

**SUPREME COURT
OF THE UNITED STATES**

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WASHINGTON, D.C. 20543

In the Matter of:)
)
PAULA KADRMAS, ET AL,)
)
) No. 86-7113
)
) Petitioners,)
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)
DICKINSON PUBLIC SCHOOLS, ET AL,)

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x
3 PAULA KADRMAS, ET AL. x
4 Appellants, x
5 v. x No.86-7113
6 DICKINSON PUBLIC SCHOOLS, ET AL. x

7 -----x
8 Washington, D.C.

9 Wednesday, March 30, 1988

10 The above-mentioned matter came on for oral argument
11 before the Supreme Court of the United States at 11:00 p.m.

12 DUANE HOUDEK, ESQ., Bismark, North Dakota, on behalf of
13 the Appellants.

14 GEORGE T. DYNES, ESQ., Dickinson, North Dakota, on behalf
15 of the Appellees.

16 NICHOLAS SPAETH, ESQ., Attorney-General of North Dakota,
17 Bismark, North Dakota, as amicus curiae, in support of
18 Appellees.

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1 PROCEEDINGS

2 CHIEF JUSTICE REHNQUIST: Very well, you may proceed
3 whenever you are ready.

4 ORAL ARGUMENT FOR PLAINTIFF BY DUANE HOUDEK, ESQ.

5 ON BEHALF OF APPELLANTS

6 MR. HOUDEK: Thank you, Mr. Chief Justice, and may it
7 please the Court. In this case the Court is called upon to
8 examine the constitutionality under the "equal protection"
9 clause of a fee charged of some North Dakota parents to bus
10 their children to school. The fee is imposed only in a
11 minority of districts which includes the Dickinson district,
12 where the Plaintiffs reside.

13 In a majority of districts in North Dakota, busing is
14 provided to all free of charge subject to local mileage
15 limitations. That is a statutory mandate in all of those other
16 districts which compromise some 160 out of the 310 districts in
17 the state.

18 Within the Dickinson district, the fee is imposed
19 against all ~~safe~~ handicapped or special education students
20 without exemption, without regard to ability to pay or the
21 financial status of the parents.

22 The effects of these two aspects of the Dickinson
23 bussing policy and the authorizing statute come together and
24 converge in this case where a poor family, unable to pay the
25 fee, lives within one of the few districts where the fee is

1 permitted to be charged. The parent who brought this case,
2 Paula Kadrmas, lives with her husband and three children called
3 New Hradec, North Dakota, on a farm that is some 16 miles from
4 the school their oldest daughter is designated to attend by the
5 district.

6 She encounters the fee at all, again, only because
7 she happens to live in that type of district. If she lived in
8 any other districts, there would not be any kind of bussing fee
9 that could, by law, be charged to her.

10 QUESTION: There are two types of school districts in
11 North Dakota; the Organized and the Reorganized, is that it?

12 MR. HOUDEK: They've come to be known, and it's a
13 rather awkward set of terms, Justice O'Connor, Reorganized and
14 Non-reorganized.

15 QUESTION: Organized and Non-reorganized.

16 MR. HOUDEK: And the Reorganized districts have done
17 so pursuant to statutes that were passed in the '40s to
18 encourage an economy of scale, if you would.

19 QUESTION: And in terms of numbers of students, is it
20 about equally divided among the two types of districts?

21 MR. HOUDEK: I think it is. I don't have the exact
22 figures, but I think it's pretty close. And what that shows is
23 that the Non-reorganized districts are generally the districts
24 in the larger cities or towns and have a higher population of
25 students, than the smaller districts.

1 QUESTION: Are the Appellants still living in the
2 same location and their circumstances have not improved, I take
3 it?

4 MR. HOUDEK: Their circumstances have greatly
5 deteriorated. At the time of trial it was found that after
6 paying taxes of some \$2500 they had about \$12,500 left for a
7 family of five.

8 Since that time, they have started on a cattle
9 enterprise, if you will. They got a loan to try and raise some
10 calves --

11 QUESTION: That should be no problem.

12 MR. HOUDEK: That remains to be seen, Justice White,
13 until calving this spring.

14 But the point of it is that out of this money that
15 was allocated to them, prior to them getting any income at all
16 from this operation, they were given only \$12,000 to live on
17 for the year, half of which inadvertently went to the former
18 landowner, so they had \$6,000.

19 QUESTION: Now, Serita has not actually been denied
20 access to school in fact, has she, to public school education?

21 MR. HOUDEK: She has been denied access to the busing
22 system.

23 QUESTION: My question was whether she has, for
24 purposes of this lawsuit been denied access to education, the
25 public school education.

1 MR. HOUDEK: She has not missed school because of it.
2 She has made it to school.

3 QUESTION: Is there any kind of ripeness problem?

4 QUESTION: Excuse me? No, I don't think there is at
5 all, Your Honor, for one thing part of the challenged statutes
6 include payment of the fee or the demand for the fee, and that
7 goes on whether or not she actually made it to school or not.

8 QUESTION: You would not urge, if that's all that's
9 left, though, you wouldn't urge any heightened scrutiny on the
10 requirement to pay a bus fare, as you do of the ability to go
11 to school?

12 MR. HOUDEK: No, if that was all that was left, we
13 would not.

14 QUESTION: It's ordinary protection analysis?

15 MR. HOUDEK: Yes. I believe, implicit in my analysis
16 there is more left than that, Your Honor.

17 QUESTION: Well, what? Her folks took her to school?
18 They drove her to school, didn't they?

19 MR. HOUDEK: They did.

20 What happened there, Chief Justice Rehnquist, because
21 of a North Dakota case decided in the North Dakota Supreme
22 Court. The court stated that if anybody signed a contract,
23 one of these busing contracts that are frequently used, or were
24 used in the Bismark district, at any rate, then they could not
25 challenge the constitutionality of having to pay that fee. And

1 so the plaintiffs in Dickinson, once the District was adamant
2 about demanding them to sign such a contract, were put in a
3 position that if they did so, they would not have been able to
4 bring their case in state court.

5 So they were left with that on one side; the
6 compulsory attendance laws of North Dakota on the other side,
7 forcing them to in some manner get their children to school,
8 and the only thing left was to drive them themselves.

9 QUESTION: Mr. Houdek, do you lose your case unless
10 the Court applies some form of heightened scrutiny?

11 MR. HOUDEK: No, no, Justice O'Connor, I don't
12 believe that's true at all. It seems to me that recently this
13 court has stated that even under the minimum rational basis
14 test of equal protection, it is looking when there are rights
15 that are important, such as the one we're dealing with here,
16 are rights that have been called by this Court important to the
17 fabric of our society, and to all the political processes that
18 citizens need to engage in.

