

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: SAMUEL K. SKINNER, SECRETARY OF TRANSPORTATION,
Appellant V. MID-AMERICA PIPELINE COMPANY

CASE NO: 87-2098

PLACE: WASHINGTON, D.C.

DATE: March 1, 1989

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x
3 SAMUEL K. SKINNER, SECRETARY OF :
4 TRANSPORTATION, :
5 Appellant :
6 v. : No. 87-2098
7 MID-AMERICA PIPELINE COMPANY :
8 -----x

9 Washington, D.C.

10 Wednesday, March 1, 1989

11 The above-entitled matter came on for oral
12 argument before the Supreme Court of the United States
13 at 10:54 o'clock a.m.

14 APPEARANCES:

15 THOMAS W. MERRILL, ESQ., Deputy Solicitor General,
16 Department of Justice, Washington, D.C.; on behalf
17 of the Appellant.

18 RICHARD McMILLAN, JR., ESQ., Washington, D.C.; on behalf
19 of the Appellee.

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C O N T E N T S

ORAL ARGUMENT OF

PAGE

THOMAS W. MERRILL, ESQ.

On behalf of the Appellant

3

RICHARD McMILLAN, JR., ESQ.

On behalf of the Appellee

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REBUTTAL ARGUMENT OF

THOMAS W. MERRILL, ESQ.

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1 Instead, Appellee argues that -- that the case
2 does not core within the terms of the ordinary
3 delegation doctrine for two reasons. First, Appellee
4 contends that the power of taxation is subject to a
5 special and highly restrictive version of the
6 non-delegation principle. And second, Appellee contends
7 that the fees that were imposed by Section 7005 cannot
8 be sustained as an exercise of any power of Congress
9 except its power of taxation.

10 I'd like to turn to those two arguments in a
11 moment, but first I think it would be useful to spend a
12 little time looking at the -- the provisions of the
13 statute that is at issue here, Section 7005, because
14 when we do that, I think you'll see that Congress has,
15 in fact, given the executive very little discretion in
16 this particular statute.

17 In fact, Congress itself made most of the
18 crucial policy decisions implicated by this particular
19 system of fees. Congress provided in the statute quite
20 clearly that it was to apply to only one agency, the
21 Department of Transportation. This is not an omnibus
22 bill that applies to -- across the board to all Federal
23 agencies.

24 Congress articulated quite clearly its policy.
25 It wanted a system of fees established that would

1 recover the costs that the Department of Transportation
2 incurs in implementing two pipeline safety programs, the
3 Natural Gas Pipeline Safety Act and the Hazardous
4 Liquids Pipeline Safety Act.

5 Subsection D of Section 7005 imposes a precise
6 ceiling on the total amount of fees that can be
7 collected in any given year. It cannot exceed 105
8 percent of the annual appropriations established by
9 Congress for both of these pipeline programs.

10 In Subsection C of the statute, Congress
11 adopts another limitation providing that the fees can be
12 used only for one purpose. They can only be used to
13 support the agency's activities under these two pipeline
14 programs and not for any other purpose.

15 Subsection A(3) and Subsection D of the Act
16 both specify exactly who is to pay these fees. They are
17 to be paid by all natural gas pipeline transmission
18 companies and by all liquid -- hazardous liquid pipeline
19 companies.

20 And finally, the only area of the statute that
21 really provides for any degree of discretion at all is
22 the section that sets forth how the fees are to be
23 established, and that's Subsection A(1) of Section 7005.

24 And if we look at that section carefully, you
25 will see that Congress, in fact, adopted no less than

1 four constraints on the exercise of discretion by the
2 Department of Transportation in setting the fee schedule.

3 First of all, if the statute is read
4 carefully, you will see that it adopts a single
5 principle that the Department of Transportation is to
6 follow in establishing fees. Fees are to be based on
7 pipeline usage.

8 Secondly --

9 QUESTION: Mr. Merrill, you keep referring
10 the -- to these charges as fees. I guess one of the
11 things argued by the other side is that it's a tax not a
12 fee.

13 MR. MERRILL: That's correct, Your Honor.

14 QUESTION: And I must say there is language in
15 National Cable Television and other cases that would
16 indicate that fees are imposed on identifiable
17 beneficiaries for particular benefits. And this looks
18 very much like a tax.

19 I guess your argument doesn't require us to
20 determine that it's a fee and not a tax, but --

21 MR. MERRILL: Well, as I -- I mentioned --

22 QUESTION: -- I find it difficult to look at
23 this as anything but a tax.

24 MR. MERRILL: As I mentioned very briefly, the
25 Appellees really have to sustain two propositions in

1 order to win here, and if they don't sustain on
2 --sustain both propositions, they lose.

3 The first is that Congress is subject to some
4 special restriction on delegation under the taxing
5 power, and the second is that this system of fees could
6 only be justified as an exercise of the taxing power and
7 not as an exercise of the commerce power.

8 QUESTION: Well, you refer -- you continue to
9 refer to it as a system of fees. But traditionally fees
10 have been imposed on people who get some benefit from
11 --the user fee. You know, you go to a national park.
12 You camp overnight. You get something out of it. Here
13 these people aren't asking for safety controls. They're
14 subject to the safety controls.

15 MR. MERRILL: That's true, Your Honor.

16 Recall, however, the Constitution doesn't use
17 the word "fees" and we're talking about an issue of
18 constitutional law. The issue of -- the second issue of
19 constitutional law presented we think is whether or not
20 Congress had to be acting under the taxing power or
21 whether it could be acting some -- under some other
22 power such as the commerce power.

23 Now, it's true that the word "fee"
24 traditionally has a connotation of something like a user
25 fee or some exaction in return for a benefit. That's

1 what the Independent Offices Appropriations Act is
2 about, and that's what this Court had before it in the
3 National Cable Television case and in the New England
4 Power case.

5 But if you think about the Commerce Clause and
6 what Congress can do under the Commerce Clause, I don't
7 think it be -- can be contended that the only thing
8 Congress can enact is a fee in that technical sense of
9 -- of some charge imposed in return for a benefit.
10 Congress passes statutes containing civil penalties,
11 criminal fines.

12 QUESTION: Can it enact a tax under the
13 Commerce Clause?

14 MR. MERRILL: I don't think that Congress
15 could enact a -- a pure tax under the Commerce Clause.

16 QUESTION: Why would it ever need to? I mean,
17 if it's enacting a tax, why doesn't it proceed under the
18 power to levy taxes?

