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OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE

THE SUPREME COURT  
OF THE  
UNITED STATES

**CAPTION:** MARTIN W. HOFFMAN, TRUSTEE, Petitioner V.  
CONNECTICUT DEPARTMENT OF INCOME MAINTENANCE,  
et al.

**CASE NO:** 88-412

**PLACE:** WASHINGTON, D.C.

**DATE:** April 19, 1989

**PAGES:** 1 - 45

1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x  
3 MARTIN W. HOFFMAN, TRUSTEE, :  
4 Petitioner, :  
5 v. : No. 88-412  
6 CONNECTICUT DEPARTMENT OF INCOME :  
7 MAINTENANCE, ET AL. :  
8 -----x

9 Washington, D.C.

10 Wednesday, April 19, 1989

11 The above-entitled matter came on for oral  
12 argument before the Supreme Court of the United States  
13 at 12:58 o'clock p.m.

14 APPEARANCES:

15 MARTIN W. HOFFMAN, ESQ., Hartford, Connecticut; on  
16 behalf of the Petitioner.

17 THOMAS W. MERRILL, ESQ., Deputy Solicitor General,  
18 Department of Justice, Washington, D.C.; on behalf  
19 of the Federal Respondent.

20 CLARINE NARDI RIDDLE, ESQ., Acting Attorney General of  
21 Connecticut, Hartford, Connecticut; on behalf of  
22 the State Respondent.

C O N T E N T S

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16  
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19  
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22  
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24  
25

| <u>ORAL ARGUMENT OF</u>             | <u>PAGE</u> |
|-------------------------------------|-------------|
| MARTIN W. HOFFMAN, ESQ.             |             |
| On behalf of the Petitioner         | 3           |
| THOMAS W. MERRILL, ESQ.             |             |
| On behalf of the Federal Respondent | 22          |
| CLARINE NARDI RIDDLE, ESQ.          |             |
| On behalf of the State Respondent   | 36          |
| <u>REBUTTAL ARGUMENT OF:</u>        |             |
| MARTIN W. HOFFMAN, ESQ.             | 42          |

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

2 (12:58 p.m.)

3 CHIEF JUSTICE REHNQUIST: We will hear  
4 argument now in Number 88-412, Martin Hoffman versus  
5 Connecticut Department of Income Maintenance.

6 Mr. Hoffman.

7 ORAL ARGUMENT OF MARTIN W. HOFFMAN

8 ON BEHALF OF THE PETITIONER

9 MR. HOFFMAN: Mr. Chief Justice, and may it  
10 please the Court:

11 At issue before the Court this afternoon is  
12 whether or not the unmistakably clear language in 106(c)  
13 of the Bankruptcy Code waives Eleventh Amendment  
14 Immunity from suit in the federal court when a trustee  
15 In bankruptcy has brought a cause of action under Title  
16 11 of the Bankruptcy Code, 542(b), 547(b) of the  
17 Bankruptcy Code, seeking to collect retroactive monetary  
18 damages from the State of Connecticut, and whether or  
19 not Article I, Section 8, Clause 4 and 18 of the  
20 Constitution would abrogate Eleventh Amendment immunity.

21 I was appointed trustee in both of these  
22 cases, Your Honors, and in both of these cases as  
23 Trustee, I analyzed the cases to see what assets were  
24 available or that should be liquidated by the Trustee in  
25 these proceedings.

1           In the case of In re Willington, since this  
2 was two unrelated bankruptcy cases that were combined as  
3 one case in the Second Circuit Court of Appeals, there  
4 was a cause of action against the State of Connecticut  
5 which had filed a chapter -- which for \$64,000 for  
6 unpaid monies due and owing to the estate as a result of  
7 services performed by Willington, a debtor in possession  
8 in a Chapter 11 proceedings.

9           That case was voluntarily -- it was  
10 voluntarily changed to a Chapter 7 proceedings by the  
11 debtor in possession. And as Trustee, I brought a cause  
12 of action under 542(b), 11 U.S.C. 542(b) of the  
13 Bankruptcy Code seeking to recover from an entity that  
14 had received -- received services, the payment of money  
15 from that entity to the trustee.

16           In the case of Zera, In re Zera, Mr. Zera was  
17 running a small lawn maintenance business and just a few  
18 days prior to his filing a bankruptcy proceedings, the  
19 state recovered \$2,000 by means of a preferential  
20 transfer.

21           In that case I made demand upon the state to  
22 collect the preference payment. Again, I was refused,  
23 and as Trustee I brought a cause of action in accordance  
24 with 11 U.S.C. 547(b) and 558.

25           QUESTION: Where did you bring it?

1 MR. HOFFMAN: I brought both of these actions,  
2 Your Honor, in the Bankruptcy Court.

3 QUESTION: Before whom?

4 MR. HOFFMAN: Before The Honorable Judge  
5 Krechevsky.

6 QUESTION: The bankruptcy judge?

7 MR. HOFFMAN: The bankruptcy judge.

8 And in both of these cases, these suits were  
9 brought under the authority of 28 U.S.C. 1334(b) and 28  
10 U.S.C. 157, which would allow the Bankruptcy Court as an  
11 adjunct of the District Court to hear both of these  
12 cases, Your Honor.

13 In both of these cases the court -- the State  
14 of Connecticut filed a motion to dismiss which was  
15 denied by the Bank -- raising a defense of sovereign  
16 immunity, and in both of these cases, the Court found --  
17 denied the state's motion.

18 The proceedings were appealed by the State of  
19 Connecticut in both cases to the District Court in  
20 Connecticut, which found against the Trustee. I took an  
21 appeal to the Second Circuit of Appeals -- Sixth --  
22 Second Circuit Court of Appeals -- which sustained the  
23 District Court and basically -- since this case is in  
24 conflict with a Seventh Circuit case, In Re: McVey, we  
25 are here today arguing these motions.

1           The clear language of 106 is basically the  
2 starting point, I believe, for the argument. When  
3 Congress enacted the Bankruptcy Code in 1978 by means of  
4 a -- passing the Bankruptcy Reform Act, what it  
5 basically did was overhaul, change, codify the  
6 Bankruptcy Act of 1898, which had been in existence up  
7 until that time.

8           The Bankruptcy -- I mean the -- Congress in  
9 1965 basically started working on changing the  
10 Bankruptcy Act. It took them approximately -- I  
11 mentioned 1968 because it took them approximately 10  
12 years to enact the Bankruptcy Reform Act of 1978.