19 QUESTION: Excuse me, this is just the right to
20 money, isn't it? She doesn't want to pay money for the bus
21 ride; other people don't have to pay; she has to pay. What are
22 we talking about except money?

23 MR. HOUDEK: We are very much talking access for
24 someone who doesn't have that money, nor the ability to drive
25 those children to school herself.

1 QUESTION: But this person got to school.

2 MR. HOUDEK: She did for this year, but it is clear
3 ion the documents that were filed in response to the Motion to
4 Dismiss, they can't be expected to do that every year. They
5 did it at great personal expense; they did it by incurring debt
6 that sooner or later that credit is going to be cut off to
7 people of their means. They did it only through the most
8 extraordinary.

9 QUESTION: Maybe at that time you will have a
10 different lawsuit, but it seems to me now she's been deprived
11 of bus transportation because she couldn't pay for it. Now
12 that raises an obvious equal protection problem. But she
13 hasn't been deprived of going to school, has she?

14 MR. HOUDEK: No, Your Honor, she has not. She has
15 gone to school. I believe it is necessary to recognize that
16 this transportation scheme in North Dakota is part and parcel
17 of the education system, and not merely some benefit like a
18 band uniform might be or something else.

19 QUESTION: Well, what if it were charge or something
20 to get a driver's license? Do we have the same problem if the
21 person can't afford to pay it?

22 MR. HOUDEK: No.

23 QUESTION: Or a charge for taking garbage away?

24 MR. HOUDEK: Sure. That was raised in one of the
25 amici briefs, I believe, as kind of a user fee analysis.

1 QUESTION: Yes.

2 MR. HOUDEK: Here this is not a user fee situation,
3 Justice O'Connor.

4 QUESTION: You don't think a little charge for
5 transportation is a user fee in a sense?

6 MR. HOUDEK: No. And here's what I think is the
7 fundamental difference. A driver's license is a privilege the
8 state gives someone and someone can apply for it or not.

9 Here attendance at school --

10 QUESTION: But desperately important, is it not?

11 MR. HOUDEK: It is important. Granted. But
12 attendance at school, and at school, not education in your
13 home, but attendance at school in North Dakota, is compulsory.
14 It is mandatory. The state in the vast majority of the
15 districts recognizes that and provides transportation free-of-
16 charge, and that has been a historical tradition in North
17 Dakota, so much so that the compulsory education laws were not
18 enforce against people who lived away from the school, and for
19 whom the district did not provide transportation.

20 So it is more than simply a benefit that one might
21 avail themselves of.

22 QUESTION: What about this statute in North Dakota
23 that says "No students rights or privileges shall be denied for
24 non-payment of fees?"

25 MR. HOUDEK: Yes, if I may answer that from a couple

1 of different approaches: first, that has not been judicially
2 construed to say whether or not it would include
3 transportation.

4 QUESTION: Have you argued that it does include
5 transportation?

6 MR. HOUDEK: We brought this waiver statute to the
7 attention of the trial court and to the other side, as a matter
8 of fact. No one has ever --

9 QUESTION: Do you take the position that the statute
10 protects your client from the payment of the fee?

11 MR. HOUDEK: That has never been established that it
12 --

13 QUESTION: Do you take the position that it does?

14 MR. HOUDEK: I would say, Your Honor, that if that
15 statute is so-construed, that that would go a long way to
16 resolving the constitutional problems that are here.

17 QUESTION: Yes, I suppose you certainly would want to
18 argue that it covers your client, if you have any interest in
19 protecting them at all.

20 MR. HOUDEK: Certainly so, certainly so. If as the
21 Appellees have seemed to indicate, that that statute takes care
22 of the entire problem, yet it is more than a little curious
23 that that statute has been raised by them for the first time in
24 this Court after some two years of litigation.

25 QUESTION: That doesn't take care of the entire

1 program. You're not saying it takes care of the entire -- you
2 still have an equal protection problem that people in some
3 counties have to pay for the busses, you know, --

4 MR. HOUDEK: That's right. But I --

5 QUESTION: -- up to the point where you're below the
6 absolute poverty line that you can't possibly get to school.
7 You'd still be disadvantaged as regards everybody else in the
8 state.

9 MR. HOUDEK: That's right. I interpreted the
10 question, Your Honor, as it would apply to our clients. They
11 would be covered by such a statute because they would certainly
12 fall within those whose privileges or educational opportunities
13 would be taken away because of a lack of an ability to pay.
14 And if the statute prohibits that, then they would be covered.
15 It does not, as you suggest, cover any kind of geographical
16 disparity that exists within the state.

17 QUESTION: I don't think Justice O'Connor was asking
18 you to concede or to asking your position as to whether your
19 clients qualify under this statute if it's interpreted the way
20 your opponents say it should be. You're not sure they would
21 qualify under it, are you?

22 MR. HOUDEK: Yes, Your Honor.

23 QUESTION: You are?

24 MR. HOUDEK: All I could say to that is that someone
25 with their income and their family composition does not

1 qualify, then that statute would not be protecting their
2 children.

3 QUESTION: Then you're right, the case is gone if
4 that statute's interpreted, though.

5 MR. HOUDEK: Well, it's interesting: all along, it
6 seems, the Appellees have said "There's no need for a waiver in
7 this case; we have one in the statute. We do this as kind of a
8 noblesse oblige, but if in fact they are saying that statute
9 applies, and if they will say that that is the law in North
10 Dakota, that they will not deny a student access to that bus
11 system if they haven't an ability to pay, and they will not
12 attempt to collect from a parent as an ability to pay the fee
13 that may otherwise may be involved, then we're a long way
14 towards settling this case.

15 But up to this point, that has never been done. They
16 have never been willing to admit that.

17 QUESTION: This statute doesn't say anything about
18 inability to pay, does it? It says, "Nonpayment of fees." Is
19 that what -- are we talking about the statutes quote on page
20 29?

21 MR. HOUDEK: Yes, Your Honor.

22 QUESTION: It doesn't say anything about inability to
23 pay.

24 MR. HOUDEK: No. It does say that --

25 QUESTION: It doesn't say anything about bussing. It

1 says, "Rights are -- " if it means you shall not be denied the
2 right to get on the bus because you don't pay the fees, if you
3 read it that way, why hasn't she been riding the bus all these
4 years?

5 MR. HOUDEK: That's right. If that statute meant
6 that, then she should have never been turned down.

7 MR. HOUDEK: Seems to me that's rather strange.

8 QUESTION: I assume there's no way to read this in
9 such a way that it would remove the liability for the fees.
10 All it means is you have to get this particular student to
11 school, or I presume her parents would continue to be liable
12 for the fees which the school could try to collect from them,
13 or the state could if and when the state had sufficient funds.