19 MR. MERRILL: The truth is I think, Justice
20 Rehnquist, that Congress doesn't specify what clause of
21 the Constitution it's proceeding under when it adopts
22 these sorts of things. And I think one of our points
23 would be that -- that this Court should not force
24 Congress to do that and should not force courts to do
25 that by articulating a different delegation standard

1 that would apply depending on which power Congress is,
2 in fact, operating under.

3 That's one of the reasons why we think it
4 doesn't make sense to say that there are two radically
5 different standards of delegation and which one you
6 apply would depend on which power of Congress we
7 determined Congress to be acting under.

8 QUESTION: Well, then you should have no
9 hesitancy in referring to these exactions as taxes.

10 MR. MERRILL: Well, I refer to them as fees
11 because Congress referred to them as fees.

12 QUESTION: That's what the statute --

13 MR. MERRILL: That's what the statute says.

14 QUESTION: -- says.

15 QUESTION: Well, don't we at least have to
16 know whether they are taxes in order to determine
17 whether the bill properly originated in the House? Did
18 this bill originate in the House?

19 MR. MERRILL: This bill did originate in the
20 House, Justice Scalia, but no claim has been raised in
21 this case under the Origination Clause. The Appellee --

22 QUESTION: But I'm saying there -- there is at
23 least that constitutional reason to have to determine
24 whether Congress was proceeding under the taxing power
25 or under the Commerce Clause.

1 MR. MERRILL: Yes. There -- there may be
2 reasons that arise in the Constitution that require the
3 Court to determine what a tax is, although the cases I
4 believe under the Origination Clause have been very
5 reluctant to define with any precision exactly what a
6 tax is.

7 All I'm saying is that in this case I don't
8 think the Court has to come up with some constitutional
9 definition of what a fee is. The Constitution doesn't
10 use the word "fee". The Constitution grants Congress
11 broad power under the Commerce Clause. (Inaudible).

12 QUESTION: Of course, the Origination Clause
13 doesn't use the word "tax" either. It's a bill for
14 raising revenue.

15 MR. MERRILL: Revenue. That's correct.

16 QUESTION: Yes. And the question I suppose is
17 -- one of the preliminary questions is whether this is a
18 bill for raising revenue or not.

19 MR. MERRILL: That could potentially be a
20 question.

21 QUESTION: And you submit it is not I gather.

22 MR. MERRILL: The word "revenue" conceivably
23 could have a different scope than the word "tax". I
24 understand, for example, that the House traditionally
25 argued that revenue included appropriations as well as

1 taxing bills. The Senate disagreed with that. So,
2 there's -- there are a lot of untested issues that could
3 conceivably be raised by the Origination Clause.

4 But again, no claim has been made in this case
5 that this particular provision violates the Origination
6 Clause. The Origination Clause came in through the side
7 door in Appellee's brief in order to try to substantiate
8 its more general argument about delegation.

9 Let -- let me, if I can, though just -- just
10 complete noting the provisions in the statute that
11 govern the setting of these fees because I think it is
12 an important point.

13 The statute sets forth a single criterion for
14 determining fees: pipeline usage. It's not a multiple
15 choice test in the sense that the Appellees suggest.

16 The statute does go on to set forth three
17 factors that the agency can look at in trying to
18 determine pipeline usage, but the ultimate standard that
19 Congress enunciated was pipeline usage.

20 The statute also says that -- that in -- in
21 determining pipeline usage by those factors that there
22 must be a reasonable relationship between those factors
23 and the determination of pipeline usage.

24 And finally, the statute says that in
25 establishing the schedule, the Secretary shall take into

1 account -- take into consideration the allocation of
2 departmental resources.

3 So, what we have here really is a -- is by
4 modern standards a highly precise statute, one that sets
5 forth a number of constraints on the discretion of the
6 Secretary of Transportation, and sets forth really four
7 limitations on the type of -- the schedule of fees that
8 can be adopted. I don't think that any serious claim
9 could be made that this statute violates the
10 intelligible principles standard of the J. W. Hampton
11 case which this Court has most consistently applied in
12 delegation cases.

13 QUESTION: Mr. Merrill, do you think Congress
14 could determine the total amount it needs each year for
15 all government services and obligations and then tell
16 IRS to determine a rate and figure out how to raise the
17 money?

18 MR. MERRILL: That, obviously, would be a far
19 cry from what we have before us in this particular case.

20 Our contention -- and I -- I will get to it
21 presently is that there should be no distinction in
22 terms of the delegation standard that this Court applies
23 to taxes as opposed to fees.

24 QUESTION: So, you think Congress could do
25 that.

1 MR. MERRILL: If Congress set forth a standard
2 to confine the discretion of the agency and -- and
3 indicated its policy and did so in a way that meant that
4 the agency's actions were subject to meaningful judicial
5 review, yes, I think Congress can do that.

6 That strikes us as odd. That strikes as sort
7 of different from the traditions that we've come to
8 expect in the area of taxation.

9 QUESTION: Me too. You -- me too. You
10 --you'd want us to review the -- the -- the assessment
11 of taxes?

12 MR. MERRILL: Well, I don't know that I would
13 want the Court to review it under the delegation
14 doctrine any differently than the Court has -- has
15 reviewed other major enactments under the delegation
16 doctrine.

17 I think it -- it strikes us as odd under our
18 traditions, but those traditions have not been developed
19 under the compulsion of any holding by this Court about
20 the meaning of the power of taxation and how far
21 Congress has to go in -- in legislating with specificity
22 under the taxing power. The -- Congress itself is
23 responsible for having generated that tradition, and
24 there's no reason to think at this point that Congress
25 is about to abdicate or to give away that -- that power

1 which it has rather jealously protected over the years.

2 QUESTION: Well --

3 MR. MERRILL: Certainly nothing in this
4 statute suggests that Congress is about ready to
5 abdicate in its -- in its powers.

6 QUESTION: One can say that all other
7 delegations of -- of authority can be -- can be
8 connected to some executive activity. And you can say
9 it's really just giving the executive discretion with
10 respect to the performance of some distinctively
11 executive activity. Whereas taxation is -- is so -- so
12 utterly independent of the performance of any executive
13 duties.

14 QUESTION: Well, Congress gives the Internal
15 Revenue Service discretion in implementing the tax
16 codes. There's a great deal of discretion exercised
17 there.

