 -- it's easy to identify what's a railroad or what's a  
10 motor carrier.

11 What's hard, and there's really no -- you  
12 could go either way -- is whether transportation by a  
13 railroad means only rail transportation by a railroad or  
14 truck transportation by a railroad; then, likewise,  
15 whether transportation by a motor carrier means -- would  
16 any problems arise if we adopted the government's  
17 meaning for transportation by a railroad, by a rail  
18 carrier, I assume you'd have to adopt the same position  
19 for the meaning of transportation by a motor carrier,  
20 wherever it appears in the Act; that is, wherever the  
21 Act says anything relating to transportation by a motor  
22 carrier, it would include rail transportation by a motor  
23 carrier, so long as the rails are owned by a motor  
24 carrier.

25 MR. RODRIGUEZ: Your Honor --

1 QUESTION: Would that make the government  
2 uncomfortable in any way?

3 MR. RODRIGUEZ: I don't know if it would make  
4 the government uncomfortable. But I think what you're  
5 saying follows logically. And I think that's the  
6 incongruity.

7 It simply can't mean everything for everyone.  
8 Transportation means --

9 QUESTION: It could.

10 MR. RODRIGUEZ: Well, I hope not, Your Honor.

11 QUESTION: It lends itself to that meaning,  
12 certainly. Transportation provided by a rail carrier  
13 means any form of transportation the rail carrier  
14 provides.

15 MR. RODRIGUEZ: Well, that's clearly the  
16 position that the ICC is taking in this case. But Your  
17 Honor, we contend that -- that that simply does not jibe  
18 with what the prior legislative -- or prior legislative  
19 enactments. You had three separate definitions of  
20 transportation, all of which were codified and combined  
21 in the section.

22 Now, we're talking about the whole statute.  
23 And through the statute, the term "transportation" is  
24 discussed.

25 Now, clearly it can't mean everything for



1 everybody. In the context of transportation provided by  
2 a motor carrier, does it also talk about -- does it also  
3 include the term, vessel? Are we talking about barges?

4 I submit to the Court that it does not. And  
5 at some point you have to impose some level of logic and  
6 clarity on this.

7 Another reason which I believe augurs in our  
8 favor and against the government is that if, in fact --  
9 if, in fact, transportation provided by a motor carrier  
10 -- excuse me, transportation provided by a rail carrier  
11 includes transportation which otherwise would be motor  
12 carrier traffic, then I submit there would have been  
13 absolutely no reason to include in 10505f the specific  
14 reference to intermodal movements.

15 QUESTION: (Inaudible).

16 MR. RODRIGUEZ: 10505f, Your Honor.

17 QUESTION: I don't have it readily in mind.

18 MR. RODRIGUEZ: If I may, Your Honor, 10505f  
19 says, the Commission may exercise its authority under  
20 this section to exempt transportation that is provided  
21 by a rail carrier as a part of a continuous intermodal  
22 movement.

23 If in fact the ICC is correct, and the phrase,  
24 transportation provided by a rail carrier includes motor  
25 carrier traffic, there would have been absolutely no

1 sense in including that section.

2 That section specifically recognizes  
3 intermodal traffic. And it was put there for a purpose.

4 And yet, even though it was put there for a  
5 purpose, we still have Section 10521b staring us in the  
6 face, which is the express reservation of power to the  
7 States to regulate intrastate motor carriage.

8 What that says to me is that the Congress  
9 intended the ICC have the power to regulate, or to  
10 exempt from regulation, on an interstate basis, motor  
11 carrier traffic that's part of TOFC service.

12 The express reservation of power --

13 QUESTION: Well, now, wait a minute. Do you  
14 say 10505f refers to --

15 MR. RODRIGUEZ: Intermodal.

16 QUESTION: It doesn't refer to -- you're not  
17 saying that refers to the truck portion of what the  
18 railroad provides?

19 MR. RODRIGUEZ: That's what intermodal  
20 movements are. It's combined movements.

21 QUESTION: But then you've given away your  
22 case. Because they use the same language in f that they  
23 do in a, that is, transportation that is provided by a  
24 rail carrier. And you're saying, in f, it means truck  
25 transportation provided by a rail carrier?

1 MR. RODRIGUEZ: Only as modified by the term,  
2 intermodal movement, Your Honor. There is no reference  
3 to intermodal movement in 10505a.

4 QUESTION: It isn't modified by that. It  
5 says, except transportation that is provided by a rail  
6 carrier, which phrase, you assert, includes only rail  
7 transportation, as a part of a continuous intermodal  
8 movement.

9 That would mean only the rail portion of the  
10 continuous intermodal movement.

11 MR. RODRIGUEZ: Your Honor, we believe that  
12 the inclusion of the word, intermodal movement, is an  
13 express -- it's an expression by Congress that there is  
14 a type of movement which will be allowed.

15 That type of movement is an intermodal  
16 movement involving TOFC, involving trains, involving  
17 trucks --

18 QUESTION: Yes, but is it the truck portion of  
19 it? If it can be the truck portion of it there, then  
20 you can read it the same way up in a. I thought your  
21 whole case hinges upon the fact that the phrase,  
22 transportation that is provided by a rail carrier, means  
23 rail transportation.

24 And if it means that up in a, then it must in  
25 f.

1 MR. RODRIGUEZ: Your Honor, it would, except  
2 for the fact that f contains the phrase, intermodal  
3 movement.

4 QUESTION: It just says, as a part of a  
5 continuous intermodal movement. So it's the rail  
6 portion of a continuous intermodal movement.

