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OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE  
**THE SUPREME COURT**  
**OF THE**  
**UNITED STATES**

CAPTION: UNITED STATES, Petitioner

V. GERMAN MUNOZ-FLORES

CASE NO: 88-1932

PLACE: Washington, D.C.

DATE: February 20, 1990

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1                   IN THE SUPREME COURT OF THE UNITED STATES

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3   UNITED STATES,                   :  
4                    Petitioner       :  
5            V.                       :   No. 88-1932  
6   GERMAN MUNOZ-FLORES            :

7   - - - - -x  
8                                    Washington, D.C.  
9                                    Tuesday, February 20, 1990

10                   The above-entitled matter came on for oral  
11   argument before the Supreme Court of the United States at  
12   10:06 a.m.

13   APPEARANCES:

14   WILLIAM C. BRYSON, ESQ., Deputy Solicitor General,  
15            Department of Justice, Washington, D.C; on behalf  
16            of the Petitioner.

17   JUDY CLARKE, ESQ., San Diego, California; on behalf of  
18            the Respondent.

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1 I take it.

2 MR. BRYSON: Well, Your Honor, we felt that the  
3 issue on which there was a conflict among the lower courts  
4 at the time we filed the petition and a conflict among the  
5 circuits at the time we -- this Court addressed the  
6 petition, was the -- on the merits.

7 There was no conflict on the justiciability  
8 question. Now, we did advert in the petition to the issue  
9 of justiciability suggesting that at minimum the question  
10 of -- on the merits should be addressed with an eye  
11 towards the problems with justiciability and, therefore,  
12 that the merits should be viewed with -- by extending  
13 great discretion to the -- to the House in deciding  
14 whether an Origination Clause violation had occurred.

15 But, no, we didn't directly raise -- raise the  
16 point. We -- we do think, however, that the point does  
17 have merit. And since the Court has directed the parties  
18 to address the question, we -- we have done so and we  
19 believe that -- that would be a perfectly legitimate  
20 ground for a decision in this case.

21 And -- at -- at bottom what -- what this issue  
22 presents, the whole political question doctrine is summed  
23 up, I think, well in a quote from Coleman against Miller  
24 which was reiterated in Baker against Carr. And that is  
25 it deals with the appropriateness of attributing finality

1 to the action of the political departments.

2 There are a lot of different kinds of political  
3 questions, as the Court discussed in Baker against Carr.  
4 There are political questions in which there is a textual  
5 commitment of the issue to one branch. There are cases in  
6 which there are strong prudential reasons for the court's  
7 not becoming involved in a particular question. Issues  
8 involving foreign affairs figure prominently in that list.

9 This case is a somewhat different case. It  
10 doesn't -- there is no direct textual commitment in the  
11 Constitution of this issue to the legislature. But we  
12 believe that when you look at all the factors bearing on  
13 the question of justiciability of Origination Clause  
14 questions, that you conclude that indeed it is not  
15 appropriate for the Court to interfere with the judgment  
16 that was made by the House and by the legislature as a  
17 whole that there was not Origination Clause problem in  
18 this case.

19 This is as Alexander Hamilton --

20 QUESTION: But, Mr. Bryson, does that mean in  
21 some other case one would not defer?

22 MR. BRYSON: No. Our position is that with  
23 respect to the Origination Clause challenges, that they  
24 are subject to political question doctrine across the  
25 board.

1           Now, one could say, and this is a backup  
2 argument that we make, that certain kinds of Origination  
3 Clause questions are simply not for this Court to second-  
4 guess the House on. And only if there is a very clear  
5 obvious Original Clause violation should the Court  
6 interfere.

7           That would be somewhat analogous to the position  
8 the Court has taken in cases involving the question of  
9 whether a particular person is a member of an Indian tribe  
10 or recognizing an Indian tribe, an area that was discussed  
11 in Baker against Carr. But our initial position is that  
12 Origination Clause questions as a whole are  
13 nonjusticiable.

14           QUESTION: I take it that -- that the House has  
15 always got a remedy, hasn't it?

16           MR. BRYSON: Exactly. And that -- that --

17           QUESTION: And we -- no -- no court would ever  
18 be asked to review a -- to review the House's decision  
19 that -- not to -- not to pass a bill it -- it thought  
20 should have originated there and didn't.