14 MR. HOUDEK: Yes, absolutely. But I think in that
15 way it's analogous, perhaps to providing indigent counsel and
16 then trying to recoup that if the person thereafter comes into
17 funds. I agree.

18 I believe in --

19 QUESTION: Let me just clear up one other thing in my
20 mind: they have said that they won't let her ride on the bus
21 not only because she doesn't pay the money, but she has to sign
22 this contract?

23 MR. HOUDEK: Right.

24 QUESTION: So that this statute wouldn't cure that.
25 She's got to -- and that contract required her to waive the

1 kind of claim she asserts in this case?

2 MR. HOUDEK: Right, so it's a real catch-22. If they
3 maintain that position, then they would never know whether they
4 would get into a situation where the statute pertained.

5 And I might add, that refusal to sign the contract
6 has been characterized as something that was done to, like our
7 clients thought it up to maintain standing. It was demanded of
8 the -- for the very reason that, if they did it, they couldn't
9 challenge any of the fees. It came from exactly the other way
10 around.

11 To summarize that point, if I might, I think everyone
12 here involved in this case and the Court below, recognized the
13 essential nature of transportation to education in North Dakota
14 where we have these very large districts and centralized
15 schools and a rural population. I mean, the majority did; the
16 dissent below did; the Appellees seem to concede.

17 QUESTION: As I understand your argument, though, if
18 North Dakota didn't furnish bus transportation to anyone in
19 order to get to school, you would say that that -- practice was
20 unconstitutional as with respect to poor people?

21 MR. HOUDEK: Yes. I think, of course, Justice White,
22 that this Court, because of the circumstances of this case need
23 not go nearly so far.

24 QUESTION: Your argument here, that's your principal
25 argument.

1 MR. HOUDEK: Our argument is that --

2 QUESTION: Your principal argument is about poor
3 people.

4 MR. HOUDEK: Yes, it is also about --

5 QUESTION: I suppose your equal protection argument
6 would be just as good with respect to the difference between
7 Reorganized and Non-reorganized districts -- if there weren't
8 any poor people, I suppose somebody who could afford to drive
9 their child to school could make it just as good an equal
10 protection claim as you could with respect to the difference
11 between the districts.

12 MR. HOUDEK: That's correct. I believe that's true.

13 But again, I don't think any decision of this Court
14 would have to rest on that ground alone because our clients
15 clearly fall within however you might define poor people.

16 QUESTION: That may be so, but if we rely on that,
17 then we would have to be saying that North Dakota is
18 constitutionally required to furnish bus transportation to poor
19 people, who have no way for their children to get to school.

20 MR. HOUDEK: I think what it would -- that 's a fair
21 characterization, Your Honor.

22 QUESTION: I think it is, too.

23 MR. HOUDEK: That would come in to play if within the
24 context of the present system, where were they compel
25 attendance to school, where that is mandatory; where if there's

1 someone 20 miles from the school they provide who has
2 absolutely no way of getting in there --

3 QUESTION: Is there any evidence that North Dakota
4 has ever prosecuted anyone under the truancy statute who was
5 simply unable to afford the bus to school and therefore did not
6 come?

7 MR. HOUDEK: That there is -- it's not recently, Your
8 Honor. Recently, the cases have taken on a home-school kind of
9 issue and people keeping them back for because of their choice
10 in education.

11 But there has been at least one case where the North
12 Dakota court has held that where a person was offered only a
13 \$.50 per day transportation allowance and not actually brought
14 to school could not be subject to prosecution for compulsory
15 attendance.

16 QUESTION: Could not be? I don't think you said,
17 "could not be?"

18 QUESTION: Is there any case ever holding otherwise
19 in North Dakota? I mean, are there many prosecutions under the
20 truancy statute?

21 MR. HOUDEK: In the context you mean, I am not aware
22 there are a lot, Your Honor.

23 QUESTION: So what's really at issue is what you say
24 is the denial of the right to public school education, not the
25 dilemma that you're going to be prosecuted for truancy if you

1 cannot afford to go on the bus?

2 MR. HOUDEK: While I agree that the denial of the
3 public school education is an extremely important factor, and
4 denial of such a right does raise these constitutional issues.
5 I think that the part about compulsory attendance merely brings
6 it into finer focus. I mean, here's a state that's saying
7 education is so important you've got to get there; you've to do
8 it in our schools; we're going to give transportation to most
9 of the districts, but we're going to withhold some. And we're
10 going to do from the poor within those districts as well,
11 without any kind of a waiver situation, because that's the way
12 it has been applied.

13 I believe the appellees can say all they want that
14 informally they will do this or they will do that; but unless
15 our clients have some legal guarantee, it's an empty promise.
16 The administrations change; circumstances and people change,
17 and unless it is backed up by some active legal significance, I
18 don't think that promise is enough.

19 I would like to reserve the rest of my time at this
20 point for rebuttal.

21 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Houdek.
22 We'll hear now from you, Mr. Dynes.

23 ORAL ARGUMENT BY GEORGE T. DYNES, ESQ.

24 ON BEHALF OF APPELLEES

25 MR. DYNES: Thank you, Mr. Chief Justice and may it

1 please the Court:

2 I think some more facts might be illuminating. This
3 matter of charging a fee actually, although it is a state law,
4 did originate in Dickinson back in 1973 and it was a plebiscite
5 of the bus uses that it came about.

6 Prior to that it was a practice of picking up the
7 children at the main road which could mean a half-mile or a
8 mile or a quarter of a mile; and the bus patrons said we would
9 rather pay a -- that didn't cost anything. They said we'd
10 rather pay a fee if you'll come to our yard and pick up the
11 children and return them there in the afternoon. So that is
12 what happened and that's what is still going on.

13 Subsequent to that, actually, the law was passed in
14 1979. The fee at the present level and for the past several
15 years as in the case of Serita Kadrmas was \$97.00 for the full
16 year. She's sixteen miles from school, so if you figure in and
17 out each day, that comes to 1.7 cents per mile, far less than
18 anybody could afford their own children. And as the evidence
19 showed, that the Kadrmases, by their own testimony during the
20 1984-85 year -- '85-86 year, excuse me, which was the year that
21 this case was tried in trial court, that they spent \$114 each
22 month for actual expenses, and this was gas and similar
23 expenses to haul the child back and forth, versus the fee which
24 would have been \$10.70 a month.