7 MR. RODRIGUEZ: Well, Your Honor, I think we  
8 read it differently from the way you read it.

9 QUESTION: We sure do.

10 What else do you have?

11 MR. RODRIGUEZ: Your Honor, the problem is, I  
12 think, the States are being whipsawed. In Garcia,  
13 you've got the States having to rely on the political  
14 process to preserve their own initiatives.

15 And yet we have to go to Congress and depend  
16 on Congress not to overregulate in areas which are  
17 traditionally left to the States, such as this.

18 Nonetheless, we still have a recognition that  
19 the States, as States, hold a special place in the  
20 Federal system.

21 I believe there is a necessary corollary to  
22 that. And the corollary is, if a statute is at all  
23 confusing, if a statute is at all ambiguous, then that  
24 ambiguity must be resolved in favor of the States.

25 That's the only conclusion which I can draw



1 from the interstate commerce cases and the Garcia case

2 And what we have here, Your Honor, is  
3 demonstrated by the fact that the ICC uses such a  
4 tortured interpretation to get to where it's going, is  
5 the fact that Congress did not make the statute clear.

6 In that case, the dispute, the ambiguity must  
7 be resolved in favor of the States. If it's not, it is  
8 for Congress to clarify. And Congress can clarify very  
9 easily by simply referencing in 10521b, one other  
10 section, perhaps 11501, where they could say that  
11 there's a specific -- there's a specific power to exempt  
12 intrastate motor carriage when part of a TOFC movement.

13 They have not done that. I do not think that  
14 it is for the ICC to put that there when they are faced  
15 with the specific reservation of power in 10521b.

16 If I might just respond to a couple of points  
17 that Mr. Roper made, as I stated when I started, the  
18 Railroad Commission of Texas has regulated motor carrier  
19 traffic in Texas intensively. And unless this Court  
20 tells us that we cannot do so, they intend to continue  
21 to do that.

22 But that does not mean that they intend to  
23 provide an unfair competitive advantages -- advantage to  
24 motor carriers.

25 Part of their legislative mandate, under

1 Article 911b, which is the Texas statute which controls  
2 their jurisdiction, is the fostering of a motor carrier  
3 -- the motor carrier industry as a viable alternative  
4 for shippers.

5 But that does not mean that they want to  
6 impose an unfair competitive advantage on railroads  
7 providing TOFC service intrastate.

8 There is no unfair disadvantage imposed on the  
9 --

10 QUESTION: I assume the interest of the State  
11 of Texas is to prevent this intermodal transportation  
12 from cutting the rates below the floor that applies to  
13 the motor carriers, isn't that right?

14 MR. RODRIGUEZ: I'm sorry, Your Honor.

15 QUESTION: They want to protect the motor  
16 carriers from cutrate competition by the intermodal  
17 carrier; isn't that what it is?

18 MR. RODRIGUEZ: There is economic regulation  
19 involved in this, Your Honor.

20 QUESTION: I mean, it's an attempt to protect  
21 the carriers from what they would regard as unfair  
22 competition by an unregulated carrier.

23 MR. RODRIGUEZ: That's correct, Your Honor.  
24 But they as motor carriers would not pay anything less,  
25 or anything more, than other similarly situated motor

1 carriers providing that type of service in the State.

2 That is not an unfair competitive advantage.  
3 That is an attempt to create equal markets for everybody  
4 competing in the same type of service.

5 There is no infirmity in that. There is no  
6 Constitutional infirmity. There is nothing which  
7 transgresses the policies of the Staggers Act or the  
8 Interstate Commerce Act.

9 QUESTION: Well, I would think you would be  
10 making the same argument if it's an interstate movement,  
11 but the truck portion of it is wholly intrastate; but  
12 you aren't.

13 MR. RODRIGUEZ: Your Honor, if it's an  
14 interstate movement, while we might -- while the State  
15 of Texas or the Railroad Commission might like to do  
16 something, they simply do not have the ability to do  
17 so.

18 Because if it's an interstate movement, it is  
19 without the regulation of the Railroad Commission of  
20 Texas.

21 QUESTION: Just because of the -- just because  
22 you concede that's what the Act says?

23 MR. RODRIGUEZ: That's what the Act says, Your  
24 Honor.

25 In closing, we would simply, respectfully pray

1 that this Court affirm the judgment or the opinion of  
2 the Fifth Circuit in this case.

3 The Fifth Circuit opinion was ably reasoned,  
4 and it distinguished the prior ATA case; and it  
5 recognizes the specific reservation of power under  
6 10521b, which is the exact same type -- the exact same  
7 type of reservation of power which this Court affirmed  
8 in the Louisiana Public Service case, which involved the  
9 FCC.

10 In that case, we had section 152b, which said  
11 that the Federal Communications Commission had no  
12 authority over intrastate rates, charges or practices.

13 This Court held that that was a specific  
14 reservation of power for the States to regulate  
15 intrastate depreciation rates.

16 I submit to the Court that that is precisely  
17 what we have here. And based on that reasoning, I think  
18 that the Fifth Circuit opinion should be affirmed.

19 Thank you.

20 CHIEF JUSTICE REHNQUIST: Thank you, Mr.  
21 Rodriguez.

22 Mr. Taranto, do you have anything more? You  
23 have three minutes remaining.

24 MR. TARANTO: Nothing further.

25 CHIEF JUSTICE REHNQUIST: Very well. The case



1 is submitted.

2 (Whereupon, at 2:42 p.m., the case in the  
3 above-entitled matter was submitted.)  
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**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:

#85-1222 - INTERSTATE COMMERCE COMMISSION, Petitioner V. TEXAS, ET AL  
and #85-1267 - MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, ET AL.,  
Petitioners V. TEXAS, ET AL.

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

BY Paul A. Richardson

(REPORTER)