18 QUESTION: In interpreting the -- the tax
19 code, but not --

20 MR. MERRILL: And in promulgating regulations,
21 including legislative regulations in some circumstances.

22 QUESTION: But not fixing rates.

23 MR. MERRILL: Generally, yes. Congress does
24 not tell the IRS to fix rates.

25 But I don't think that fixing rates can

1 somehow be singled out or zeroed in on as -- as a -- as
2 a -- as a unique function as to which there can be
3 absolutely no delegation by Congress whatsoever. After
4 all, fixing rates was exactly what was at issue in the
5 J. W. Hampton case.

6 QUESTION: Nor does Congress tell IRS how much
7 money to raise.

8 MR. MERRILL: Nor does Congress tell IRS
9 --Congress did not tell the DOT how much money to raise
10 in this case either. DOT can -- is -- has -- is subject
11 to a fixed limitation in any given year of 105 percent
12 of its annual appropriations, and over time --

13 QUESTION: Yes, but they're supposed to get
14 100 percent of their costs of operating the program,
15 aren't they? Isn't the -- the purpose of the fee
16 schedule to reimburse the agency for its costs of
17 operation.

18 MR. MERRILL: That's correct. If the fee
19 schedule works correctly, if they're not -- if the
20 collection of the fees is reasonably complete, over time
21 the agency will recover 100 percent of its appropriated
22 costs.

23 QUESTION: See, if this -- if this program is
24 permissible, this is a way of raising additional
25 revenues without increasing taxes, isn't it?

1 MR. MERRILL: Yes.

2 QUESTION: Yes.

3 MR. MERRILL: And, in fact, the legislative
4 history -- I would have to be candid -- suggests that
5 the primary motivation for enacting the statute was
6 concern with the Federal deficit.

7 But I don't think that that means it's
8 unconstitutional as an unconstitutional delegation of
9 power because if you look at the statute, the -- the
10 discretion is channeled quite narrowly here. And we see
11 no principal basis in the Constitution for a distinct
12 delegation doctrine with respect to taxes as -- as
13 opposed to the regulation of interstate commerce.

14 QUESTION: And user fees have the same effect
15 too and the same attraction and are often imposed for
16 the same reason.

17 MR. MERRILL: Yes.

18 QUESTION: Instead of raising taxes, you
19 impose user fees.

20 MR. MERRILL: Yes, yes. I mean, if you look
21 at the history of the IOAA, for example, in 1952,
22 there's a footnote in the National Cable case which
23 recites a little bit of that history and indicates that
24 Congress' motivation there was to reimburse the
25 government for some of the expenses that it was

1 incurring in providing benefits, privileges and licenses
2 to people.

3 What Congress thought here was we have an
4 industry which is engaged in an inherently dangerous
5 activity, transporting natural gas and oil through
6 pipelines. We've adopted a regulatory program, and in
7 order to try and limit those dangers, and doesn't it
8 makes sense that the costs of doing that should be borne
9 by the industry?

10 QUESTION: Well, one can certainly agree
11 wholly with that judgment, but regret that Congress
12 can't make up its own mind about some of these things.

13 MR. MERRILL: Congress made up its mind in
14 this case.

15 If you -- if the principle that Congress is
16 operating under is that it wants an industry to bear the
17 costs of a program, it seems sensible to me for Congress
18 to direct the agency to establish the schedule of fees
19 that is going to apportion those costs according to the
20 degree to which each company in the industry is, in
21 fact, creating the costs. Congress could do it by some
22 kind of fixed formula saying that the fees shall be X
23 percent or something like that, but that would be more
24 rigid and in a sense make less sense than simply telling
25 the agency to do it.

1 And the agency's discretion here is not -- is
2 not broad. They're supposed to do it according to
3 pipeline usage.

4 QUESTION: Well, but you speak as if rigidity
5 were something to be scorned. But basically, the idea
6 of legislation and administration suggests that, you
7 know, there is going to be some rigidity in the
8 legislation, that it doesn't entirely just lop over to
9 the administrator.

10 MR. MERRILL: I agree with that. And in the
11 -- in the taxation area, pure and simple, when we're
12 talking about raising revenues in order to support
13 public goods like defense and the national welfare
14 system, rather than recovering the costs that -- that
15 the government has incurred in a particular program,
16 that type of -- of -- of rigidity and -- and setting of
17 fixed rates based on broad distributional considerations
18 and other factors makes complete sense. And Congress,
19 in fact, routinely does that.

20 But when Congress decides that it wants to
21 recover the costs of a particular program from the
22 persons who are responsible for that program, for the
23 --for the need for that program, I don't think it's
24 inappropriate for Congress to say that -- that some
25 discretion should be given to the agency in the

1 apportionment of those costs among the people
2 responsible for the -- giving rise to the need for the
3 program in the first place.

4 QUESTION: What about Congress telling an
5 agency to raise such taxes or such funds as may be in
6 the public interest, convenience and necessity, which is
7 a standard we've -- we've approved in other contexts?

8 MR. MERRILL: Well, Justice Scalia, at some
9 point, obviously, you would start bumping up against --

10 QUESTION: Is that the point?

11 MR. MERRILL: -- the limitations that the
12 Court identified in the Schechter Poultry case, for
13 example. I mean --

14 QUESTION: Well, but -- but that -- but we've
15 -- we've approved that language in other contexts. Is
16 that language okay for taxes too?

17 MR. MERRILL: I -- our submission --

18 QUESTION: If not, then there's a different
19 standard for taxes.

20 MR. MERRILL: Our submission is that the same
21 standard that the Court has articulated in the
22 non-delegation context generally should be applied to
23 exercises of the power of taxation.

24 QUESTION: So, your answer is yes. You could
25 say raise taxes or raise -- raise funds to the degree

1 and in the manner that is in the public interest,
2 convenience and necessity.

3 MR. MERRILL: Well, if that's all the statute
4 said, I think it would raise questions --

5 QUESTION: That's all the Federal
6 Communications Act says.

7 MR. MERRILL: Well, it says more than that. I
8 mean, it --

9 QUESTION: Not really.

10 MR. MERRILL: That -- that's a particular
11 standard for award of licenses.

12 QUESTION: Not really, for when broadcasting
13 licenses are to be issued. There's not much more.

14 MR. MERRILL: The standard for setting
15 --awarding a license or setting a rate, but that
16 standard appears within the context of a whole
17 administrative mechanism which has been set up by
18 Congress with general statements of purpose --

19 QUESTION: well, yes, but the standard that
20 Justice Scalia suggests would also appear in the history
21 of -- history of appropriations and the agency spent a
22 certain amount of money over the years, and that sort of
23 -- they could decide what degree of activity of their
24 own was in the public interest. (Inaudible).