13           One of the sections that they dealt with was  
14 106 of the Bankruptcy Code. It seemed that they worked  
15 on 106 over a long period of time because at the  
16 beginning they were only dealing with 106(a) and (b).  
17 That was a situation where they knew that -- they had  
18 106(a) and 106(b), and they came up with a conclusion  
19 that the state by filing a proof of claim in the  
20 Bankruptcy Court asking for something from the court,  
21 acknowledging the jurisdiction of the court by filing a  
22 proof of claim, therefore, they would waive their  
23 sovereign immunity claim, and they would give the court  
24 the jurisdiction to, in 106(a), utilize the -- by means  
25 of a compulsory counterclaim the ability of a debtor or

1 a trustee to recover retrospective monetary damages from  
2 the state. That is, if the state filed a proof claim  
3 alleging there was \$100 owed to it under a contract and  
4 the trustee under that same contract or debtor in  
5 possession or debtor had a claim for \$1,000, that by  
6 means of a compulsory counterclaim the estate or the  
7 debtor would collect \$900.

8 QUESTION: What about some claim against the  
9 state unrelated to their claim?

10 MR. HOFFMAN: No, they couldn't -- they could  
11 not do anything unless they filed a voluntary --  
12 voluntary proof of claim in accordance with 106(a) and  
13 (b). They couldn't do it.

14 QUESTION: But why would you need 106(a) after  
15 you have you 106(c)? What does 106(a) cover that 106(c)  
16 wouldn't?

17 MR. HOFFMAN: 106(a) --

18 QUESTION: Assuming you read 106(c) the way  
19 you read it?

20 MR. HOFFMAN: The way I read it.

21 QUESTION: Um-hum.

22 MR. HOFFMAN: Well, 106(a) and (b) cover those  
23 situations where -- one of the two ways that the state  
24 can obviously be brought before the court is one is to  
25 waive their jurisdiction and file a proof of claim,



1 which they would do under (a) and (b).

2 QUESTION: Right.

3 MR. HOFFMAN: But, as I'm here today, they  
4 didn't do it under (a) and (b). That's why (c) was put  
5 in, to put in those situations where they don't do it.

6 QUESTION: But you wouldn't need a waiver if  
7 you have a mandatory elimination of state sovereign  
8 immunity. You wouldn't need a waiver. I mean, why have  
9 a waiver provision when you then go on to say and by the  
10 way, whether the state waives or not, the state is  
11 liable. And that's what you tell us (c) means.

12 MR. HOFFMAN: I think that what happened was  
13 because the way the code section was codified and the  
14 way Congress worked at it, they had (a) and (b) and they  
15 had worked on it, and then they came to the situation  
16 where in the -- except where they file a proof of claim,  
17 where they don't file a proof of claim and not assuming  
18 their -- not withstanding their -- their -- their --  
19 they're assuming that they -- they have sovereign  
20 immunity -- not over -- I'm sorry -- not withstanding  
21 any assertion of sovereign immunity that they're -- they  
22 would still -- the trustee would have the opportunity to  
23 sue the state as long as it's under those certain  
24 situations that they give it to them because --

25 QUESTION: Well, I understand what you're

1 saying, but -- and -- and maybe you give me an  
2 explanation for why it's such a strange statute, but it  
3 still is a very strange statute that you're -- that --  
4 the way you're asking us to interpret it. You're asking  
5 us to interpret this as saying first, if the state -- if  
6 the state files a claim, it can be subject to liability  
7 and then, second, even if a state doesn't file a claim,  
8 it can be subject to liability.

9 MR. HOFFMAN: Only under certain  
10 circumstances, though, Justice Scalia.

11 QUESTION: Well, what circumstance is covered  
12 by the first part that isn't covered by the second  
13 part? Is there any case that's covered by (a) and (b)  
14 that is not covered by (c)? Just one?

15 MR. HOFFMAN: Well, as I have stated in my  
16 brief, I've said that there are certain circumstances  
17 where there's lien avoidance, post-petition claims that  
18 in those particular circumstances that the state would  
19 not be bound unless they filed proof of claim. They  
20 would have to file a proof claim.

21 QUESTION: But that -- your interpretation of  
22 section -- of (c) isn't the only interpretation that (c)  
23 is subject -- is that is not the only way it might be  
24 interpreted. After all, there are a lot of -- your  
25 obligation as the Trustee was to file a list of

1 creditors, right?

2 MR. HOFFMAN: Yes, that is correct.

3 QUESTION: And whether or not they filed  
4 claims, if you know from the books that you owe them,  
5 you list them, don't you?

6 MR. HOFFMAN: If the --

7 QUESTION: Don't you?

8 MR. HOFFMAN: No, Your Honor.

9 QUESTION: Don't you anymore file a list of  
10 claims against the estate?

11 MR. HOFFMAN: No. What the -- what the  
12 procedure that in Willington, as an example, and that  
13 was a Chapter 11 proceedings -- it was a business. They  
14 carried on a business.

15 QUESTION: Yes, yes.

16 MR. HOFFMAN: And they provided services.

17 QUESTION: Yes.

18 MR. HOFFMAN: They went out and they gave  
19 services to the state, and people --

20 QUESTION: In an ordinary liquidation  
21 bankruptcy, do you -- do you ever allow a claim that --  
22 that some creditor hasn't filed for?

23 MR. HOFFMAN: No, they have to file a proof of  
24 claim.

25 QUESTION: You don't -- you don't -- you never

1 allow -- you never allow a claim that -- that there  
2 hasn't been a proof of claim filed on?

3 MR. HOFFMAN: Unless it's -- no.

4 QUESTION: When you know -- when you know that  
5 the estate owes something, you don't say we should pay  
6 them?

7 MR. HOFFMAN: If the state -- If the estate  
8 owes an administrative claim, yes, we do pay them. If  
9 the -- if a creditor does not file a proof of claim it  
10 does -- In a bankruptcy proceeding -- It does not share  
11 in the distribution.

12 QUESTION: What about a creditor in possession  
13 of a secured in -- a secured property? Do you not pay  
14 them something?

15 MR. HOFFMAN: A creditor -- a creditor that  
16 has secured property, Your Honor, if his property is  
17 liquidated by the Trustee, liquidated by the Trustee,  
18 then the lien -- a lien as to the assets will attach,  
19 and he will get that money if he's entitled to it. But  
20 if the property is taken back -- taken back by the  
21 secured party, he must file a claim as any other  
22 creditor, or else he won't share in the estate.

23 The clear language in my reading of 106(c) is  
24 that first of all that you have to read the whole  
25 bankruptcy -- the Bankruptcy Code as a whole. If you

1 just read 106(c), it's difficult to interpret it the way  
2 the Seventh Circuit in the McVey case read it, and the  
3 way that I have proposed it.