21           MR. BRYSON: That's exactly right. Or if in --  
22 in any event, if any court where so asked, they would  
23 quickly dismiss the complaint. The -- the statute will  
24 not come up for review unless the House is happy and the  
25 Senate is happy --

1 QUESTION: That's right.

2 MR. BRYSON: -- with the procedure and with the  
3 substance. And --

4 QUESTION: And the President is too.

5 MR. BRYSON: And the President is too, exactly.  
6 The House -- I think Alexander Hamilton put this well when  
7 he said in The Federalist that the Origination Clause  
8 question is essentially the exclusive privilege of  
9 originating money bills which belongs to the House of  
10 Representatives.

11 If the House of Representatives is satisfied  
12 that the Origination Clause privilege has not been  
13 violated, then it can pass the bill that is sent to it by  
14 the Senate and the President can sign it and that's the  
15 end of the matter. That should be, we think, the end of  
16 the matter with respect to questions of court review of  
17 that statute.

18 QUESTION: Could you say the same thing, Mr.  
19 Bryson, for the legislative veto?

20 MR. BRYSON: No.

21 QUESTION: Why not? I mean, so long as the  
22 President -- you could say so long as the thing only comes  
23 up if -- suppose the President's entirely happy with the  
24 legislation he gets that he wouldn't otherwise have gotten  
25 that contains a legislative veto and he is perfectly



1 willing to implement it that way to give away his powers.  
2 We wouldn't let him do that, would we?

3 MR. BRYSON: No, we wouldn't -- you wouldn't.

4 QUESTION: Well, why should we let the House do  
5 it?

6 MR. BRYSON: Because the House is not really, we  
7 think, giving away a power here. What's really -- this is  
8 not an intra- inter-branch dispute over the creation of an  
9 animal that the Constitution doesn't recognize.

10 QUESTION: It's an inter-House dispute which is  
11 just as important as far as separation of the various  
12 powers of the government is concerned. Isn't that  
13 significant?

14 MR. BRYSON: Your Honor, we -- we think it is  
15 not. We think it is -- is a matter of sequence not a  
16 matter of the creation of a non-constitutional animal.

17 What happened in the legislative veto cases was  
18 that we had something that purported to be legislation  
19 which simply wasn't because it was simply the views of the  
20 House of Representatives, not concurred in by the Senate  
21 and not presented and concurred to -- and concurred in by  
22 the President.

23 In this case, all that's involved is a matter of  
24 sequence in which a bill, which is clearly a bill,  
25 arguably did not originate in the House --

1 QUESTION: Well, that -- but that's just  
2 demeaning the importance of the constitutional provision.  
3 You may be quite right that it's not very important but  
4 that's not for us to judge.

5 It was written there -- just the sequence  
6 requirement is written there just as clearly as the  
7 bicameral requirement. Why -- why shouldn't we give full  
8 effect to the one just as the other?

9 MR. BRYSON: I think you give full effect, Your  
10 Honor, by allowing the House to decide whether there has  
11 been an Origination Clause violation. I'm not  
12 suggesting --

13 QUESTION: Just as could allow the President to  
14 decide whether the -- the bill veto clause has been -- has  
15 been offended. But we don't.

16 MR. BRYSON: You don't and I think the  
17 difference is because in the legislative veto case you --  
18 you're talking about the presentation to the court of  
19 something that simply is not a statute. This is not a  
20 case in which something arrives to the court and which you  
21 can fairly say this is not a statute.

22 QUESTION: But that -- but that begs the  
23 question. It is not a statute if it hasn't complied with  
24 the requirements for a statute.

25 MR. BRYSON: Well, Your Honor, let --

1           QUESTION: And if one of those requirements is  
2 -- is this sequence, then it's not a statute, just as  
3 something that is passed without both Houses is not a  
4 statute.

5           MR. BRYSON: Well, I -- I would disagree, Your  
6 Honor, because -- to take the next clause that appears in  
7 the Constitution after the Origination Clause, the  
8 Presentment Clause requires when a bill is sent to the  
9 President, that if the President decides not to approve  
10 the bill, he sends it back to the House from which it  
11 originated.

12           Now, suppose that he sends to the wrong House  
13 and it originated in the House and he sends to the Senate.  
14 The Senate then acts on the bill and overrides the veto  
15 and sends it to House and the House then overrides the  
16 veto. It cannot be the case, I submit, that this Court  
17 would then strike down the statute on the ground that it  
18 was sent to the wrong House.