25 MR. MERRILL: Yes. I will admit that -- that

1 these -- these -- these problems are troubling, that
2 they seem to be contrary to the traditions that we've
3 operated under. But I would -- I would remind the Court
4 about some of the reasons that -- that the Court has
5 cited for not applying a highly strict delegation
6 standard in the commerce context and would suggest that
7 those same reasons would also apply in the context of
8 taxation.

9 Now, the two primary reasons I think, first of
10 all, are just simple a practical problem that when
11 you're operating a government the size of the Federal
12 Government, Congress can't make all the policy decisions
13 itself. It has to utilize the executive branch or the
14 -- or executive agencies to decide supplementary issues
15 of policy. That has been a primary factor that has been
16 cited in this Court in its cases.

17 The second is a definitional problem. If
18 you're going to draw the line between somehow
19 fundamental policy issues and non-fundamental policy
20 issues, how can the Court develop a workable standard
21 for differentiating between those two types of
22 questions. That's -- those sort of considerations have
23 haunted the delegation doctrine in -- in the context --
24 in the traditional context. And I think they would be
25 equally applicable here.

1 Appellees say, well, it's different when we're
2 talking about the allocation of the tax burden. That's
3 somehow special. But the allocation of the tax burden
4 is not just simply a function of tax rates. It's a
5 function of the definition of income. It's the function
6 of what's deductible. It's the function of what kind of
7 credits you get. And the Internal Revenue, for example,
8 has to exercise a lot of discretion in a lot of areas in
9 determining those things. And so, the ultimate
10 allocation of a tax burden is not something that
11 Congress itself can make every -- every -- every single
12 decision about.

13 And so, we -- we just -- Appellees have not
14 suggested really a meaningful intermediate standard for
15 delegation that would apply to the taxation (inaudible),
16 but not to the --

17 QUESTION: How much -- how much damage would
18 be done to -- to our prior history in cases if we simply
19 held that the taxing power is non-delegable?

20 MR. MERRILL: If you held that the taxing
21 power was non-delegable?

22 QUESTION: Yes.

23 MR. MERRILL: Well, I don't know what that
24 would mean. I mean, the taxing power is non-delegable.
25 The commerce power is non-delegable.

1 QUESTION: Rules for raising revenue have to
2 originate in the House and follow the procedure. That's
3 all.

4 MR. MERRILL: Semantically I don't think the
5 correct reading of this Court's cases is that any of
6 Congress' powers are delegable in the sense that the
7 entire power can be transferred to somebody else. The
8 issue this raises is how much discretion can Congress
9 give to the executive in implementing statutes that it
10 enacts pursuant to its multiple powers.

11 We think in answering that question, how much
12 discretion can you give before you have somehow deemed
13 to have delegated or deemed to have abdicated that the
14 Court -- that the only standard we can think of -- the
15 only standard that anybody has really suggested is the
16 standard of J. W. Hampton and Schechter Poultry and so
17 forth.

18 And -- and for the Court to somehow suggest
19 that taxation is different would send us down the road
20 of having to consider all sorts of challenges to tax
21 statutes in a variety of contexts based on the need,
22 first of all, to come up with an abstract definition of
23 taxes as opposed to something else and then, secondly,
24 to try and figure out what this new delegation standard
25 actually means.

1 Appellees have identified nothing in the text
2 of the Constitution that would differentiate the taxing
3 power from the commerce power. They certainly don't
4 suggest that Article I, Section 8, Clause 1, which sets
5 forth the power to lay and collect taxes itself,
6 provides a textual basis. They focused almost
7 exclusively on the Origination Clause.

8 I think there are three reasons why the
9 Origination Clause cannot plausibly be cited as a source
10 for some kind of hyper delegation standard that applies
11 only to taxation.

12 First of all, the Origination Clause doesn't
13 say anything more about the degree of precision that
14 Congress has to use in passing tax statutes than does
15 Article I, Section 8, the Taxing Clause itself.

16 Secondly, insofar as the Origination Clause
17 can be read as reflecting a policy judgment by the
18 Framers that issues of taxation should remain closer to
19 the people than other types of decisions, the Framers
20 provided a procedural mechanism for realizing that
21 policy. They said that tax bills had to originate in
22 the House. This bill did originate in the House.
23 There's no dispute about that, and so the procedural
24 mechanism that Congress adopted to vindicate its policy
25 has been satisfied.

1 Finally, Appellees have quoted to the Court
2 the first half of the Origination Clause which says that
3 "all bills for raising revenue shall originate in the
4 house of representatives," but they haven't quoted or
5 relied on the second half of the Origination Clause
6 which says "but the senate may propose or concur" in
7 "amendments as on other bills." So, unlike the British
8 tradition, for example, where the House of Commons got
9 to initiate revenue measures and the House of Lords
10 could only approve or disapprove, vote up or down on
11 that, the Framers rejected that and gave the Senate the
12 power to amend or propose alternative measures even
13 though the bills are originated by the House.

14 This is a much more diluted principle of
15 popular accountability than one would have under the
16 British system or that one would have if all you had was
17 the first half of the Origination Clause. And we don't
18 understand how you get from that diluted principle of
19 accountability, how you make the logical leap from that
20 to the proposition that Congress can give the executive
21 no discretion in implementing the tax laws. There seems
22 to be too much of a -- of a gulf there in order to
23 sustain the proposition the Appellee wants to sustain.

24 Let me turn to the second --

25 QUESTION: I'm not -- I'm not sure I -- I

1 followed all of that argument of --

2 MR. MERRILL: Well --

3 QUESTION: It doesn't -- it doesn't apply to
4 the delegation doctrine. The delegation doctrine, we
5 see if the legislature is delegating its powers.

6 MR. MERRILL: The Appellees have argued,
7 Justice Kennedy, that you can find this policy in the
8 Origination Clause that says that matters of taxes have
9 to be kept close to the people. The House of
10 Representatives at the time the Constitution was framed
11 was directly elected, but the Senate was not. And so,
12 Appellees concluded from that matters of tax have to be
13 decided by what today are -- are both the House and the
14 elected Senate to a greater extent than can be decided
15 by an executive branch agency which is only --

16 QUESTION: We still have to identify a revenue
17 bill and we still have -- we still have to identify a
18 revenue bill and we still have to make sure that it
19 originates in the House.