4 The wording in (c) is "Except as provided in  
5 subsection (a) and (b) of the section, of this section,  
6 and notwithstanding any assertion of sovereign immunity.

7 Now, I know that the wording goes on further  
8 to say, one, "A provision of this title that contains  
9 creditor, entity or governmental unit applies to  
10 governmental units," and, two, "A determination by the  
11 court of an issue arising under such a provision binds  
12 the governmental unit -- units."

13 Each word in analysis, when one takes into  
14 consideration the Bankruptcy Code as a whole, does show  
15 the clear, unmistakably clear intent of Cong -- of  
16 Congress to show its intent to waive sovereign immunity.

17 QUESTION: It can't be unmistakably clear, if  
18 only because of the first phrase with which the -- with  
19 which (c) is introduced which, as far as I can  
20 ascertain, is utterly meaningless. Can you possibly  
21 tell me what notwithstanding -- notwithstanding (a) and  
22 (b) --

23 MR. HOFFMAN: No matter what they -- oh, I'm  
24 sorry. But my reading is that no matter what their  
25 claim is, they can't claim sovereign immunity under (c)

1 when there are three -- when there -- when you go to the  
2 trigger words which identify --

3 QUESTION: Well --

4 MR. HOFFMAN: -- the code sections.

5 QUESTION: But, boy, people don't talk that  
6 way. When you say notwithstanding, you -- you would  
7 think that what -- that what (a) and (b) would be saying  
8 is there is state sovereign immunity and then when you  
9 would say notwithstanding the apparent sovereign  
10 immunity under (a) and (b), there is no sovereign  
11 immunity under (c). But, in fact, (a) and (b) do not  
12 provide for sovereign immunity. They eliminate  
13 sovereign immunity.

14 So, it makes no sense to say notwithstanding  
15 the elimination of sovereign immunity in (a) and (b).  
16 There is no sovereign immunity under (c). That is  
17 really, truly gobbledygook.

18 MR. HOFFMAN: Well, except that it took -- it  
19 took Congress 10 years to write 106(c).

20 (Laughter)

21 MR. HOFFMAN: And it took them five years to  
22 come up with 106(a) and (b) and another five years to  
23 come up with (c).

24 QUESTION: Do you think it would have been  
25 better if they had done it in a shorter time?

1 (Laughter)

2 QUESTION: It wouldn't have been so weird  
3 then.

4 (Laughter)

5 MR. HOFFMAN: Your Honor, it's true, though,  
6 but Congress is still changing and correcting the  
7 Bankruptcy Code and making it more clear. Obviously,  
8 it's going along. But I think this clearly meets the  
9 test, the clear test to show their intent, their clear  
10 intent to do this under those specific code sections  
11 that involve their intention.

12 QUESTION: Well, why isn't the Second  
13 Circuit's reading and the District Court of  
14 Connecticut's reading just as plausible as yours, that  
15 (a) and (b) waive sovereign immunity when the state  
16 files a claim. But if the state doesn't file a claim,  
17 then sovereign immunity is not waived. It's just -- the  
18 state is simply bound by certain kinds of adjudication.  
19 What is wrong with that reading?

20 MR. HOFFMAN: Well, the reason it is wrong --  
21 I mean, not -- the reason that I take -- I object -- I  
22 say that it's different the way that I interpret it, the  
23 way the Seventh Circuit interprets it is because I look  
24 at creditor, entity and governmental unit as the words  
25 -- I read the Bankruptcy Code as a whole, and they tell

1 me to go to 542(b) to 547(b) and 550(a), which tell me  
2 that I can recover a monetary judgment against the  
3 state. And I can do it if Article I of the  
4 Constitution, the bankruptcy clause abrogates the  
5 Eleventh Amendment.

6 QUESTION: So, you don't rely on the specific  
7 language, then, of section 106?

8 MR. HOFFMAN: I do as it encompasses the code  
9 as a whole.

10 QUESTION: Well, what does that mean?

11 MR. HOFFMAN: What it means, Your Honor, is  
12 that if there is a word in this statute "entity" that I  
13 can look at another code section, 542(b) which has that  
14 word in there, and I can utilize that because all this  
15 says is that sovereign immunity is waived in those code  
16 sections such as 542(b) which has the word entity and  
17 says that I can collect a monetary debt.

18 The reading of these three statutes here that  
19 -- the reading of the three statutes that deal with  
20 preferences, that deal with collection or recovery of a  
21 debt for money owed to the estate would also -- and if  
22 the clear language of that -- of the statutes  
23 unmistakably shows congressional intent to waive  
24 sovereign immunity, the question, then, is whether or  
25 not the Court will find that the plenary powers under



1 Article J, section 8, clause 18 do abrogate or does  
2 abrogate the Eleventh Amendment under the -- when one is  
3 utilizing the Bankruptcy Court and -- but only under  
4 those specific code sections that apply.

5 Now --

6 QUESTION: May I just ask one other question.  
7 You say only under the specific code sections, those  
8 that contain any one of the three triggering words,  
9 "creditor," "entity," or "governmental unit." But just  
10 to follow up on Justice Scalia's point -- I'm not sure  
11 you've completely answered it -- are there sections of  
12 the code which do not contain any of the three  
13 triggering words, pursuant to which a state might file  
14 some kind of a claim and an issue might arise where they  
15 would be no waiver of sovereign immunity?

16 MR. HOFFMAN: Yes. As I said, there's 545 and  
17 there's 549 that I've quoted in my brief.

18 QUESTION: So, your point is that (a) and (b)  
19 apply to 545 and 549, but do not apply to 542 or some of  
20 the others that have these triggering words in them?

21 MR. HOFFMAN: 540 -- 545, 549, unless they  
22 file a proof of claim, it wouldn't apply.

23 QUESTION: So that the -- your answer, then,  
24 to Justice Scalia is that -- is just that it depends on  
25 what the particular section -- whether the particular

1 section contains the triggering word or not?

2 MR. HOFFMAN: I think that what Congress --  
3 yes, Justice Stevens. I think that what the Congress in  
4 the legislative history was trying to show was that they  
5 have, probably, difficulty as we can see with the waiver  
6 of sovereign immunity under the bankruptcy clause. But  
7 in order to come about and recognize that in 1988 or  
8 1989 -- last year there were 600,000 bankruptcy cases  
9 filed in the United States, and of those approximately  
10 68,000 were business bankruptcies.

11 You're going to have the state and you're  
12 going to have the federal government, you're going to  
13 have them involved in a great majority, a great majority  
14 if not in excess of 90, 95 percent or more in the  
15 business bankruptcies, and there's no question in my  
16 mind about that.