19           It becomes simply a matter of sequence. Now,  
20 one could argue that that is not a bill, not an act,  
21 because the provisions set up in the Constitution were  
22 violated. But, of course, that can't be because a  
23 President who wanted his veto sustained would obviously  
24 always send it to the wrong House.

25           QUESTION: (Inaudible) is that what you are

1 saying?

2 MR. BRYSON: Not -- not really. I think it's a  
3 matter of --

4 QUESTION: That all these sequential things  
5 don't -- don't amount to much. Maybe -- maybe you're  
6 right.

7 MR. BRYSON: No.

8 QUESTION: I -- don't want to say that.

9 MR. BRYSON: No, I think it's a matter of  
10 constitutional remedy. It's a question of --

11 QUESTION: Well, Mr. Bryson, are you -- are you  
12 relying on the -- when you cite us to the second paragraph  
13 of Section 7 of the express language that if a bill passes  
14 both Houses and is signed by the President, even after a  
15 veto, it shall become law? That's a little different than  
16 the provision in the executive veto case.

17 MR. BRYSON: Well, that certainly is support for  
18 the position that we are taking that -- that once the  
19 House is satisfied that the Origination Clause has been  
20 fulfilled, that --

21 QUESTION: Well, couldn't one argue that the  
22 entire Section 7 has been satisfied if the second  
23 paragraph has been satisfied?

24 MR. BRYSON: One certainly could. I mean, one  
25 has to argue to the contrary --

1           QUESTION: Which one couldn't argue in the  
2 executive veto case.

3           MR. BRYSON: That's right. That's correct.  
4 That's correct.

5           To make the contrary argument, one would have to  
6 say you have to satisfy each and every clause and each and  
7 every clause has to be fulfilled with respect -- and that  
8 anyone could come in and enforce -- insist on --  
9 compliance with that clause and that noncompliance results  
10 in the invalidation of the statute. And we submit that  
11 both the -- the history of the Origination Clause and  
12 looking at the second clause as well suggest that that  
13 can't be the case.

14           Now, the -- it's important, I think, in focusing  
15 on the question of justiciability what the costs and  
16 benefits are of striking down statutes when in fact both  
17 the House and Senate, and indeed the President, have  
18 agreed that the statute is valid and have passed it.

19           The benefit of striking down a statute to a  
20 citizen is virtually negligible. The House could, if it  
21 were presented with a bill that it believed came from the  
22 Senate and was a revenue bill, could always simply put a  
23 House number on the top of it, pass it and send it back to  
24 the Senate. Where there is an Origination Clause  
25 violation alleged, all that has happened is that the House

1 has failed to do that ministerial task.

2 Probably, and in most cases, because the House  
3 has failed to recognize the bill as a Origination Clause  
4 problem. It has failed to --

5 QUESTION: Well, of course, all of your comments  
6 to the effect that this is just ministerial and it seems  
7 to be rather a minor matter are quite inconsistent with  
8 the other prong of your argument in which you tell us the  
9 House has been very jealous to guard this prerogative.

10 MR. BRYSON: Your Honor, --

11 QUESTION: I would assume that this is a very  
12 important prerogative for the House. And I would also  
13 assume that it might be that there is a majority of one  
14 party in the Senate and very slim majority of the same  
15 party in the House and that the minority members in the  
16 House would have a very great interest in the preservation  
17 of this -- of this provision and not just supinely  
18 surrendering it.

19 MR. BRYSON: Exactly. They do -- it is an  
20 important House prerogative. But I think when you -- when  
21 you say that what you are saying is this is something for  
22 the House to exercise. It demeans, in some senses, the  
23 House's prerogative if the courts are sitting behind the  
24 House and second-guessing the House.

25 It is the very importance of the prerogative for

1 the House to enforce that in part cuts against judicial  
2 review after the House has decided that the prerogative is  
3 not applicable in a particular case.

4 And -- and the example is, I think, what would  
5 happen in a case like this, if in fact the Court started  
6 actively to review Origination Clause questions, if the  
7 House had even recognized this as an Origination Clause  
8 question, and it seems to me in light of the fact that  
9 this didn't look like what -- what anyone has considered  
10 revenue bills in the past, it would be perfectly  
11 understandable why the court did not -- why the House did  
12 not recognize this as -- as presenting an Origination  
13 Clause question.