25 QUESTION: And that proves what?

1 MR. DYNES: That proves that, although it may have
2 been an imposition, they were able to get that child to school
3 and clearly could have paid the fee which was --

4 QUESTION: It doesn't prove they could afford it,
5 does it?

6 MR. DYNES: I think it does, yes.

7 QUESTION: What if they went into debt and their
8 debts were overwhelming and they continued to go in debt?

9 MR. DYNES: I think it would have been prudent to pay
10 the fee.

11 QUESTION: It might have been prudent but I don't
12 believe it proves anything else.

13 MR. DYNES: Of course, with a family they are, they
14 certainly aren't at a high level of income, but they did have
15 resources to devote to various things, and it would appear that
16 that's something they should have done. I understand they're
17 doing that now.

18 QUESTION: What do you mean by "resources to devote
19 to those things?" They didn't have very much.

20 MR. DYNES: No, it was certainly limited.

21 QUESTION: Are you inferring irresponsible spending
22 on their part?

23 MR. DYNES: No, not at all. And I'm sure that there
24 wasn't enough at the end of the month, which was true for the
25 good share of the people that ride that bus.

1 QUESTION: With all the resources of the state, you
2 could have found out how much money they had, couldn't you?

3 MR. DYNES: Pardon, Justice Marshall?

4 QUESTION: Couldn't you have found out exactly how
5 much money that family had?

6 MR. DYNES: Well, the testimony -- they testified as
7 to what their income was, and it was \$15,000.

8 QUESTION: Are we bound by that or are you trying to
9 add to that?

10 MR. DYNES: No, no. That's the only testimony, and
11 that is the finding of the court. The poverty level at that
12 time was \$12,500.

13 QUESTION: Mr. Dynes, what about -- it might have
14 been more economical, but what about the contractual
15 requirement? They did have to sign this contract, in order to
16 get the child on the bus?

17 MR. DYNES: That's true, they were asked to sign a
18 contract. However, they weren't asked to pay the fee if they
19 weren't able to pay the fee in advance. They were able to pay
20 the fee when they could, and Mrs. Kadrmas testified that she
21 understood that to be the policy.

22 As a matter of fact, for the previous year --

23 QUESTION: But the contract, let me just go back to
24 the contract that would have required them, would have
25 prohibited them from bringing an action in this case, is that

1 right?

2 MR. DYNES: I guess it would have, yes.

3 QUESTION: What is the reason for that?

4 MR. DYNES: I guess they could still bring the equal
5 protection on the argument between the districts; and I think
6 they could still -- I don't know if it would prevent them from
7 bringing the action; but of course they would have committed to
8 pay the fee. They couldn't have contested the legality of the
9 fee, that's correct. But I'm not sure if they'd still have a
10 lawsuit or not.

11 QUESTION: Why do you have such a contractual
12 provision? It seems sort of a strange thing to me?

13 MR. DYNES: It's a matter of lining up during the
14 summer season to know who's going to ride the bus. They have
15 -- these are district-owned busses; they try to fill them to
16 capacity; they don't want to have any empty seats in them; they
17 have kindergarten children who just ride one way; they have
18 some others who just ride one way because they want to stay
19 after school for extra-curricular and things like that, so they
20 do the best --

21 QUESTION: Well, that would explain my --

22 MR. DYNES: They do the best they can to schedule.
23 And of course, they do want a legal commitment. They do want
24 the people to pay if they're able to.

25 QUESTION: What about -- what is the reason for the

1 waiver of the right to challenge the fee?

2 MR. DYNES: What is the reason for the waiver?

3 QUESTION: Yes. That's what puzzles me. One of the
4 things that puzzles me about the case.

5 MR. DYNES: You're speaking about the statutory
6 waiver?

7 QUESTION: No, as I understand it -- I don't have it
8 in front of me; the contract would have foreclosed a lawsuit
9 like this -- at least some of the claims.

10 MR. DYNES: Well, they would have agreed that they
11 were obligated to pay the fee. There's no question that that's
12 true. There would be a legal obligation.

13 QUESTION: And that they could not contest that fact?

14 MR. DYNES: I don't know that it said that in there.
15 It didn't go into the legal matter. It wasn't drawn up by a
16 lawyer; it was just a contract that was drawn up by the bus
17 administrator asking people to agree to pay a certain fee, and
18 it's I think probably was somewhat of an outgrowth of this case
19 in Bismark where Mr. Houdek mentioned there was a suit and the
20 case was denied on a constitution attack because the individual
21 had signed the contract.

22 QUESTION: Mr. Dynes, I guess no matter how we view
23 the case, we have to address the argument here that there's an
24 equal protection denial by virtue of different treatment in
25 North Dakota of reorganized school districts for bus

1 transportation and non-reorganized districts?

2 MR. DYNES: Yes.

3 QUESTION: And the supreme court apparently found
4 that the statute authorizing bus fees in non-reorganized school
5 districts, but not in the reorganized ones, was rationally
6 related to the legitimate government purpose of encouraging
7 reorganization?

8 MR. DYNES: I think we have to take that in two
9 parts, Justice O'Connor. The reorganized school districts
10 started reorganizing under laws that were passed in 1947, and
11 that process basically has been completed. It could still
12 continue. But pretty much all the little ones have become
13 bigger ones now. And under that law, it did say that each
14 district, when they reorganized, has to have a plan.

15 Now it's not the same plan. They create their own
16 plan which they vote on. Then the electors in each small
17 district being reorganized into the larger district would have
18 to approve that plan in order for the reorganization to be
19 completed. And that is what the supreme court was referring to
20 when they said the rational basis was to encourage
21 reorganization in the larger districts.

22 QUESTION: We now have this scheme on the books and
23 if it's a reorganized district, they can't charge bus fees, and
24 if it isn't they can, and that's being challenged?

25 MR. DYNES: That's right.

1 QUESTION: Now what is the legitimate governmental
2 purpose now, do you suppose, in that difference?

3 MR. DYNES: That as the reorganization has been
4 completed, the plans are in place; they've been voted on in the
5 individual districts and the legislature when they passed this
6 fee statute, simply left those districts alone because they had
7 those plans in place, with not charging any fees.

8 QUESTION: So I'm asking you for what governmental
9 purpose we should look in the discrepancy here? How do you
10 defend it?

11 MR. DYNES: The first purpose was to reorganize,
12 which they did. They have a plan in which they're honoring;
13 they're not disturbing that plan.

14 The other districts, like Dickinson, never had any --
15 they weren't reorganized; never have been --

16 QUESTION: And never will be.

17 MR. DYNES: And never will be.

18 QUESTION: Too big.

19 MR. DYNES: They were never required to have any bus
20 system, you see. The statute now and for many years past, has
21 said that a school like Dickinson need not have a bus system at
22 all. But they can elect to do it simply by action of the
23 board, as opposed to, in the reorganized districts, where it
24 was an action of the people, and it was part of the plan.