17 QUESTION: Well, the Court of Appeals didn't  
18 think that (c) was surplusage either, did they?

19 MR. HOFFMAN: It did not.

20 QUESTION: It ruled against you, even though  
21 -- even though -- even -- even in -- in footnote 5 they  
22 thought that (c) had its own meaning.

23 MR. HOFFMAN: Yes. The Court of Appeals  
24 basically -- that's correct, Your Honor. But the Court  
25 of Appeals basically said yes, it's partially --

1 partially -- under certain circumstances where you're  
2 looking for injunctive or declaratory relief, but the --  
3 they sort of limit it. They gave me a quarter of a loaf  
4 maybe, I would say.

5 QUESTION: Yes.

6 MR. HOFFMAN: But --

7 QUESTION: You were still hungry.

8 (Laughter)

9 MR. HOFFMAN: Well, as it -- well, I'm looking  
10 at the aspect of the Chapter 11. I'm looking at  
11 Willington, I'm looking at the people that provided the  
12 electricity, the purveyors. Everybody went out there  
13 and they said okay, look. Come to work with us. We're  
14 providing services to these Title 19 Medicaid patients.  
15 We're going to get paid from the State of Connecticut.  
16 You don't have to worry. Even if this is converted to a  
17 Chapter 7, it doesn't matter because the \$65,000 or  
18 \$4,000 that the state owes, they'll pay it to us and,  
19 therefore, you'll get your share as an administrative  
20 expense. And, therefore -- and -- and -- and if -- and  
21 that is -- that is the congressional scheme, I think.

22 QUESTION: Well, the state knows that if they  
23 just stay out of the -- at least they thought if they  
24 just stay out of the proceeding, they won't have to pay  
25 the money.

1 MR. HOFFMAN: That's correct.

2 QUESTION: Unless they're sued -- unless you  
3 sue them in their own court.

4 MR. HOFFMAN: That's correct. I could have  
5 done that, too, that's correct. But the congressional  
6 scheme -- I -- the congressional scheme in my -- and  
7 what I would say would be uniform decisions, expediency,  
8 waste of judicial time, waste of having -- they could  
9 also have 50 different bankruptcy codes in the state,  
10 too. You don't have to have federal bankruptcy court.  
11 You could have 50 separate little bankruptcy courts  
12 throughout the state. When they conflict with the  
13 federal court, that's a different question.

14 QUESTION: As you read this provision, it  
15 would apply even if you couldn't bring suit in state  
16 court. You're attributing to Congress the intent of  
17 saying that even if a businessman has entered into a  
18 contract with the state that he knows he's not going to  
19 be able to recover on because the state has not waived  
20 its sovereign immunity, he's taking his chances. Maybe  
21 he gets, you know, an added premium for taking chances  
22 like that or whatever. But if he's lucky enough to go  
23 bankrupt, then his creditors are going to be able to sue  
24 on that contract even though the -- the individual  
25 himself wouldn't have been able to.

1 MR. HOFFMAN: Well, the --

2 QUESTION: That's a strange intent to  
3 attribute to Congress.

4 MR. HOFFMAN: Well, Justice Scalia, I think  
5 the -- the nature of the Bankruptcy Code is to -- to  
6 give an even distribution of assets to the creditors,  
7 not to the debtor, but to the creditors, those people  
8 that are owed money by the bankrupt estate.

9 The State of Connecticut's a creditor in this  
10 case, too. They're a creditor. The federal  
11 government's a creditor in this case, too. They're both  
12 owed taxes. They could have received money if -- they  
13 could have received money in order of priority if  
14 they're owed these proper taxes. But when they have an  
15 unsecured debt here, a debt which is owed to the Chapter  
16 11 debtor in possession and then when it's converted to  
17 a 7, the trustee comes in and tries to collect.

18 QUESTION: Well, if they try -- if they file a  
19 claim, you have them under section (a) and (b), don't  
20 you?

21 MR. HOFFMAN: That is correct.

22 QUESTION: So, how do they get their tax claim  
23 paid without filing a claim?

24 MR. HOFFMAN: They don't.

25 QUESTION: Well, then, aren't you out --

1 you're actually going to be able to get your -- what you  
2 regard as your just deserts -- just deserts?

3 MR. HOFFMAN: It's not me, Justice Rehnquist.  
4 I'm doing this on accordance to enforce the code section.

5 QUESTION: It's bigger than both of us.

6 (Laughter.)

7 MR. HOFFMAN: My name's on it. That's all  
8 there is.

9 QUESTION: Of course, the state may owe \$4,000  
10 and you may owe it only a thousand.

11 MR. HOFFMAN: That's correct.

12 QUESTION: So, they'd just as soon as keep the  
13 three.

14 MR. HOFFMAN: It does defeat the bankruptcy  
15 scheme. It does -- I mean, if you've got 250 Judges out  
16 there that are administering 600,000 cases or maybe a  
17 few more or less -- I'm not sure about the number -- and  
18 it seems to me that -- that when one looks at the  
19 picture as a whole that it would be that the clear  
20 intent has been shown.

21 And -- and I'd like to discuss Article I, the  
22 constitutional issue, because I feel that the  
23 constitutional issue should be raised if the Court finds  
24 the unmistakable language is clear, is that when the  
25 states ratified the Constitution, they did give up

1 certain power, they did give certain powers to Congress,  
2 and they did give the power to Congress under Article I,  
3 section 8, clause 4, to establish bankruptcy laws, to  
4 establish it.

5 And, under 18 they said you make the laws to  
6 pass those -- to make those laws be enforceable. And  
7 so, Title XI is the bankruptcy law and 28 U.S.C. 1334  
8 and 157 give the jurisdiction to the Bankruptcy Court,  
9 not only to take this matter but to hear it and to  
10 decide it.

11 I'd like to reserve whatever time I have left.

12 QUESTION: Is it your position that the  
13 bankruptcy clause gives Congress any more extensive  
14 authority to subject states to liability than the  
15 commerce clause?

16 MR. HOFFMAN: No.

17 QUESTION: Thank you, Mr. Hoffman.

18 Mr. Merrill.

19 ORAL ARGUMENT OF THOMAS W. MERRILL

20 ON BEHALF OF THE FEDERAL RESPONDENT

21 MR. MERRILL: Mr. Chief Justice, and may it  
22 please the Court:

23 Petitioner contends that section 106(c) of the  
24 Bankruptcy Code authorizes bankruptcy courts to  
25 adjudicate claims for retroactive monetary relief

1 against non-consenting governmental units. If  
2 Petitioner is right, then a significant question of  
3 constitutional law would be presented, whether the  
4 Congress has the power under the bankruptcy clause of  
5 Article I to abrogate a state's Eleventh Amendment  
6 Immunity in this particular fashion.