14 But suppose it had, it recognized it as a  
15 potential problem for Origination Clause, instead of  
16 simply deciding finally and for once that this was not in  
17 the House's view an Origination Clause problem, they would  
18 have had to go through the exercise of taking the statute  
19 that had been presented to them by the Senate and putting  
20 another House number on the top of it and sending it back  
21 to the Senate simply to ensure that that statute would be  
22 invulnerable to constitutional attack in the courts.

23 We submit that that really demeans the House's  
24 role and doesn't enhance it. And it is an important  
25 prerogative. It's one which the House has guarded

1 jealously. But it's also guarded it very well.

2 It's important, I think, to point out that in  
3 two hundred years there's only been one statute which has  
4 ever been struck down on Origination Clause grounds. That  
5 was struck down by a district court and the opinion in  
6 that case, I think, is manifestly incorrect.

7 So that the sum total of -- of the contribution  
8 of the judiciary in this area over -- over two hundred  
9 years in second-guessing the House, to the extent that  
10 there has been any second guessing, has been one incorrect  
11 decision.

12 QUESTION: Mr. Bryson, in Buckley against Valeo  
13 the court held that the provision in the Federal Election  
14 Commission Act providing for appointments violated the  
15 President's authority under the Appointments Clause. Now,  
16 the President signed that bill and we did not treat that  
17 as a waiver or kind of an expression of general  
18 satisfaction. I think he might have made a signing  
19 statement. I don't remember.

20 So it seems to me that -- that if -- if you're  
21 going to rely here on the kind of the general satisfaction  
22 of everybody involved with what went on, you have to say  
23 that conflicts between the House and the Senate, or  
24 possible conflicts, do not amount to the same thing as  
25 inter-branch conflicts.



1 MR. BRYSON: I think that's certainly an  
2 important feature of our argument. That what you are  
3 dealing with is not an inter-branch conflict when you are  
4 dealing with something that does not create, as I was  
5 trying to make the point with Justice Scalia -- an animal  
6 that does not exist in the Constitution --

7 QUESTION: Well, you know, they're just not  
8 going to -- (inaudible) will never be here.

9 MR. BRYSON: That's certainly true. But it will  
10 be here only if you allow an individual to come into court  
11 and claim that in spite of the satisfaction on the part of  
12 both entities of the House -- of the --

13 QUESTION: Well, that isn't conflict between the  
14 two Houses, that's a conflict between -

15 MR. BRYSON: Within --

16 QUESTION: -- some other person and both of the  
17 Houses.

18 MR. BRYSON: That's right. That's the nature of  
19 the animal and that's what we have here.

20 QUESTION: Would you agree that bicameralism is  
21 one of the most important structural components of the  
22 Constitution insofar as The Federalist papers and Framers  
23 were concerned?

24 MR. BRYSON: I would. I certainly would.

25 QUESTION: Mr. Bryson, I -- I will -- I will

1 remind the Solicitor General of the argument you are  
2 making today at the time when the House and the Senate  
3 decide that it would be much more efficient to conduct all  
4 of their business through joint committees.

5 MR. BRYSON: Well, I --

6 QUESTION: And -- and at that point I -- I will  
7 say that the Justice Department seems to have taken the  
8 position that after all this is -- this is a family  
9 affair, it's just an internal dispute within the  
10 Legislative Branch and that's really not as important as  
11 disputes between the separate branches.

12 MR. BRYSON: Well, I think -- without trying to  
13 give a global answer to all of these questions, I think it  
14 is wise to look at the language that the court used in  
15 Baker against Carr when the court said that it is  
16 necessary to make a discriminating inquiry into the  
17 precise facts and postures -- posture of each particular  
18 case and the impossibility of resolution by semantic  
19 cataloguing.

20 I think one of -- the wisdom of that point may  
21 be presented by this case in that you have to look at  
22 these things on a very narrow -- on a very narrow basis.  
23 You can't simply make sweeping assertions that perhaps  
24 by --

25 QUESTION: Precisely my point, Mr. Bryson.

1 MR. BRYSON: The -- on the merits, if I can turn  
2 to the merits now.

3 The first question presented is whether the bill  
4 in this case that's at issue was a bill for raising  
5 revenue within the meaning of this Court's precedence. We  
6 submit that if you look at the Nebeker case -- that's the  
7 Twin City Bank against Nebeker -- and the Millard case --  
8 Millard against Roberts -- it is absolutely clear that  
9 this is not a bill for raising revenue within the meaning  
10 of the Court's precedence.