25 QUESTION: This was a local option?

1 MR. DYNES: And those plans, you have to remember,
2 were different, and are different. It's been suggested that
3 they have free bus transportation; well, it's true they don't
4 charge a fee, but they don't haul all of the children either.
5 They typically won't haul any children that are within two
6 miles of school, for instance, and they very often don't go
7 door to door like we do in Dickinson.

8 QUESTION: In the case of a non-reorganized district,
9 which I take it Dickinson is --

10 MR. DYNES: That's correct Your Honor.

11 QUESTION: Is the district simply left free to decide
12 whether or not they will charge a fee?

13 MR. DYNES: That's true.

14 QUESTION: It's not as if the state says you will
15 charge a fee to some districts and you won't to others. and
16 with the districts that aren't reorganized, they are left a
17 local option?

18 MR. DYNES: They are left a local option and the
19 statutes are completely silent on whether or not they could
20 charge a fee.

21 QUESTION: But with the reorganized districts, the
22 state tells them you can't charge a fee?

23 MR. DYNES: It doesn't say that. It says you have to
24 have a reorganization transportation plan. And the statutes
25 are silent as to whether or not you can charge a fee. They may

1 very well be.

2 QUESTION: All of these systems that are local option
3 on bussing?

4 MR. DYNES: Well, in a way, except that the
5 reorganized districts are done by vote of the people at the
6 time the districts was organized, the unorganized districts --

7 QUESTION: I thought that the supreme court said that
8 the reorganized districts could not charge a bussing fee. I
9 thought that was the assumption on which they took the case?

10 MR. DYNES: The statute is silent on that. I don't
11 remember that that was in the decision.

12 MR. DYNES: I'm not sure, Your Honor; I'm not sure
13 about that. They don't, and nobody wants to in those
14 districts, and I think the reason is because they have this
15 plan in place.

16 But the other districts either have the option of
17 having the bussing plan of any kind, and they also have the
18 option of charging a fee or not within the limitation, of
19 course; and they also have the option to determine how far away
20 from school they require people to live in order to take
21 advantage of the system.

22 QUESTION: In your view, so far as the North Dakota
23 statute is concerned, it's optional to charge fees for the
24 school bus in both kinds of districts?

25 MR. DYNES: No. The statutes don't say that. That

1 would another lawsuit.

2 QUESTION: But well, I think what several of us are
3 trying to find out is, do the North Dakota statutes mandate one
4 way or another as to whether a fee should be charged for a
5 school bus trip in (a) the reorganized districts; and (b) the
6 other districts?

7 MR. DYNES: In the reorganized districts there is
8 nothing about fee. It doesn't say they can charge it; it
9 doesn't say they can't charge it. And they don't charge it.

10 QUESTION: The reason that fees are not charged for
11 bussing in the reorganized districts is that those
12 reorganization plans provided for free bussing?

13 MR. DYNES: I think that's true. And there has been
14 no attempt to change that.

15 QUESTION: A reorganized district might possibly not
16 charge a fee at all?

17 MR. DYNES: Absolutely.

18 QUESTION: They could have a transportation plan that
19 says \$1.00 a mile.

20 MR. DYNES: That's true. And they charge different
21 fees. They're more expensive in some of the --

22 QUESTION: So in effect, all the reorganized
23 districts have opted themselves to provide free transportation?

24 MR. DYNES: That in effect is true. But as I said,
25 they don't haul all of the children. And I wanted to mention

1 that the --

2 QUESTION: Also their transportation plans really
3 differ one from another?

4 MR. DYNES: That's right. They're --

5 QUESTION: They don't charge but their mileages are
6 different or things like that --

7 QUESTION: Mr. Dyne do you know --

8 MR. DYNES: Some of them pick them up at the door and
9 some of them don't.

10 QUESTION: The opinion of the supreme court, I
11 thought, stated that the North Dakota statute allows only those
12 school districts which have not been reorganized to charge a
13 fee for school bus service?

14 MR. DYNES: True, Your Honor.

15 QUESTION: And that's what they said. But you say we
16 don't pay any attention to that?

17 MR. DYNES: No, Your Honor. I'm not saying that.
18 I'm saying the statute addresses, that talks about those fees,
19 talks only about the non-reorganized districts. It simply
20 doesn't apply in any respect to the districts that are
21 reorganized.

22 QUESTION: But don't we have to accept the
23 interpretation of the statute placed on them by the supreme
24 court of your state?

25 MR. DYNES: I think it's correct. I think that the

1 reorganized districts can't charge a fee, but Your Honor, that
2 really isn't the issue.

3 QUESTION: I thought that was one of the issues
4 raised by the Appellant?

5 MR. DYNES: All right, I stand corrected, I guess
6 they have raised that issue. We will accept for the purposes
7 of argument that certainly the reorganized districts can't
8 charge. I know that they don't charge it.

9 QUESTION: What's the reason, then, for the
10 distinction between the two kinds of districts? What is the
11 rational justification that's offered for the distinct
12 treatment?

13 MR. DYNES: Justice Kennedy, as I mentioned, I think
14 the Court recognizes the argument for the rational basis for
15 the reorganized district, having a busing plan. They're
16 required to have a bussing plan. The other districts have
17 never been required to have a bussing plan. It's been
18 optional. The charging of the fee, the rational basis is
19 simply to allocate available public funds.

20 The cost of this bus is paid in Dickinson and it'll
21 vary from district to district may charge a fee about 11
22 percent by the users; about 11 percent by the local taxpayers,
23 which of course, includes all those who have used the bus and
24 who don't and the rest of it is state money.

25 Only a very small percentage of the students ride the

1 bus, about 13 percent. The other 87 percent furnish their own
2 transportation to and from school because they live within the
3 four mile and within the three-mile limitation.

4 QUESTION: Mr. Dyne, before you sit down, please
5 follow up on Justice Kennedy's question. He asked you about
6 the rational basis, or the reason for the distinction was, and
7 you gave a reason which was quite different from the reason
8 that your state supreme court gave. They said that the purpose
9 was to encourage non-reorganized districts to reorganize.
10 That was the only purpose they gave. During your argument
11 you've said that's just not going to happen.

12 MR. DYNES: I don't believe you've read the entire
13 opinion.

14 QUESTION: I'm reading on page 64 of the Appendix
15 which after explaining at some length why it's a rational basis
16 standard, they say, "The obvious purpose of the legislation is
17 to encourage school district reorganization with a concomitant
18 tax base expansion and enhanced and more effective school
19 system. The legislation provides incentive for people to
20 approve school district reorganization." That's what they say.

21 MR. DYNES: That's the separate legislation that
22 requires that they have a bus plan in place, which they do, the
23 reorganized districts.