7 It's the position of the United States that  
8 the court need not reach this constitutional question.  
9 In our view, section 106(c) waives governmental --  
10 sovereign immunity only to the extent of allowing  
11 government units to be bound by judgments in rem  
12 concerning the preservation or distribution of assets of  
13 an estate in bankruptcy. But that section does not  
14 authorize suits of an offensive character seeking to  
15 augment the assets of the estate by recovering money  
16 from governmental units.

17 Since we do not take a position on the  
18 constitutional question presented, I will focus my  
19 portion of the argument on the issues of statutory  
20 construction.

21 QUESTION: I thought you just did take a  
22 position on it?

23 MR. MERRILL: How so?

24 QUESTION: I thought you said that they were  
25 right on that point. On the constitutional question. I



1 must have misheard you.

2 MR. MERRILL: No, no. Our position is that  
3 the --

4 QUESTION: Oh.

5 MR. MERRILL: -- the court can avoid reaching  
6 the constitutional question because the statute,  
7 properly construed, does not waive state sovereign  
8 immunity for actions for monetary relief.

9 There's no question but that section 106(c)  
10 does waive sovereign immunity. Both subsection (a) and  
11 subsection (c) specifically refer to waivers of  
12 sovereign immunity. But the issue before the Court is  
13 not whether there has -- whether or not there has been a  
14 waiver of sovereign immunity, but rather what the scope  
15 of that waiver is.

16 Now, though we think that cumulatively the  
17 waiver in Section 106 is a broad one, it's far from  
18 unlimited. I think it's useful to begin by looking  
19 briefly at all three subsections of section 106(c).  
20 Subsections (a) and (b) both concern the situation where  
21 a governmental unit has filed a claim against a -- a --  
22 the debtor in bankruptcy.

23 Subsection (a) provides that when a  
24 governmental unit files such a claim, it loses its  
25 sovereign immunity with respect to any claim for

1 monetary relief that rises -- arises out of the same  
2 transaction or occurrence underlying the government's  
3 claim.

4 In this compulsory counterclaim situation, the  
5 waiver is unlimited. There's no cap on the size of the  
6 affirmative relief that can be obtained against a  
7 sovereign entity.

8 Subsection (b) provides that when a  
9 governmental unit files a claim, there may be offset  
10 against that claim any type of claim that the debtor in  
11 possession or the trustee may have against the  
12 government.

13 In this permissive counterclaim situation,  
14 there's no limit on the source of the cause of action.  
15 It doesn't have to rise out of the same transactional  
16 occurrence, but the offset is capped by the amount of  
17 the government's recovery. It cannot exceed the amount  
18 that the government is eventually held to be entitled to  
19 -- to get from the bankrupt estate.

20 Subsection (c), which is in issue here, was  
21 added to the 1978 Bankruptcy Code at the last minute by  
22 the Conference Committee. We freely concede that it's  
23 not a model of clarity. But, in our view, it was not  
24 designed to deal with the problem that subsections (a)  
25 and (b) are designed to deal with, which is monetary

1 recovery from the government.

2           Rather, it was simply intended to make clear  
3 that the government is bound by a judgment, a  
4 declaratory-type judgment, in the nature of an in rem  
5 proceeding involving the rights of the entire world to  
6 the assets of the bankrupt.

7           QUESTION: I don't understand that. Give me  
8 an example.

9           MR. MERRILL: Well, a good example would be  
10 your typical discharge situation, which can occur under  
11 a variety of sections of the code. If the government  
12 has not filed a claim but is listed as a creditor, and  
13 you get to the end of the proceedings and the discharge  
14 order is issued, the government is bound by that. They  
15 cannot deny it and proceed to recover.

16           QUESTION: Your opponent says that -- says  
17 that that's just a figment of the imagination because of  
18 the -- you never unless -- he says he never lists a  
19 creditor unless there's a claim filed. I don't think I  
20 agree with him, but -- I take it you think that --

21           MR. MERRILL: Well, I --

22           QUESTION: you -- especially in a Chapter 11,  
23 the trustee files a list of creditors, doesn't he?

24           MR. MERRILL: That's my understanding, Justice  
25 White, yes. And if a listed creditor receives notice

1 and does nothing to try to assert that claim --

2 QUESTION: Well, then it may be allowed. It  
3 may still be allowed.

4 MR. MERRILL: But if it's disallowed, then the  
5 creditor has not asserted any rights --

6 QUESTION: Exactly. Then he's bound. They're  
7 bound.

8 MR. MERRILL: -- at the end of the proceeding  
9 the discharge order is entered and that creditor is  
10 bound.

11 QUESTION: Right.

12 MR. MERRILL: What 106(c) is saying, in  
13 effect, is that when the government's in that situation,  
14 it's bound.

15 Another example would be a determination of  
16 tax liability under section 505. Bankruptcy courts are  
17 allowed to -- are authorized by that section to  
18 determine to what extent a tax claim that may exist is  
19 valid or invalid. If the government doesn't file a  
20 claim, but nevertheless an issue arises about tax  
21 liability, then the bankruptcy court is authorized to  
22 determine that issue and the government would be bound  
23 by it. That was the situation in the *Gwilliam* case and  
24 the *Dolard* cases out of the Ninth Circuit, which the  
25 legislative history suggests were the precise reason or

1 the primary motivation that Congress had.

2 QUESTION: You cite those in your brief?

3 MR. MERRILL: Yes, they're cited in our brief.

4 QUESTION: Okay.

5 QUESTION: If you intended to limit it to that  
6 situation, why would he use that language of one, just  
7 -- to cover just those situations where the states would  
8 be bound by -- by judgments, although you couldn't  
9 affirmatively get any money from them. Why would he use  
10 the phrase "a provision of this title which contains  
11 creditor, entity or governmental unit," to refer to all  
12 of those provisions wholesale. I can't understand why  
13 one would do that.

14 MR. MERRILL: I have no explanation for that,  
15 Justice Scalia.

16 QUESTION: Well, if you have no explanation  
17 for that, then -- then -- then the suggested reading  
18 you're proposing is not a very plausible suggested  
19 reading. It gives a nice result, but I don't see how it  
20 bears any relationship to the language.

21 MR. MERRILL: I don't think so, Justice  
22 Scalia. I think if you look at subsection (c) it  
23 contains two subparts, (1) and (2), and they're joined  
24 by the word "and" which ordinarily is thought to be  
25 conjunctive rather than disjunctive.