20 MR. MERRILL: The Origination Clause, of
21 course, still applies. They're not -- and they're not
22 disputing that it was violated in this case. They're
23 trying to find this policy in it. And all I'm
24 suggesting is --

25 QUESTION: And you're not saying it has no

1 policy reason.

2 MR. MERRILL: No. All I'm suggesting is that
3 if there is a policy of popular accountability, it's not
4 the dramatic one they suggest. It's a qualified one
5 because the Senate, at the time the Constitution was
6 adopted, was not directly elected and that the Framers
7 contemplated that the Senate would have the power to
8 propose amendments to revenue bills which, of course,
9 today the Senate is directly elected by the people, and
10 so we have perhaps more accountability than the Framers
11 even anticipated under the Origination Clause.

12 Let me make just one quick point about the
13 second issue: Is this a tax or is this a fee?

14 I don't think that's the correct way to ask
15 the question. The correct way to ask the question is
16 could Congress adopt this provision under its commerce
17 power. And I think if you think quickly about two
18 hypothetical -- or two statutes, you can see my point
19 that Congress ought to be able to have the power under
20 the Commerce Clause to enact this particular statute.

21 One statute would impose strict liability on
22 all pipelines for accidents caused by the pipeline
23 --fires, explosions and so forth -- and would require
24 the pipelines to pay damages to persons that are injured.

25 The second statute would adopt a scheme of

1 regulation setting the safety standards and enforcement
2 to ensure that accidents don't happen, and then imposes
3 on the pipelines the costs of paying for that scheme of
4 regulation.

5 The second statute is really what we have in
6 this case. I can't see any question that the first
7 statute would be sustainable under the commerce power,
8 and if that's the case, I think the second ought to be
9 sustainable under the commerce power as well.

10 I'd like to reserve the balance of my time for
11 rebuttal, if I might.

12 QUESTION: Very well, Mr. Merrill.

13 Mr. McMillan?

14 ORAL ARGUMENT OF RICHARD McMILLAN, JR.

15 ON BEHALF OF THE APPELLEE

16 MR. McMILLAN: Mr. Chief Justice, and may it
17 please the Court.

18 The issue in this case, of course, is not
19 whether the Framers were committed to the proposition
20 that taxation and legislative accountability for
21 taxation were important. That proposition, that elected
22 representatives should be accountable for their votes on
23 tax matters, was accepted by everyone.

24 The issue is whether or not that deeply held
25 belief was actually incorporated into the text of the

1 Constitution so that it actually binds Congress today
2 when Congress is not so sure it likes the idea of that
3 accountability.

4 The Constitution says that "all bills for
5 raising revenue shall originate in the house of
6 representatives." And when the Constitution says "all
7 bills," It is using in constitutional language the only
8 word that meant law making. You couldn't pass -- you
9 couldn't make a law without introducing a bill. And it
10 might be sufficient to just stop there and accept the
11 Constitution at its word, that all revenue-making bills
12 or laws must originate in the House of Representatives.

13 QUESTION: Well, this one did.

14 MR. McMILLAN: Section 7005 originated --

15 QUESTION: Right.

16 MR. McMILLAN: -- but the decision that we're
17 complaining about did not. The decision that we're
18 complaining about is setting a tax rate. You can't have
19 a revenue-raising bill without setting a revenue rate or
20 a tax rate. That decision was not made by Congress.
21 That decision was made in the Department of
22 Transportation.

23 QUESTION: Hasn't the President been given the
24 power on some occasions to establish the -- the levels
25 of -- of importation fees on oil and on other matters as

1 well? Isn't that -- isn't that a revenue-raising
2 measure?

3 MR. McMILLAN: well, if we take the Hampton
4 case, for example, in Hampton, Congress said that they
5 wanted a tariff equal to the difference between the cost
6 of production at home and abroad. And it asked, and
7 properly asked, the executive to become involved in the
8 implementation of that statute to determine over time
9 what the cost of abroad --

10 QUESTION: Right.

11 MR. McMILLAN: -- of production abroad and at
12 home were. But that arithmetic calculation was -- was
13 no more than that. So, in that case, no. There was not
14 a specific rate of duty imposed.

15 QUESTION: Why is this one less -- less
16 arithmetic? Because the particular individuals to pay
17 it are not -- are not as well identified? Is that --

18 MR. McMILLAN: No. This case is not
19 arithmetic because the agency was given four ways to set
20 the tax rate. They could choose one of four rates in
21 effect. They could base the rate on miles, on volume
22 miles, on revenues or some combination. And it makes a
23 big difference whether you choose miles or volume miles.

24 QUESTION: Well, I guess in Hampton there were
25 a lot of different ways of computing whether the goods

1 were being subsidized abroad or whether -- you know,
2 whatever the President had to determine there. There
3 were probably a dozen different ways of going about
4 making that factual inquiry. And the President could
5 have decided to do it in one way or another.

6 MR. McMILLAN: There is a basic difference we
7 think between establishing a rate of tax. We're talking
8 about revenue raising under the -- under the Origination
9 Clause. We think there is a basic difference between
10 establishing that rate of tax in the context of taxation
11 and making determinations about findings of fact,
12 case-by-case determinations in response to changing
13 conditions over time. That's what was happening in
14 Hampton. It was a case that involved regulation of
15 commerce. It involved the imposition of duties on
16 foreign commerce as a way of regulating foreign
17 commerce. It did not involve the setting of tax rates
18 for purposes of funding the Federal Government.

19 QUESTION: Doesn't the President have -- he
20 has all sorts of powers under the Trading with the Enemy
21 Act. But I recall that the President has, on his own,
22 established import -- import fees on -- on oil. Hasn't
23 -- hasn't -- hasn't that happened?

24 MR. McMILLAN: I don't know.

25 QUESTION: Do you think the President could

1 --could be given the authority in the event of a -- if
2 he thinks the national interest requires it, to impose
3 an import fee on -- on petroleum?

4 MR. McMILLAN: I think the President -- let me
5 give two answers to that.

6 First of all, I think that if the President is
7 acting under some power other than the taxing power,
8 under the war powers power, for example, then perhaps he
9 could do that under that power.