11 Those cases establish the proposition that if a  
12 statute sets up a program and arranges a means to pay for  
13 that program within the statute, that the means to pay for  
14 the program do not constitute the bill -- a bill for  
15 raising revenue within the meaning of the Origination  
16 Clause even if the means for paying for the program turn  
17 out to be taxes and even if the money that's assessed goes  
18 into the general treasury.

19 This was certainly the case in the Nebeker case,  
20 the Twin City Bank against Nebeker, where the Congress  
21 imposed on national banking associations the costs of  
22 setting up a national currency system in which -- which  
23 was, as the court explained it, to benefit all the people.

24 These were, as described by the court, taxes on  
25 the national banking association. They went into the

1 general treasury. But they were, as the court explained,  
2 for the purpose of paying for the program which the  
3 Congress had set up.

4 This case follows a fortiori from that one  
5 because in this case these were not denominated taxes and  
6 the payments in this case go not into the general treasury  
7 but into a special fund for victims.

8 Now, there are certain limited circumstances in  
9 which these funds may go into the general treasury. But  
10 they are only in the rare case. And the -- the general  
11 structure of the statute is that the funds that are  
12 collected for the special assessments will go into a  
13 special fund for victims.

14 QUESTION: Well, it's your position then that if  
15 the government decided we needed a new national network of  
16 roads or needed to massively expend money to repair those  
17 we have and enacted an income tax increase for that  
18 purpose and put the money in the general revenue with the  
19 idea that it wanted to support the road building, no  
20 Origination Clause problem if the bill originates in the  
21 Senate.

22 MR. BRYSON: That's -- that's correct, Your  
23 Honor, and I think the Millard case is almost -- almost on  
24 point with that. In Millard there was a project to do  
25 railroad construction in the District of Columbia which

1 the Congress said, here's the railroad construction  
2 project and we're going to impose a property tax within  
3 the District of Columbia to pay for it. This Court said  
4 no Origination Clause problem.

5 Now, I think in that case the House might very  
6 well argue that this should have originated in the House  
7 and would very possibly reject the Senate's effort to  
8 originate that kind of legislation. But this Court's  
9 precedence would suggest that if the decision is for this  
10 Court to make, this Court would say no Origination Clause.

11 QUESTION: Well, that's a pretty extreme  
12 position. I'm not sure you have to reiterate that kind of  
13 doctrine to resolve this case.

14 MR. BRYSON: Well, you don't because this case,  
15 I think, is a good deal easier than that and I am just  
16 trying to lay out what the limits of the Court's doctrine  
17 had -- have been.

18 And I think in part what the Court is doing by  
19 setting the limits very broadly for what is going to be  
20 permitted in this area -- what the Court is doing is  
21 responding in part to the -- the difficulty -- the -- the  
22 -- the reluctance to interfere with the resolution by the  
23 House and Senate of Origination Clause problems. They  
24 are, in a sense, deferring very broadly without actually  
25 calling the question a political question.

1           That is why, I think you get decisions like  
2 Nebeker and Millard against Roberts which say that as long  
3 as you have a program which is being paid for in the same  
4 statute, that's it. You don't have to inquire any  
5 further. Now, the -- the response --

6           QUESTION: Even if the tax that's going to  
7 finance a project hits everybody?

8           MR. BRYSON: Even if it hits everybody. That's  
9 right. Which is the case in Millard, everybody within the  
10 District of Columbia. There's no reason to distinguish  
11 between a tax on everybody in the District of Columbia  
12 than a tax on everybody in the District of Columbia and a  
13 tax on everybody in the country for purposes of analysis.

14           Now, the Respondents argue that there is a  
15 difference between this case and some of the other Supreme  
16 Court cases that we have relied on. And that is, they  
17 say, that in those cases there was a quid pro quo, the  
18 person who was paying the tax was getting a benefit.

19           First of all, we think that's not so. If you  
20 look at the Nebeker case, for example, there's no direct  
21 benefit, no quid pro quo for the national banking  
22 associations that were picking up the bill for the  
23 creation of a national currency system that was to benefit  
24 everybody.

25           But, in any event, there's a more basic

1 objection to that point, which is that a -- there is no  
2 logical difference between a tax that is a -- or a fee  
3 that is imposed to -- for which one pays for a benefit and  
4 a fee that one pays in order to compensate the government  
5 for a cost that one has imposed on the government.