1           The petitioner's argument essentially in this  
2 case is that the two stand alone and that subsection (1)  
3 of subsection (c) authorizes actions against  
4 governmental units anytime one of those three words  
5 happens to appear in a provision of the Bankruptcy Code.

6           Our -- our position is that you have to read  
7 the two of them together and that subsection (1) is  
8 quite sweeping. It sweeps within its compass a very  
9 large number of code provisions.

10           We did a computer check preparing for this  
11 argument and discovered that over 100 provisions of the  
12 code use the word "creditor." So, subsection (1) is  
13 very sweeping, but then it's also limited by subsection  
14 (2) which says that a determination by a court of an  
15 issue arising under such provision binds governmental  
16 units. We think both subsections have to be satisfied,  
17 and the language of the second subsection quite clearly  
18 suggests declaratory relief, determinations of -- of the  
19 rights of the world with respect to the assets that are  
20 before the Bankruptcy Court, whether or not they have  
21 filed a claim.

22           QUESTION: Would your interpretation be any  
23 less plausible than it now is if subsection (1) were  
24 simply totally eliminated? What is -- what does  
25 subsection (1) add that you would need to arrive at your

1 Interpretation? Could you just read subsection (2) and  
2 get your interpretation?

3 MR. MERRILL: Well, there are some subsections  
4 that do not contain one of the triggering words. There  
5 are some provisions of the Bankruptcy Codes. One of the  
6 problems is understanding exactly what the word  
7 provision means. But there are sections of the code --

8 QUESTION: I see.

9 MR. MERRILL: -- and subsections of the code  
10 that do not contain these three words.

11 QUESTION: And with respect to those, you  
12 would not be able to -- your theory is you would not be  
13 able to bind --

14 MR. MERRILL: That's correct.

15 QUESTION: -- governmental.

16 MR. MERRILL: That's correct. To give you one  
17 example which --

18 QUESTION: Do those provisions make any sense  
19 from a policy standpoint? Excluding those particular  
20 provisions?

21 MR. MERRILL: I'm not sure whether it makes  
22 sense to -- I mean, the list of ones that are included  
23 or the ones that are excluded, I'm not sure it make a  
24 lot of sense.

25 QUESTION: Yeah.

1 MR. MERRILL: We have not gone through and  
2 read every single section of the code that contains one  
3 of these triggering words. There are like 65 that  
4 contain the word "entity," and it goes on and on.

5 I can give you one example, though. It's --  
6 It's not an issue presented in this particular case, but  
7 the automatic stay provision of section 362 contains a  
8 triggering word, and we concede that that is a provision  
9 that -- that affects and binds -- binds the government  
10 because the automatic stay is essentially preserving the  
11 assets of the bankrupt estate in an in rem sort of  
12 fashion.

13 But, in 1984 I believe it was Congress amended  
14 that by adding a new provision, subsection (h), which  
15 authorizes money damages for violating automatic stay.  
16 Well, subsection (h) does not contain a triggering  
17 word. So, it might be our position in a case, for  
18 example, that that's a separate provision, doesn't  
19 contain a triggering word and, therefore, you don't even  
20 have to get to the question of subpart (2) because  
21 subpart (1) is not satisfied.

22 I think one of the most significant things  
23 about the language of 106(c) and in coming to a  
24 determination of its meaning is what it does not say.  
25 Subsection (c) uses none of the words that we generally



1 associate with monetary relief. There's no reference to  
2 the word "money." There's no reference to "monetary" --

3 QUESTION: Yes, but, Mr. Merrill, may I  
4 interrupt you right on that point?

5 MR. MERRILL: Sure.

6 QUESTION: If you incorporate by reference the  
7 sections that contain those words, you do incorporate  
8 547(c), which talks about transfers that are avoidable  
9 as preferences. There's no reference to money in there,  
10 but if you just read it literally, it would seem to me  
11 that termination under that section is binding on the  
12 entity, which is the governmental entity, and the  
13 determination is you've got to give the money back or  
14 the property back, whatever it is. It doesn't list it  
15 in dollars. Why doesn't it just literally just read on  
16 that case?

17 MR. MERRILL: I think you're right, Justice  
18 Stevens. If all you had was subpart (1) and you just  
19 incorporated --

20 QUESTION: On subpart (2) it gives you the  
21 consequence of it, namely the determination pursuant to  
22 this section is binding. This tells you what it means  
23 to have it.

24 MR. MERRILL: That's right. If -- if you --  
25 If you go through the process of incorporation by

1 reference, you can find references to monetary relief.  
2 But when Congress was thinking about sovereign immunity,  
3 I mean, section 106 was where it was thinking about  
4 sovereign immunity.

5 I don't think there's any suggestion that --  
6 that there was a careful review of all the subsections  
7 that would be triggered here and in the subsection where  
8 they're speaking about sovereign immunity under  
9 subsection (c), they don't say anything about money  
10 damages as contrasted with --

11 QUESTION: They don't in (a) or (b) either.  
12 They don't in --

13 MR. MERRILL: Well, (a) and (b) use the word  
14 "claim."

15 QUESTION: Well, I understand that.

16 MR. MERRILL: And the word "claim" is defined  
17 by the Bankruptcy Code as a right to payment. And the  
18 significant language in both (a) and (b) refers to a  
19 claim against a governmental unit that is the property  
20 of the estate. In other words, a right to demand the  
21 payment of money from the government. So, (a) and (b)  
22 are clearly talking about that situation. The word  
23 "claim" -- quite significant we think -- is not used in  
24 subsection (c), and we think that that, at least as a  
25 matter of statutory construction, lends some credence to

1 the -- to our petition.

2 QUESTION: I don't know how you would  
3 introduce the word claim in it the way they've done it.  
4 If there is some sense -- and I don't know whether there  
5 is or not -- they're saying some sections -- you -- you  
6 treat the entity as a governmental entity and some you  
7 don't and they have a formula for doing it. You just  
8 say we don't follow the formula.

9 MR. MERRILL: But not only is the word claim  
10 difficult to introduce, but any language that suggests  
11 an in personam type action is difficult to introduce in  
12 subsection (c).