24 But the separate rational basis for letting them
25 charge -- for letting these other districts, charge a fee who

1 don't have to have a plan in place --

2 QUESTION: Where do they describe that in the opinion
3 from the part I've read?

4 MR. DYNES: I could pass a note through Mr. Spaeth
5 later if you'd like. I'm pretty sure it's in the opinion.

6 QUESTION: Well, I didn't find it.

7 MR. DYNES: It's been neglected in the briefs, I
8 think.

9 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Dynes.
10 We'll hear now from you, Mr. Spaeth.

11 ORAL ARGUMENT BY NICHOLAS SPAETH, ESQ.

12 AS AMICUS CURIAE, IN SUPPORT OF APPELLEES

13 MR. SPAETH: Mr. Chief Justice, Members of the Court:
14 may it please the Court, before beginning the argument I've
15 prepared, I would like to pick up on a question Justice Stevens
16 just asked because I can tell that the Court is interested in
17 it.

18 The reorganization statute which was passed by the
19 legislature quite a long time ago, did have as its purpose to
20 encourage reorganization, and it did encourage reorganization
21 in the vast majority of school districts in this state. It
22 would be a mistake to examine it solely in the context of
23 Dickinson where there was no reorganization. It's done its
24 work throughout the rest of the state, and it's done it in a
25 pretty fair and rational way. It's purpose was to encourage

1 consolidation, and as a quid pro quo, where there was
2 consolidation, to guarantee that there would be school bus
3 transportation provided to parents who were fearful that when
4 their local schools closed, they would have to face the
5 responsibility of bussing or transporting your child in from a
6 great distance.

7 And that system has to be looked at based on its
8 impact on the entire state.

9 QUESTION: General Spaeth, can a reorganized school
10 district charge for school busing?

11 MR. SPAETH: No, I do not believe so. I think you
12 are absolutely correct.

13 QUESTION: So we can put that at rest?

14 MR. SPAETH: We can put that at rest, that's right.
15 Only unreorganized school districts may and it's their option.

16 QUESTION: All right, and so on the equal protection
17 challenge, as to the difference between the reorganized and the
18 unreorganized districts, what is the legitimate governmental
19 justification for it?

20 MR. SPAETH: It was a local option to provide each
21 school district with the choice of deciding first of all
22 whether it wanted to reorganize; then if it decided not to
23 reorganize, whether it wanted to charge a fee? The statute is
24 actually neutral on its face. It does not say, in some
25 districts, a fee must be paid and others not.

1 QUESTION: You are saying, I think, if I understand
2 it correctly, that it once had a purpose, to achieve
3 reorganization. It really doesn't have any purpose any more
4 except, I suppose, if you know that the incentives that the
5 government promises one time, everybody else will get anyway;
6 the next time they offer an incentive you won't believe in it.

7 You're saying the only current reason for the
8 distinction is that if the government should now say that
9 everybody will get bus transportation free, people will say,
10 "gee, you can't rely on the government. We thought that one of
11 the incentives for reorganizing was that we'd get bus
12 transportation; but now they've given it to everybody anyway so
13 you simply can't trust the government when it promises things.
14 That's the only current existing reason for the distinction.

15 MR. SPAETH: It still has a rationale in the sense
16 that it provides the non-reorganized school districts with an
17 option. It gives them the choice: do we want to fund this
18 service or do we not. It certainly is a rational basis.

19 QUESTION: General Spaeth, the option, if I
20 understand you, at the time of the legislation, they were
21 concerned about poor families living a long ways from the new
22 central school, and what would happen to them if they didn't
23 provide bus service?

24 MR. SPAETH: Not just poor families.

25 QUESTION: Well, at least those who are a distance

1 away. And now you say that some reorganized and some didn't,
2 but those that didn't reorganize are functionally just like
3 those that -- the problem that the legislature was concerned
4 with -- some distant families not near enough to the school to
5 get there without free bus transportation. So now how do you
6 say under your -- why should one family in that posture which
7 has the same economic situation, same distance from school, why
8 wouldn't the legislature express the same concern about that
9 family as about those that were motivated to -- who got into
10 the plight just because they agreed to the reorganization?
11 That's the problem.

12 MR. SPAETH: What happened here, Justice Stevens, is
13 there was a very rational scheme was put in place given the
14 needs of the state as a whole, and you're focusing on the
15 Dickinson school district, where it isn't.

16 QUESTION: No. I'm focusing on what the legislature
17 was concerned about when it said, if you get yourself in this
18 particular structure with a central school and people living a
19 long ways away from it, we'll take care of you. But we won't
20 take care of a similar set of circumstances in another
21 district. What's the justification for that?

22 MR. SPAETH: Because when the legislature was
23 considering this problem, the legislature emerged from a
24 political compromise and realized that, in order to provide
25 some districts with an incentive to reorganize, it was going to

1 have to put in some guarantee that transportation would be
2 provided. It didn't need that same incentive if they weren't
3 going to reorganize, because generally -- of course, not in
4 every case -- but generally there wasn't the same
5 transportation problem; that the students would live close
6 enough to their school where they wouldn't need free
7 transportation.

8 QUESTION: What you are saying is that the
9 legislature had no intention whatever to benefit people distant
10 from the schools; it just wanted to eliminate a possible
11 obstacle to their voting for reorganization? It has no
12 beneficent desire here at all? It was just wanted to get their
13 votes?

14 MR. SPAETH: The primary focus was to encourage this
15 process of consolidation, and in order to get this legislation
16 through, that important protection had to be put in to
17 encourage the consolidation process, and that's what we're
18 talking about here.

19 Now, there's one other issue that troubles the court,
20 and I want to talk about it, and that is, how did this case get
21 here? In the jurisdictional statement, the question presented
22 is whether a state may deny equal access to education to a
23 distinct class of people, basically minor people whose parents
24 are below the poverty level; I don't think on the record here
25 that question is presented.

1 I think, Justice O'Connor, that this case may not be
2 ripe is entirely a correct one: first of all, there is no
3 question they weren't denied education. Serita attended school
4 through the entire course of this litigation.

5 Second, she wasn't even denied transportation on the
6 school bus. All that was required was that her parents sign
7 this contract.

8 QUESTION: I guess it's enough to raise the
9 challenge, isn't it?

10 MR. SPAETH: Well, the state law would have provided
11 for a waiver of fee; and no waiver --

12 QUESTION: Well, let's talk about this state law. It
13 would have permitted Serita to board the bus, whether her
14 parents paid or not?

15 MR. SPAETH: That is correct.

16 QUESTION: Would it have excused her parents from
17 paying?

18 MR. SPAETH: Yes, it would.

19 QUESTION: You think it addresses that?

20 MR. SPAETH: Yes, all you have to do is if you look
21 in the joint appendix, the court's Finding of Fact No.14,
22 that's located on page 7 of the joint appendix -- what the
23 court decided based on the conflicting evidence was all that
24 the Dickinson school district required was that the parents
25 sign the written agreement to pay fees, and make a bona fide

1 effort to pay on these obligations, a bona fide effort. It's
2 an open-ended kind of obligation.