6 Let me give you an example that I think  
7 illustrates this point. Suppose there is a \$100 fee for  
8 using the Yellowstone National Park because of a littering  
9 problem and the \$100 fee is to be used to pick up the  
10 litter. It can't make a difference in the  
11 constitutionality of that statute as to whether it is  
12 deemed to be a fee which is a benefit to a person going  
13 into the park so that he will enjoy the park's litter-  
14 free aspect versus a case in which he is being charged a  
15 fee because of what he may have contributed, or members of  
16 his class may have contributed, to the costs of picking up  
17 the litter. It's the same thing. It is just two sides of  
18 the same coin.

19 In this case you have a class of people --  
20 people who have committed crimes -- who, as a class, have  
21 imposed costs on others -- the victims of crime -- and  
22 Congress has decided to impose on that class, the people  
23 who have committed crimes, the costs, or some of the costs  
24 of that event, which have been suffered by -- by victims.

25 There is a one-for-one, quid pro quo of sorts --

1 a negative quid pro quo that's perfectly consistent with  
2 the Respondent's argument except that isn't a so-called  
3 benefit to the -- to the member of the class that's paying  
4 the fee.

5 Finally, on origination, I would point out that  
6 this statute passes almost any test you could possibly  
7 imagine for origination.

8 The House was the first chamber to propose  
9 special assessments in the form that they first passed.  
10 It was the first to pass the precise language that finds  
11 its -- that found its way into the Special Assessments  
12 Act. It was -- the House introduced the bill in which  
13 that language was ultimately found.

14 QUESTION: What if the -- what if the Senate is  
15 the first one to conceive of -- of the bill on -- on that  
16 theory? I mean, let's assume that a Senate Committee had  
17 first devised the notion, then the Senate would have  
18 originated the bill, right?

19 MR. BRYSON: I don't think so. Our position,  
20 Your Honor, is that there are any number of different ways  
21 that a bill can be deemed to have originated in the House.

22 The fact that there are -- there are -- that the  
23 Senate may have thought of the bill first, doesn't  
24 foreclose the House from considering that it has  
25 originated the bill if it first passes --



1 QUESTION: The fact that the House thought of it  
2 first means that it originated in the House, but the fact  
3 that the Senate thought of it first does not mean that it  
4 originated in the Senate.

5 MR. BRYSON: It sounds -- it sounds odd, but I  
6 think that --

7 QUESTION: Yes, it does.

8 MR. BRYSON: -- that's the answer. Because  
9 otherwise --

10 QUESTION: It has to be the answer or you lose.

11 MR. BRYSON: Well, I -- not necessarily, Your  
12 Honor. But -- because in this case I think there are any  
13 number of different tests which are perfectly presentable,  
14 all of which come out the same way, as House originated.

15 Now, the only test that points in the direction  
16 of Senate origination is one which we think is an invalid  
17 test and that is the argument that Respondent makes that  
18 it is the House that first puts the final language into  
19 the package that has the number that finally passes.

20 The only thing the Senate did in this case with  
21 respect to the Victim Protection Act, was to take a House  
22 bill that had that Act in it and had been passed by the  
23 House, and stick it on to another House bill which did not  
24 have that language into it and then pass it and send it  
25 back to the House.

1 Your Honor. The only thing the Senate contributed to this  
2 case, and it says, was a staple, stapling the two bills  
3 together. And yet this is deemed to be dispositive in  
4 favor of saying it was Senate originated. That can't be.  
5 that this If the House -- if the Senate had taken the two  
6 bills and turned them upside down so that the bill that  
7 had the Victim Act in it had -- that bill's number was the  
8 bill number that passed, then even Respondent would say  
9 this originated in the House.

10 QUESTION: Yes, but you would say it originated  
11 in the House if the converse happened, wouldn't you?

12 MR. BRYSON: Yes, we would. Because we say that  
13 any number of different ways that -- of conceiving  
14 origination will satisfy the Origination Clause. They  
15 aren't necessarily -- Mr. Chief Justice, and may it

16 please the QUESTION: The test is heads I win, tails you  
17 lose. The basic theme of the government's brief and

18 the govern MR. BRYSON: It is -- that -- it is a heads we  
19 win, tails we lose because of the difference -- tutionality

20 of the as QUESTION: Why? Why? I mean -- quence in which

21 the bill MR. BRYSON: Because -- because otherwise you  
22 get into the -- are other than the House of

23 Represent QUESTION: Because otherwise you lose. ad in this

24 case, who (Laughter.) se in fact the language of the House

25 was passe MR. BRYSON: No. Otherwise the House loses, So

1 Your Honor.

2 (Laughter.)