13 QUESTION: Is setting aside a voidable  
14 preference an in personam or an in rem transaction?

15 MR. MERRILL: We think it can be both.

16 QUESTION: Well, then haven't you given your  
17 distinction away?

18 MR. MERRILL: Well, no. We think the basic  
19 distinction is a sound one and is fully supported by the  
20 language of section 106(c). We think that perhaps in  
21 the application of the distinction there would be  
22 situations where there could be disputes. But with  
23 respect of preference avoidance, we think that, for  
24 example, the situation in the Whiting Pools case where  
25 you had tangible property, trucks and vehicles and sort

1 -- and so forth, as to which title belonged to the  
2 debtor, but possession had been taken over by the  
3 federal government, the IRS, in anticipation of  
4 satisfying a tax lien, that that would be a type of  
5 situation where the property is still within the  
6 custody, so to speak, of the Bankruptcy Court and you  
7 could avoid that as a preferential transfer in that  
8 situation, but we don't think that the language can be  
9 extended so far as to include recovery of money damages  
10 or cash.

11 QUESTION: Or recovery of monetary  
12 preferences? What if it's a preference in paying a bill  
13 or something?

14 MR. MERRILL: Well, we think that that would  
15 fall under the -- the retroactive monetary relief side  
16 of the line rather than the in rem side of the line.

17 QUESTION: Mr. Merrill, I don't suppose you  
18 have any more explanation than anybody else of the magic  
19 words, "except as provided in subsections (a) and (b)"?

20 MR. MERRILL: I don't have a great explanation  
21 for that, Justice Scalia. It does seem to me, though,  
22 that if you start with (c) -- and this would not be the  
23 natural way to read through the whole section -- but if  
24 you start with (c) and realize that Congress was  
25 thinking about a limited waiver with respect only to

1 declaratory relief to rights and the assets of the  
2 estate, then it would make sense to say that except as  
3 provided in subparts (a) and (b) which authorize  
4 recovery of money damages in the situation where there's  
5 been a proof of claim.

6 So, I think if that's what was going on in the  
7 minds of the draftsmen, perhaps it makes a certain  
8 amount -- amount of sense.

9 The big point here, though, I think is that  
10 the interpretation of the statute that we advance I  
11 think is supported by the language. It's supported by  
12 the legislative history. It's supported by the canons  
13 of construction that waivers of sovereign immunity are  
14 supposed to be construed narrowly if possible. And the  
15 mere fact that there is, as the Second Circuit, I think  
16 demonstrated, a credible interpretation that does not  
17 support petitioner's contention, suggests that Congress  
18 does not clearly waive the sovereign immunity of either  
19 the states or the federal government under this  
20 particular statute. Thank you.

21 QUESTION: Thank you, Mr. Merrill.

22 Mrs. Riddle.

23 ORAL ARGUMENT OF CLARINE NARDI RIDDLE

24 ON BEHALF OF THE STATE RESPONDENT

25 MRS. RIDDLE: Mr. Chief Justice, and may it

1 please the Court:

2 The State of Connecticut supports the United  
3 States in its interpretation that Congress did not  
4 intend to award money damages against consenting  
5 states in federal court under the Bankruptcy Code.

6 We also believe with the opposite conclusion  
7 that if Congress did intend to abrogate the states'  
8 Eleventh Amendment immunity pursuant to the bankruptcy  
9 clause, that that would not pass constitutional muster.

10 It is because it is our contention that the  
11 Eleventh Amendment prevents Congress from abrogating the  
12 state's Eleventh Amendment immunity with respect to  
13 money damages in federal courts. And that's for two  
14 reasons.

15 The bankruptcy clause, in both its language  
16 and its history, is not directed at states, nor is it  
17 directed at limitations at state -- of state activity.  
18 And, number two, the bankruptcy clause was enacted prior  
19 to the Eleventh Amendment and is, therefore, subject to  
20 it.

21 In stark contrast to the 10 amendments before  
22 the Eleventh Amendment, the Eleventh Amendment is, in  
23 essence, a protection of states. The core under the  
24 modern case law of the Eleventh Amendment is the  
25 protection of consenting states from jurisdiction by

1 federal courts in money damages claims.

2 QUESTION: May I ask at that point you think  
3 the Eleventh Amendment applies both to the exercise of  
4 Article III jurisdiction by courts and also the Article  
5 I jurisdiction by courts that are created pursuant to  
6 Article I?

7 MRS. RIDDLE: Yes.

8 QUESTION: You do. The words "judicial power"  
9 in the Eleventh Amendment you think apply to both of  
10 those situations?

11 MRS. RIDDLE: Absolutely.

12 The -- the core of the Eleventh Amendment is  
13 the protection of states and the federal system and the  
14 recognition of the appropriate spheres of sovereignty of  
15 the two.

16 In the 191-year history of the Eleventh  
17 Amendment, this Court has allowed Congress to override  
18 the Eleventh Amendment with only one other  
19 constitutional provision, and that is the Fourteenth  
20 Amendment.

21 In the 1976 case of Fitzpatrick versus Bitzer,  
22 this court noted that the Fourteenth Amendment  
23 represented a shift in the federal-state balance under  
24 the Constitution. The Court said that through the  
25 enforcement provision of section 5 of the Fourteenth

1 Amendment, that Congress could abrogate the states'  
2 Eleventh Amendment immunity.

3 The question is, how far does that holding  
4 go? Does any grant of power to Congress have the effect  
5 of possibly overriding the Eleventh Amendment and  
6 thereby making it a nullity? Does it extend to the  
7 possibility that Congress by a majority vote could  
8 override what Article V sets out, which is a procedure  
9 for amending the Constitution?

10 I would posit that Fitzpatrick does not go  
11 that far and that that the opinion of Fitzpatrick is the  
12 limiting principle. Fitzpatrick says that the  
13 Fourteenth Amendment is by its express terms directed at  
14 the states and by its own terms is a limitation on state  
15 authority.

16 If you look to the Fourteenth Amendment  
17 language, it says, "Nor shall any state deprive any  
18 person of life, liberty or property without due process  
19 of law, nor deny to any person within its jurisdiction  
20 the equal protections of the law."

21 Section 5 of that amendment says that  
22 "Congress shall by appropriate legislation enforce the  
23 provisions of this article."

24 So, the Fourteenth Amendment, enacted after  
25 the Eleventh Amendment, makes the Eleventh Amendment



1 subject to the Fourteenth Amendment.

2 The bankruptcy clause, on the other hand, is  
3 of a different sort. The bankruptcy clause addresses  
4 economic issues. The concern of the drafters of the  
5 bankruptcy clause was a uniform law of bankruptcy to  
6 deal with the discharge of debtors across the United  
7 States.

8 The language of the clause says that Congress  
9 shall establish a uniform law on the subject of  
10 bankruptcy throughout the United States. It is not by  
11 its language directed at states, nor does it affect  
12 state activity.

