

# 11-889 TARRANT REGIONAL WATER DISTRICT V. HERRMANN

DECISION BELOW: 656 F.3d 1222

LOWER COURT CASE NUMBER: 10-6184

## QUESTION PRESENTED:

This Court has held on numerous occasions that a State may not discriminate against interstate commerce in water absent an "expressly stated" or "unmistakably clear" congressional intent to immunize the relevant state laws from dormant Commerce Clause scrutiny. See *Sporhase v. Neb. ex rel. Douglas*, 458 U.S. 941 (1982); *So.-Cent. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82 (1984). The questions presented here, which are of vital importance to arid regions of the United States that depend on interstate imports of water and interstate compacts governing access to water, are as follows:

1. Whether Congress's approval of an interstate water compact that grants the contracting States "equal rights" to certain surface water and - using language present in almost all such compacts - provides that the compact shall not "be deemed \* \* \* to interfere" with each State's "appropriation, use, and control of water \* \* \* not inconsistent with its obligations under this Compact," manifests unmistakably clear congressional consent to state laws that expressly burden interstate commerce in water.

2. Whether a provision of a congressionally approved multi-state compact that is designed to ensure an equal share of water among the contracting states preempts protectionist state laws that obstruct other states from accessing the water to which they are entitled by the compact.

CERT. GRANTED 1/4/2013