3 MR. BRYSON: Otherwise the House loses. I think  
4 the House is deprived of its right to make a determination  
5 that this is sufficient to satisfy the origination  
6 interests.

7 QUESTION: General Bryson, I suppose we don't  
8 have to get to this issue if you prevail on the other one,  
9 whether it's a bill for raising revenue.

10 MR. BRYSON: That's right. Thank you.

11 QUESTION: Thank you, Mr. Bryson.

12 Ms. Clarke.

13 ORAL ARGUMENT OF JUDY CLARKE

14 ON BEHALF OF THE RESPONDENT

15 MS. CLARKE: Mr. Chief Justice, and may it  
16 please the Court:

17 The basic theme of the government's brief and  
18 the government's argument really is who cares. Munoz pays  
19 an assessment and he complains about the constitutionality  
20 of the assessment simply because of the sequence in which  
21 the bill passed the Congress.

22 Who cares other than the House of  
23 Representatives about the sequence of bills. And in this  
24 case, who cares because in fact the language of the House  
25 was passed by the Senate and sent back to the House. So

1 the bottom line question is why are we here and who cares.  
2 And in reality, what the government's argument does is  
3 overlook the significance of the Origination Clause.

4 I submit to this Court that the Framers did not  
5 see it as a matter of parliamentary procedure. They did  
6 not see it as simply a matter of sequence. They saw it as  
7 something that deserved the merit of going into the  
8 Constitution.

9 They brought it basically from England where it  
10 was a matter of practice that the most democratic House  
11 controlled the purse strings. In fact, in the states in  
12 this country at the time of the Constitutional Convention,  
13 it was a matter of practice in the States.

14 QUESTION: But -- but in England, the -- the  
15 House of Lords could not amend the bill. Once you say --  
16 I mean, as this thing came out of the Convention, it was  
17 compromise between those who wanted to follow the English  
18 practice, which said it had to originate in the lower  
19 House, and no amendment was permitted in the upper House,  
20 and those who didn't want that provision.

21 So what they adopted was -- was this compromise  
22 in which it has to start in the House but once it starts  
23 there, the Senate can do anything it wants to it. Which  
24 -- you've got to admit there's not a whole -- very sharp  
25 teeth to that provision at all.

1 MS. CLARKE: It lost some strength in the  
2 compromise. There's no question. And the people -- the  
3 Framers who were very supportive of the Origination Clause  
4 were very angry about that and in fact did not sign off on  
5 the Constitution, in part, because of their  
6 dissatisfaction with the watering down of what they viewed  
7 as this very most important clause.  
8 But the fact remains is that it did remain in  
9 the Constitution. It was part of the great compromise of  
10 the Framers in the debate between the small and the large  
11 states, the power between those states. The small states  
12 wanted an equal vote in the Senate and the large states  
13 said, well, we want the power to originate money bills, to  
14 originate revenue bills, because we are representative of  
15 the people.  
16 Now the government has suggested in the briefing  
17 that popular elections of the Senators has decreased  
18 again, watered down even further the Origination Clause,  
19 when in reality it has not. The House remains the most  
20 democratic body. It's elected and unelected, if it were,  
21 every two years.  
22 The people of the United States can boot out the  
23 entire House every two years if they are dissatisfied with  
24 the way the -- they're being taxed, with the way the  
25 government is operating, with the size of the government.

1       The Senate, the people tend to forget, it's a  
2 six-year turnaround and we cannot as easily get rid of  
3 those Senators. The Senate, the same two Senators from  
4 Nevada have an equal vote as the same two Senators from  
5 California. The California Senators represent probably  
6 eleven or twelve or fifteen million people. Whereas, the  
7 Senators from Nevada represent what 350,000 to 500,000  
8 people. So the fact of popular elections has not  
9 diminished the clause at all.

10       It was the power --

11       QUESTION: Ms. Clarke, another clause of the  
12 Constitution says that a majority of each House shall  
13 constitute a quorum to do business. It's my understanding  
14 that unless there is a quorum call on the floor, it is  
15 quite common for bills to be passed when there is not a  
16 majority of the House present.