10 QUESTION: well, here he's acting under the
11 commerce power, but your -- your argument is, yes, he
12 may be acting under the commerce power, but this is
13 raising revenue. Now, the hypo I gave you -- it's the
14 same. He's acting under the war power, under all sorts
15 of powers, but he's raising revenue by -- by imposing a
16 --an import fee on -- on oil.

17 What I'm suggesting is it's very hard to adopt
18 an absolute rule that the executive cannot be given
19 discretion as to whether to raise revenue or not.

20 MR. McMILLAN: To me, Your Honor, the rule
21 basically boils down to whether or not it's a zero sum
22 game. Revenue raising -- let me -- let me just take the
23 New England Power case as an illustration of that zero
24 sum game principle, and New England Power I choose
25 because that involved natural gas pipelines, just as

1 this case involves natural gas pipelines.

2 In New England Power, there was a set of
3 regulations. And the government came in and made the
4 argument that they're making today; namely, those
5 regulations benefit these pipelines. And the Court said
6 fine. If you can point to a benefit that you are
7 conferring on a specific individual or company by your
8 regulatory action, fine, then charge them for it.
9 There's a quid pro quo involved there. Something goes
10 this way and you pay a fee in return for it.

11 But if what you are doing is raising revenue
12 for the public purpose, if you are doing something other
13 than simply trying to make entrepreneurs rich, which was
14 the language Justice Douglas used, and are going beyond
15 that to satisfy a public purpose, then you are raising
16 revenue, and when you are raising revenue, you come
17 under constitutional concerns that are different. I
18 think we can take that much away from National Cable and
19 New England Power.

20 What the difference is we are here today to
21 decide. And the first place we need to look is the
22 Origination Clause. We can look at the structure of
23 that clause. It is the first enumerated provision in
24 Section 7 of Article I which contains not only the
25 Origination Clause, of course, but the Presentment

1 Clause and the principles of bicameralism.

2 It has words that are meaningful. Bills were
3 the constitutional term for law making. And "originate"
4 in a dictionary at least means to bring into being. Tax
5 law making must be brought into being through bills in
6 the House of Representatives.

7 And we know from looking at the history of
8 this clause, that it symbolized legislative
9 accountability for tax matters. It was part of the
10 great compromise. It was ardently championed by some of
11 our most famous forbearers. And it was a proposition
12 not simply that the executive should not be involved in
13 raising taxes, but that not even the Senate should play
14 the role of originating that idea.

15 QUESTION: But it doesn't say that the rates
16 have to be fixed in those bills, does it?

17 MR. McMILLAN: It -- well, this Court will
18 have to decide what a bill to raise revenue means. If
19 this Court thinks you can raise revenue without setting
20 a rate, then a bill to raise revenue that said nothing
21 about rates wouldn't be covered by the Origination
22 Clause. But if the notion of the Framers, if the
23 history of this clause means anything -- that is, that
24 the basic decisions about taxes have got to be made by
25 Congressmen -- then the decision about rates is the

1 central issue, perhaps the number one issue that you
2 have to find in that bill before you can move past the
3 Origination Clause and even worry about whether there
4 are intelligible principles for doing something else.

5 QUESTION: (Inaudible).

6 QUESTION: What do you do about Treasury
7 Department regulations which -- which assuredly
8 determine who will pay taxes and what rates will be for
9 particular individuals?

10 MR. McMILLAN: There is a --

11 QUESTION: A lot of discretion as -- as to how
12 to write them.

13 MR. McMILLAN: There is a profound difference
14 in fact between the regulations of other agencies which
15 this Court has approved as lawmaking or quasi lawmaking
16 and Internal Revenue regulations which, as Your Honor
17 mentioned in Mr. Merrill's argument, are interpretive.
18 There is a big difference between the IRS' role which is
19 to interpret what Congress had -- had to say in a way
20 not binding on this Court and an independent legislative
21 sort of lawmaking function that -- that we've seen with
22 other agencies. So, I think --

23 QUESTION: You think -- you think that's a
24 constitutional line between interpretive regulations and
25 -- and legislative regulation.

1 MR. McMILLAN: I --

2 QUESTION: So, you -- you think this one would
3 be okay if instead of what they said, Congress simply
4 said you shall raise a reasonable amount of money
5 assessed -- by assessing -- assessing these charges in a
6 reasonable fashion. Then the agency would have been
7 interpreting the word "reasonable" and it would have
8 been okay.

9 MR. McMILLAN: No, absolutely not. I think --

10 QUESTION: Well, then -- then the
11 constitutional line has nothing to do with interpretive
12 or not.

13 MR. McMILLAN: No. I believe the
14 constitutional line does. There is a distinction
15 between giving the agency a lawmaking function and an
16 interpretive function. In the interpretive function
17 situation, the only lawmaking body remains Congress. And
18 --

19 QUESTION: That depends on -- on how broad the
20 word you're interpreting is. I mean, in some agencies,
21 the -- the word is "reasonable." And if that's going to
22 satisfy you that the Constitution has been complied
23 with, so long as you say, instead of spelling out what
24 they spelled out here, which I think it is a lot better,
25 if the -- If the Congress had simply said, you know,

1 impose a reasonable -- reasonable fees in a reasonable
2 fashion, then it would all be interpretive and it's all
3 okay.

4 MR. McMILLAN: Let's take that hypothetical
5 and be specific about it. Congress passes a law that
6 says the IRS set just and reasonable taxes. There are
7 two things wrong with that.

8 First of all, a point that I was trying to
9 make and apparently haven't made very successfully is
10 that the interpretive function, which is all the IRS
11 does -- the interpretive function asks Congress -- I
12 mean, asks the agency to decide what did those words
13 mean just -- what did those words mean. That's
14 something -- that interpretation then has no law-making
15 function and certainly couldn't rise to the level, we
16 don't think, of establishing a rate, a rate for tax.

17 But even if there was -- even if they said
18 just and reasonable rates, there's a -- there's a
19 fundamental problem with whether or not Congress has
20 made the decision.

21 QUESTION: I agree with that. I'm not -- I'm
22 not questioning that. I'm just questioning whether you
23 can say that the critical distinction is between whether
24 it's interpretive or non-interpretive because depending
25 upon how -- how vague the word you are supposedly

1 interpreting it is, you can -- you can achieve equally
2 undemocratic results either way.