3 QUESTION: Well --

4 MR. SPAETH: In fact, she'd been bussed for three
5 years without payment of any fees.

6 QUESTION: But counsel, if their cattle works out,
7 for example, and they make a lot of money, they're going to
8 have to pay that fee.

9 MR. SPAETH: That's correct, and there goes the equal
10 protection argument. That's what is important about the
11 contract -- because economic situations do change. And even
12 though the Dickinson school district is not going to try to
13 come out and garnish their earnings to pay a fee now --

14 QUESTION: So as long as they're poor, they don't
15 pay?

16 MR. SPAETH: That's right. As long as you're poor,
17 you don't pay. But if you come in to money through cattle or
18 through the lottery, then you are going to be --

19 QUESTION: I don't want to pay even if I'm rich.
20 That's how I got rich. I don't spend money that I don't have
21 to spend, and why should I have to pay for busses when rich
22 people in other counties don't? So isn't there still an equal
23 protection argument?

24 MR. SPAETH: If you put it in that sense, right. If
25 you consider that the state has somehow dictated this kind of

1 discrimination. I don't think it has because the statute is
2 neutral. But they you're left with some sort of purely
3 geographic difference which the Court from McGowan v. Maryland
4 on, has put a minimum of scrutiny on.

5 Of course there are distinctions between counties, or
6 the school districts, based on this fee, but those kinds of
7 distinctions exist all over. They exist in life, and the
8 Constitution has never provided a remedy for that kind of
9 discrimination. And that's where I think we're left with the
10 barest minimum scrutiny of a statute that on the whole works
11 pretty well. It's not perfect --

12 QUESTION: General, may I interrupt? You do have
13 these distinctions in life. Sometimes a child moves into a
14 neighborhood and everybody in the neighborhood is a Swede and
15 the child is Irish and he gets beat up on the way to school;
16 and in every school district except yours, the school
17 authorities say we're going to protect the children as they go
18 to school. But in this district the administration is Swedish
19 and they say, "Go ahead and beat the kid up on the way to
20 school."

21 He gets there though. He still doesn't have a
22 challenge since he can overcome the obstacles and he gets
23 there?

24 QUESTION: You can tell Justice Stevens is from
25 Chicago.

1 [Mirth.]

2 MR. SPAETH: I am tempted to respond, Justice
3 Stevens, by saying that is not the case here, but two weeks ago
4 --

5 QUESTION: Well, we've got an obstacle. It's an
6 obstacle.

7 MR. SPAETH: Justice Scalia warned the assembled
8 Attorney-Generals in this room that we were not to answer a
9 question that way; that we were indeed required to answer a
10 question anyway, even if we don't believe it applies.

11 And you might have a different case there. We're not
12 dealing with the --

13 QUESTION: And the justification would be the state
14 says each school district runs its own affairs, except that in
15 9 out of 10 we have regulations that ensure that the children
16 have adequate access to the school. But in this one, we'll let
17 them run their own show. And they just happened to do it in
18 this way. Would that be permissible geographic discrimination?

19 MR. SPAETH: Yes, it would, and in fact, if you look
20 at this Court's decision in McGowan v. Maryland and an earlier
21 case, Calvert v. Maryland, where there were different -- Ann
22 Arundel County had different sets of rules than other counties,
23 those kinds of challenges were raised and rejected.

24 Unless the Court were to create a new form of
25 constitutional protection, those kinds of things would be okay.

1 The remedy there, of course, is some sort of due process action
2 against the individual entity. But it is not an equal
3 protection case.

4 QUESTION: I understand that you say there's no
5 denial of education in this case?

6 MR. SPAETH: That is correct.

7 QUESTION: Well, let's take the State of Texas, and
8 they tell the children in Galveston you can go to school in El
9 Paso, would that be a denial of education?

10 MR. SPAETH: It depends, I suppose, on the purpose,
11 Justice Marshall. It depends upon what the purpose was of
12 that. If the purpose was to disadvantage some distinct
13 minority group, identifiable, yes it might be. You know, if
14 we're talking about aliens being forced to go to school
15 somewhere else because they're aliens, or even if the State of
16 North Dakota said poor people are going to go to school in
17 Galveston, instead of in Houston, we might have a problem. But
18 the state doesn't do that here.

19 QUESTION: How are the poor people going to get
20 there? That costs you about \$300 airplane fare.

21 MR. SPAETH: They're going to have to move there, I
22 think, is what the answer is.

23 QUESTION: It's easy.

24 MR. SPAETH: No it's not.

25 QUESTION: I think if you give one people

1 transportation you should give it to the others. Offer it; not
2 that they have to take it.

3 MR. SPAETH: It's not the state making that decision,
4 Justice Marshall. It's the individual school district deciding
5 whether or not to fund that.

6 QUESTION: I thought that state education was a part
7 of the Constitution; that the state, once they offered
8 education should offer it on an equal basis. The state.

9 MR. SPAETH: It does, Justice Marshall. It offers it
10 on the same basis as everybody. The state funds --

11 QUESTION: You can't escape it by turning it over to
12 the counties.

13 MR. SPAETH: No, the state, just for your
14 information, in this case the state funds 2/3rds of the
15 transportation costs to the local district, and it's only the
16 other third that we're talking about now here.

17 QUESTION: The other third could be very important to
18 some people.

19 MR. SPAETH: There's no doubt about that, Justice
20 Marshall, but we're talking --

21 QUESTION: It also applies to the millionaire. He
22 might not want to spend his money on busses. He might want to
23 put it on yachts.

24 QUESTION: It seems to me, General Spaeth, that the
25 fact that the state picks up the tab on most of the

1 transportation -- is it the same percentage in the reorganized
2 and non-reorganized districts?

3 MR. SPAETH: Yes. It's a uniform system applied
4 across the board in the state.

5 QUESTION: Then it seems to me there the principal;
6 it's not so much then the county itself deciding how to
7 disperse the local taxpayers' money, but you have the state
8 financing it. That seems to me more of a reason to have a
9 uniform rule.

10 MR. SPAETH: I disagree. I think it's no different
11 than Texas financing system in Rodriguez, where the state
12 didn't provide all of the funding for education to allow the
13 school district to decide how much more it was going to
14 contribute. In this case the state provides 2/3rds of it; the
15 school district itself picks up another roughly six; and the
16 parents are called upon to provide the remaining six.