13 As a matter of fact, the history of the -- of  
14 the bankruptcy clause does not either prohibit state  
15 activity.

16 In the 19th century there were many years when  
17 we did not have a federal bankruptcy code. In those  
18 instances states enacted their own bankruptcy codes.  
19 And, on many occasions, this Court affirmed the  
20 authority of those state to have those codes.

21 In the 1819 case of *Sturges versus*  
22 *Crowninshield*, Chief Justice John Marshall said, "It is  
23 not the mere existence of the bankruptcy power, but its  
24 exercise by Congress that contravenes that exercise by  
25 states."

1           So, we have both the language and the history  
2 of the bankruptcy clause not prohibiting state activity  
3 in the area.

4           Significantly with section 106 of the  
5 bankruptcy clause that is at issue in this case today,  
6 Congress specifically said that it did not feel it had  
7 the authority to abrogate or to waive the state's  
8 sovereign immunity completely.

9           Additionally, the bankruptcy clause, as prior  
10 enacted to the Eleventh Amendment, is subject to it.

11           In conclusion, when we're attempting to  
12 harmonize both the Eleventh Amendment with the other  
13 provisions in the Constitution, the Fitzpatrick versus  
14 Bitzer holding makes good sense, where those situations  
15 where other constitutional provisions have language that  
16 are directed at states, that limit state authority and  
17 that have specific enforcement provisions directed at  
18 Congress, those provisions, those provisions can then  
19 have the vindication of federal rights through money  
20 damages actions against states.

21           But if you have a provision in the  
22 Constitution that is like the bankruptcy clause, which  
23 is not directed at state activity, then you have to  
24 accommodate different competing interests and that those  
25 federal rights, those federal issues can be vindicated

1 through declaratory or injunctive relief, suits by the  
2 United States government, inducements of waiver as you  
3 see with the federal regulatory scheme, all of those  
4 things are available to harmonize the public policy of  
5 those constitutional provisions.

6 So, in conclusion I'd like to say that  
7 Congress did strike the right balance when it enacted  
8 the Section 106, and we believe that our interpretation  
9 of the bankruptcy clause in the Eleventh Amendment is  
10 the proper interpretation of section 106(c), and I would  
11 today respectfully request you to affirm the decision of  
12 the Second Circuit.

13 QUESTION: Thank you, Mrs. Riddle.

14 Mr. Hoffman, do you have rebuttal? You have  
15 four minutes remaining.

16 MR. HOFFMAN: Yes, I do.

17 REBUTTAL ARGUMENT OF MARTIN W. HOFFMAN

18 MR. HOFFMAN: I think if we -- I think the --  
19 that the court -- this is still 1989, that there are  
20 many large Chapter 11s that are in existence throughout  
21 the United States. If you follow -- this is more than  
22 just collecting a debt and collecting a preference.  
23 It's whether or not the congressional scheme to have a  
24 bankruptcy code that's effective throughout the United  
25 States and it is carried on in the federal court, the

1 District Court, the Bankruptcy Court is an adjunct of  
2 the -- of the Bankrupt -- of the District Court that one  
3 must expand.

4 This is a special situation. This is a  
5 situation where if you're going to have a  
6 super-creditor, if you're going to have a state, if  
7 you're going to have a federal government that can do  
8 whatever it wants and then say well, the court can  
9 determine what we owe --

10 QUESTION: That was the situation in the  
11 Chandler Act, wasn't it?

12 MR. HOFFMAN: The Chandler Act was in 1938.

13 QUESTION: Well, I know, I know, I know.

14 MR. HOFFMAN: And that was --

15 QUESTION: So, in this respect you say the new  
16 law changed things?

17 MR. HOFFMAN: That's right -- correct, Your  
18 Honor. It took -- that is absolutely correct. That was  
19 the way it was, and it took 10 years for them to decide  
20 it and, in fact, 106(a) and (b) was five years before  
21 (c), so it took them another five years to come up with  
22 that. And to answer your questions about creditors,  
23 Your Honor, a trustee does list creditors in a Chapter  
24 11. They don't have to file a proof of claim. Only in  
25 a Chapter 7.

1 QUESTION: Yes, and they are allowed for that.

2 MR. HOFFMAN: They are allowed in a Chapter 11.

3 QUESTION: Yes. And if they -- and if you  
4 allow them a certain amount and the state hasn't come  
5 in, it's nevertheless stuck. It's bound by the -- by  
6 the court's determination.

7 MR. HOFFMAN: Unless the trustee objects to it.

8 QUESTION: Yes, exactly.

9 QUESTION: Mr. Hoffman, before you leave,  
10 could -- could you tell me -- you -- you said that your  
11 brief contained those sections that you think would be  
12 covered by (c) but are not covered by 1(b). What pages  
13 in your brief are they?

14 MR. HOFFMAN: It's a footnote, Your Honor,  
15 which -- it's a little footnote that says 545 and  
16 545(a). But there's an amicus brief by In re Inslaw  
17 which goes into it in much greater detail. I might say  
18 that.

19 In addition to the -- the specific language of  
20 the statute, Senator DiConcini in his remarks when  
21 106(c) was eventually enacted clearly said you could  
22 look -- you can go after preferences. I mean, there  
23 can't be any clearer words in the legislative history.

24 He takes the situation and says here's a  
25 special -- here's a situation where I'm telling you you

1 can go after it. Not -- and he also has words in it  
2 that it says there's other situations, too.

3 Now, the -- the case of Fitzpatrick versus  
4 Bitzer does deal with the Fourteenth Amendment, and  
5 certainly there is nothing that has dealt with the  
6 Article I, section -- with the bankruptcy clause. But  
7 then, again, this code section has only been in  
8 existence for 10 years, and prior to that it would not  
9 have come up.

10 But I say this, with the vast scheme that  
11 Congress is looking to -- after all, we have our  
12 senators, representatives. They can decide whether or  
13 not they want a bankruptcy code, whether or not they  
14 should have all the creditors be involved, whether or  
15 not one creditor can stand aside and say yes, you can  
16 determine what we owe, but there's no way you can ever  
17 collect it.

18 As an example, in the Eastern case, if the  
19 state is owed money, there's nothing to stop them from  
20 going after it.

21 CHIEF JUSTICE REHNQUIST: Thank you, Mr.  
22 Hoffman. The case is submitted.

23 (Thereupon, at 1:51 o'clock p.m., the case in  
24 the above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:  
No. 88-142 - MARTIN W. HOFFMAN, TRUSTEE, Petitioner V. CONNECTICUT

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DEPARTMENT OF INCOME MAINTENANCE, et al.

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BY

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