3 MR. McMILLAN: At a practical level, perhaps.
4 I -- I was only trying to make the point that we're here
5 to decide where the law-making function ought to reside
6 for purposes of taxation. And giving an agency
7 interpretive power does not transfer that law-making
8 function away from an agency. Giving it law-making
9 -- legislative rule-making powers does.

10 We know why this concept of legislative
11 accountability for taxation was so important. We see it
12 in the newspapers regularly. We -- we saw it in a -- in
13 a somewhat different context recently when Congress
14 voted down the congressional and judicial pay raises.
15 We may not like that result, but we know why it
16 happened. It happened because Congress had to vote, and
17 when Congress has to vote on an issue as sensitive as
18 taxation, we know it's going to affect the result, and
19 we know that's what the Framers intended.

20 So, we do think as a matter of the first issue
21 that the Origination Clause is violated here, that if
22 you look at the structure of that clause, at the words
23 that it uses, at the history of that clause, you can
24 only conclude that the decision made here by the
25 Department of Transportation did not originate in a bill

1 of the House. It originated in a notice in the Federal
2 Register.

3 There is a second issue which we have raised
4 in the alternative to the Origination Clause issue,
5 which posits the question of what if the Origination
6 Clause is not by itself dispositive of whether or not
7 some --someone other than Congress can tax. It has to
8 do with what we mean by the term "execution of the laws"
9 in the context of taxation.

10 Let me start with a proposition that I don't
11 think will be disputed. The Congress cannot delegate
12 legislative power to the President is a principle
13 universally recognized as vital to the integrity and
14 maintenance of the system of government ordained by the
15 Constitution. That quote from Field and Clark has been
16 quoted innumerable times in decisions of this Court.
17 The question is does it mean anything.

18 Without reaching the issue of taxation, the
19 context of taxation here, I think we can begin with the
20 proposition that whenever this Court has sustained the
21 delegation of law making to an agency, it has always
22 been a predicate for that ruling, that there was
23 something to execute. There was some program to
24 implement. There were case-by-case determinations over
25 time in response to changing conditions or whatever. We

1 found that in Hampton. It was true in Mistretta. In
2 short, there has to be a program to execute, perhaps
3 details to fill in with respect to that program, but not
4 the central issue of how much someone is going to pay,
5 not simply a decision to make.

6 And we know that the --

7 QUESTION: What was that in Mistretta? I -- I
8 don't recognize your description of what the Court said
9 in Mistretta at all.

10 MR. McMILLAN: The Court in Mistretta --

11 QUESTION: It's a good description of the
12 dissent, but --

13 (Laughter.)

14 QUESTION: -- but I don't --

15 MR. McMILLAN: The --

16 QUESTION: What -- what was the executive
17 function that was being performed --

18 MR. McMILLAN: The --

19 QUESTION: -- other than the making of rules?

20 MR. McMILLAN: The quote from Mistretta that I
21 was referring to was this. "Developing proportionate
22 penalties for hundreds of different crimes by virtually
23 a limitless array of offenders is precisely the sort of
24 intricate, labor-intensive task for which delegation to
25 an expert body is especially appropriate."

1 QUESTION: Writing tax laws may be.

2 MR. McMILLAN: The Department of
3 Transportation has never been thought of as a expert
4 agency on writing tax laws.

5 This -- this Court in the Lichter case and in
6 other cases has, in looking at what we mean by execution
7 of the law and delegation, held specifically that we
8 ought to be concerned with the nature of the power that
9 is being invoked. In Lichter it was a war powers
10 situation, and the Court found that in that context,
11 there was -- it was particularly appropriate to find the
12 delegation. And in --

13 QUESTION: Mr. McMillan, supposing in this
14 case that Congress had said this safety program is
15 costing us \$100 million a year, we want the -- that
16 money raised from the pipeline companies and all of
17 them, and we want it raised on a basis of usage of the
18 pipelines. Now, that may be a little bit different from
19 this case, but it's -- to the extent it is a
20 hypothetical. Is -- is that unlawful delegation?

21 MR. McMILLAN: Yes.

22 QUESTION: Why?

23 MR. McMILLAN: It -- it is really precisely
24 the New England Power fact pattern in a sense. It's
25 really exactly New England Power.

1 QUESTION: well, but didn't the Court in New
2 England Power say that Congress had not delegated to the
3 FPC? It didn't say Congress couldn't have delegated,
4 did it?

5 MR. McMILLAN: The Court didn't reach the
6 third -- they reached two issues and didn't reach a
7 third. They found this is unquestionably taxes. They
8 found that the label, the tax label, makes a difference
9 for constitutional purposes, but on the third issue,
10 what difference does it make, they didn't reach it.
11 We're here today to argue that the taxing power, that
12 is, the basic decisions about raising revenue, including
13 the most central decision of all, who was going to pay
14 how much, cannot be delegated to an agency regardless of
15 whether or not the standard is usage or something else
16 that's --

17 QUESTION: But how much -- how much discretion
18 really is delegated here if you say that there's \$100
19 million to be raised? We want it raised from all
20 pipeline users. Now, all the agency has to do is go out
21 and count in that case. And we want it paid -- paid by
22 them or raised from them on the basis of pipeline usage.
23 You could just refer to statistics. Is the --

24 MR. McMILLAN: Mid-America is here not because
25 it cares how much the industry is going to pay.

1 Mid-America is here because if you choose miles, as
2 distinguished from volume miles, the tax we pay is very
3 different.

4 And there is no distinction. We talk about
5 \$100 million or \$9 million. There is no distinction
6 between the DOT program here and the Interstate Commerce
7 Commission or the Securities and Exchange Commission or
8 the Federal Aviation Administration or any number of
9 other agencies.

10 QUESTION: Well, that simply means we ought to
11 get it right in this case I guess.

12 (Laughter.)

13 MR. McMILLAN: We -- we should get it right in
14 this case. Absolutely. We should expect that the
15 financing of a major part of the Federal Government by
16 taxes is going to be made according to a set of basic
17 decisions made in Congress.

18 QUESTION: Well, supposing in -- in this case
19 the Congress had added volume miles so that there really
20 was very little discretion left in that area.

21 MR. McMILLAN: If they had said volume miles,
22 then we're -- we wouldn't be here because that -- there
23 isn't any discretion. That is the selection of a
24 formula which you go out to the industry and find out
25 what are the volume miles which -- for your pipeline,

1 what are for you. You plug that into a pocket
2 calculator, and out comes the number.