17 It's just one way that benefits -- and we're talking
18 about economic benefits here; there are a host of other
19 examples here: medicare, medicaid; where people using those
20 kinds of services have to pay a user fee.

21 It's also true in food stamps. We are talking here
22 about some things in life that are even more important than
23 education where the users of those benefits have to pay part of
24 the cost.

25 QUESTION: I assume that in the reorganized districts

1 where they don't make a charge for the bussing fee, it comes
2 out of locally imposed taxes?

3 MR. SPAETH: That's right, the taxpayers there.

4 QUESTION: So that the people who don't pay bussing
5 fare have to pay something more in their taxes, although it
6 probably wouldn't --

7 MR. SPAETH: Right and it generally is property
8 taxes, which are not, you know, which are tax, and you could
9 argue, I suppose that poor people aren't likely to pay property
10 taxes, and therefore are likely to get a free ride in those
11 kinds of accountings.

12 But I don't think we're dealing with --

13 QUESTION: Nice pun. I like that.

14 [Mirth.]

15 MR. SPAETH: Again, I think we are dealing here with
16 something that is an economic benefit, and we have one school
17 district here that's charging a small amount for it. I don't
18 think it's unconstitutional. I think it's some thing that
19 probably isn't even properly raised in this case.

20 I think the court wanted to duck this case; I think
21 that the record is such that it could be affirmed almost on an
22 ulterior basis.

23 QUESTION: I suppose that reorganized districts have
24 got a better tax base, so an enhanced tax base --

25 MR. SPAETH: They certainly do.

1 QUESTION: -- and if an unreorganized district,
2 probably because if it can't be reorganized isn't going to
3 achieve a better tax base. So it's just economically in a
4 different situation?

5 MR. SPAETH: In many cases that's right, Justice
6 White, and you know it --

7 QUESTION: Well, the Supreme Court said -- indicated
8 that right?

9 MR. SPAETH: Yes, that's correct. But that's what
10 we're faced with -- \$97.00 a year, which is a user fee levied
11 in one county that's at issue here against a background of a
12 system that really did what it was supposed to do, which was to
13 encourage the reorganization of most of North Dakota schools.

14 We're the most agricultural state in the United
15 States; we're not a rich state by any means; and we're seeing
16 what's happening all over the upper Midwest; and that is a
17 shrinking of the rural population, even out of the small towns
18 into the larger cities.

19 And that's what's driven this whole process. It's
20 largely complete at this point, but this program I think has
21 worked well.

22 CHIEF JUDGE REHNQUIST: Thank you General Spaeth.
23 Mr. Houdek, you have eight minutes remaining.

24 ORAL ARGUMENT BY DUANE HOUDEK, ESQ.

25 ON BEHALF OF APPELLANTS -- REBUTTAL

1 MR. HOUDEK: I would first like to point out that the
2 concept of reorganization did not create the right to bussing
3 in North Dakota. It is not as though there was no bussing.
4 And the reorganization statutes then created that right.

5 Bussing existed long before 1947 when the
6 reorganization statutes were passed. As a matter of fact, what
7 the statutes did was to ensure that that tradition would
8 continue.

9 QUESTION: But did free bussing exist before?

10 MR. HOUDEK: Yes, Your Honor. Older cases have said
11 that this very statute that gave an option of providing
12 transportation or making in lieu payments, although they were
13 discretionary in which you did, they were mandatory that you
14 did one or the other.

15 So that has nothing to do with the reorganization
16 statute.

17 Secondly, this is not a local option case. This is
18 not a Rodriguez "difference in quality of education." As
19 Justice Stevens pointed out, these are mostly state funds, and
20 it's more than 2/3rds. And in may cases it's 80 percent of the
21 funds are state monies that are being distributed to the
22 various districts.

23 Withholding 80 percent -- withholding all of that
24 benefit because of the failure to pay that fee --

25 QUESTION: General, your opponent suggests that the

1 fee equals only the local contribution. That the 2/3rds of the
2 state money goes anyway.

3 MR. HOUDEK: Yes. That's true, but withholding it
4 from a person who doesn't pay it, withholding all that state
5 benefit, is not something that a local option ought to be able
6 to do.

7 QUESTION: I suppose you could say you could offer to
8 take 2/3rds of it away with the school, would you?

9 MR. HOUDEK: No, I wouldn't, Your Honor. What I'm
10 saying is that it's even worse that this fee could deny those
11 people all of the state benefit as well. The formula apart
12 from that, they don't pay the same percentage in every
13 district; the formula is the same; the state funding of
14 transportation formula is based on whether you use a small or a
15 large bus; and the number of pupil days.

16 Some districts get over 100 percent; they get more
17 than their cost. Some get 50 percent, so the percentage is not
18 the same.

19 QUESTION: I suppose you can say that the person who
20 can't afford the 1/3 fee or whatever proportion of that is
21 charged, has to forego the other 66 percent just because that
22 person doesn't have the money, but another resident of the
23 district who has no children forgoes the whole thing, all the
24 time. So one doesn't have the money; the other doesn't have
25 children. It isn't the case that everybody in the district has

1 to get the benefit.

2 MR. HOUDEK: No. It is like other parts of
3 education; people pay taxes and fund it whether they have
4 children or not because education is important to our society
5 as a whole. And this is the same concept, Your Honor, at least
6 I see that in that fashion.

7 The question or the specter that this is a local kind
8 of case I think is most disturbing because we're not talking
9 about the inability of a district to tailor a plan mileage
10 limits based on the size of the cities within their district or
11 anything like that. They most certainly have the right to do
12 that. What we're talking about is the denial altogether of the
13 essential part of the education process in North Dakota.

14 The difference, I think, in the geographic cases that
15 were cited by Mr. Spaeth, here we have that element of
16 compulsion again, and we have the benefit being given
17 throughout the state and then being arbitrarily withheld.

18 Most of the questions I noted from this Court has
19 been what is the purpose of this? Why do we have this
20 difference? The reorganization statute in 1947 reorganized the
21 state as it was destined and designed to do. The fee statute,
22 32 years later, had absolutely nothing to do with that. It
23 served no purpose. It has little to do with reorganizing those
24 districts as any other statute you might find on the book.

25 That process, as they have conceded, is complete, and

1 it is not likely to happen in Dickinson.

2 Unless there are any further question, thank you,
3 Your Honors.

4 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Houdek. The
5 case is submitted.

6 (Whereupon at 12:00 p.m. the case was submitted.)

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REPORTERS' CERTIFICATE

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DOCKET NUMBER: 86-7113
CASE TITLE: KADRMAS v. DICKINSON PUBLIC SCHOOLS
HEARING DATE: March 30, 1988
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the SUPREME COURT OF THE UNITED STATES.

Date: March 30, 1988

Margaret Daly

Official Reporter

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