3 QUESTION: Mr. McMillan, I don't -- tell you
4 the truth, I don't see what's so sacrosanct about taxes.
5 I mean, we have -- we have an agency here, the
6 Department of Transportation, that is allowed to adopt
7 all sorts of rules with broad discretion, that can say
8 what I can do or what I can't do. They can make things
9 unlawful. It's authorized even to adjudicate civil
10 penalties against me for violating those rules. And
11 yet, somehow we -- we pass some -- some threshold of
12 impermissibility when --when they're given authority to
13 say how much money is to be raised from -- from
14 pipelines. I -- I don't feel that I'm suddenly in a --
15 in a new world when -- when that happens. I mean --

16 MR. McMILLAN: well --

17 QUESTION: Had we not given Transportation all
18 these other powers, I could understand it. But what's
19 so -- what's so ugly about taxes? I don't understand it.

20 MR. McMILLAN: well, with all due respect,
21 Your Honor, I don't -- it's not a question of whether
22 you feel uncomfortable or I feel uncomfortable or even
23 whether the Framers felt uncomfortable. The question is
24 what does the Constitution require, and there is no way
25 of understanding the Origination Clause and where it

1 traces from without understanding that as a symbol of
2 legislative accountability in the tax area.

3 QUESTION: well, no, not legislative
4 accountability. House accountability. What it says is
5 when there is a tax bill, it has to be -- originate in
6 the House, just as in other areas it says when there is
7 a bill on anything, it has to pass both houses and has
8 to be presented to the President. But neither of those
9 two says when there has to be a bill. It just says what
10 must happen when there is a bill.

11 MR. McMILLAN: It means legislative
12 accountability and House accountability. It means not
13 only will the executive not be involved in this
14 decision, but even the Senate's involvement will be
15 limited. That's the -- that's what the Framers had in
16 mind and that's what's --

17 QUESTION: If that decision is to be made by
18 -- by law, as opposed to having it made by the
19 executive. Yes. When that is so, it must be done that
20 way, just as you can say in other areas, whenever the
21 decision is to be made by law, the Senate has to agree
22 to it and the House has to agree to it and the President
23 has to sign it. But that doesn't speak to whether it
24 must be made by law or can instead be delegated to the
25 President.

1 MR. McMILLAN: We are here today arguing that
2 the decision about what Mid-America is going to pay,
3 what its tax rate is going to be can only be made by
4 law. I don't think that's a particularly surprising
5 provision. That's what the Constitution says.

6 QUESTION: (Inaudible) so. I don't see
7 anything so -- so quite different about taxes as opposed
8 to -- to offenses that -- that can be made unlawful by
9 -- by the President without -- without a law.

10 MR. McMILLAN: Offense -- offenses are a zero
11 sum game in the way that revenue raising isn't. If you
12 do something wrong, your -- you pay back for it. You
13 --you pay to make it right, so to speak. That's a zero
14 sum game that comes in under a different sort of a -- of
15 a constitutional power.

16 When you raise revenue for the public good for
17 discretionary spending, that is a issue that is covered
18 by a discrete set of constitutional provisions. There's
19 no way to get away from the fact that the Constitution
20 treats taxation differently than it treats other powers,
21 not only in the Origination Clause but in other clauses.
22 Taxation is different under the Constitution.

23 Mid-America is here sharing some of the --
24 some of those original concerns. Tax should be called a
25 tax. If someone is going to decide what Mid-America is

1 going to pay to support this program, it ought to be
2 Congress. It ought not to be an invisible employee of
3 the Department of Transportation.

4 QUESTION: May I ask? Under your view if the
5 Congress delegated to the Department of Transportation
6 the decision of which roads in the Federal highway
7 system should become toll roads and to set the right
8 rates in an effort to reimburse the government for the
9 cost of the roads, would that be permissible? And they
10 charge a user fee in the form of tolls, but the purpose
11 of the user fee would be to pay back the government for
12 building the roads. And how would that be different
13 from this?

14 MR. McMILLAN: The Court in National Cable I
15 think found that if you are talking about a user fee, it
16 doesn't rise to the level of something that the
17 constitutional concerns associated with taxation are
18 concerned about.

19 QUESTION: So, that would be all right.

20 MR. McMILLAN: Yes.

21 QUESTION: Yes.

22 MR. McMILLAN: In closing, I would just go
23 back to a point that I started with that the decision we
24 are talking here originated in the Department of
25 Transportation. There is a difference between bills for

1 raising revenue and notices in the Federal Register.

2 Thank you.

3 QUESTION: Thank you, Mr. McMillan.

4 Mr. Merrill, do you have rebuttal? You have
5 three minutes remaining.

6 REBUTTAL ARGUMENT OF THOMAS W. MERRILL

7 MR. MERRILL: Two quick points.

8 First, with respect to the argument that the
9 DOT regulations violate the Origination Clause in this
10 case because the regulations didn't originate in the
11 House of Representatives, that argument would call into
12 question the validity of every single regulation issued
13 by the Treasury Department.

14 And it's simply not the case that all Treasury
15 regulations are interpretive regulations. One of them,
16 which is cited in Appellee's brief at page 19, Section
17 -- under Section 1502 of the Internal Revenue Code,
18 specifically provides authority to the Secretary to
19 adopt legislative regulations.

20 And it's not true that that's some kind of
21 esoteric housekeeping provision. It has to do with
22 establishing standards for allocating income and
23 expenses among affiliated corporations when they file a
24 consolidated return. And those regulations and the
25 decisions made under them have an extremely major impact

1 on the allocation of the tax burden among affiliated
2 corporations, how much income tax they pay and what kind
3 of capital gains they're subject to.

4 And with respect to Justice Scalia's question
5 about the President's imposing a fee on imported oil,
6 yes, under the Trade Expansion Act in the early 1970s,
7 the decision was made by President Ford to substitute
8 for a system of oil import quotas a system of oil import
9 fees. And this Court unanimously sustained that against
10 a non-delegation challenge in the case of FEA v.
11 Algonquin which is at 5426 of the United States Reports.

12 Thank you.

13 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
14 Merrill.

15 The case is submitted.

16 (Whereupon, at 11:50 o'clock a.m., the case in
17 the above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:
No. 87-2098 - SAMUEL K. SKINNER, SECRETARY OF TRANSPORTATION, Appellant

V. MID-AMERICA PIPELINE COMPANY

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

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