17       Is that litigable in court? Could you object to  
18 the -- to the statute that comes out of that process  
19 because there was not a quorum on the floor?

20       MS. CLARKE: I would object to that. I -- I  
21 think that before getting into a detailed discussion of  
22 that, we'd have to look at the significance the Framers  
23 gave to it.

24       However, under the precedence of this Court, I  
25 think that the enrolled bill doctrine may operate to stop

1 consideration of what went into the bill and how many  
2 people were there at the time that it was voted.

3           There is some -- some degree of a presumption of  
4 -- of -- of appropriateness when a bill comes out of the  
5 Congress. I think for the Origination Clause you would  
6 have to look at -- you would have to be able to look at  
7 the amendment of the Senate in order to give the clause  
8 any strength.

9           But yes, I believe that a litigant could come  
10 before this Court and say there was not a quorum present  
11 at the time the bill was voted on and, therefore, the bill  
12 is not valid if the Court changed --

13           QUESTION: Wow.

14           MS. CLARKE: -- the history of its precedence.  
15 But to this point, the Court has said you don't really  
16 look behind the bill. In those kinds of circumstances,  
17 you assume that the seal of the clerk counted the adequate  
18 number of yeas and nays and that the --

19           QUESTION: Why don't we assume the same here?

20           MS. CLARKE: Because you destroy the clause.

21           QUESTION: Just as you destroy the Quorum  
22 Clause.

23           MS. CLARKE: Well -- and, again, I say before we  
24 could get into the meat of that clause, we would have to  
25 look at the significance of the clause. If in fact, the

1 Quorum Clause --

2 QUESTION: The Quorum Clause is a lot more  
3 significant than this clause. This clause just -- just  
4 does not have that many teeth.

5 MS. CLARKE: Well, as I say, I believe that a  
6 litigant could come before this Court and say there was  
7 not a quorum, the bill was invalid.

8 QUESTION: Well, I think you'd probably have to  
9 say --

10 MS. CLARKE: I think both of us have to say  
11 probably several things.

12 (Laughter.)

13 MS. CLARKE: The who cares argument really wraps  
14 very easily and very appropriately into the political  
15 question issue. And the government acknowledges, I think,  
16 as it has to, that this Court has -- has addressed the  
17 clause four times, that there is no textual commitment,  
18 and that in reality by finding a political question here ,  
19 the Court would be writing itself out of separation of  
20 powers litigation completely.

21 As has been pointed out this morning. the  
22 President gave up the presentment right in Chadha when he  
23 signed the Immigration and Nationality Act. The President  
24 gave up the appointment right in Buckley v. Valeo when --  
25 when the President signed the Federal Election Campaign



1 Act.

2 And if the Court decides that the House gave up  
3 the prerogative of origination when it passed the bill,  
4 then the Court in reality would be writing itself out of  
5 political -- out of separation of powers cases. And I  
6 think that would be a very dangerous step for the Court  
7 and -- and one that is not necessary at all.

8 The government's position is that in reality the  
9 Court would be showing a lack of respect for the House.  
10 Not at all. Any time the Court strikes a statute as  
11 unconstitutional, that's, I suppose, a lack of respect for  
12 the House and the Senate because they've passed the bill  
13 in fact.

14 The House has never assumed that it has the sole  
15 power over the -- enforcing the Origination Clause. And  
16 in fact in the briefs -- throughout the briefs there's a  
17 debate throughout the history of the House and Senate  
18 about what the Court would say and what the Court would do  
19 and that the Court has the final control over  
20 constitutionality.

21 That the Court -- that the House has the ability  
22 to enforce the Origination Clause is really irrelevant.  
23 The House has the ability not to pass unconstitutional  
24 laws. The House has the ability and, in fact, has the  
25 constitutional obligation to enforce the Constitution and

1 to act in a manner that it believes is constitutionally  
2 appropriate.

3 The significant thing here that distinguishes  
4 this case is that the House simply didn't discuss it. The  
5 Court may be in a little bit more different situation or  
6 in a deferential situation perhaps, if in fact the House  
7 had debated the clause or the applicability of the clause.  
8 But you don't have that here.

9 The government argues that there are a lack of  
10 judicially manageable standards. Its definitions, its  
11 legislative history, its -- the circuits have addressed  
12 the Origination Clause most recently really in the TEFRA  
13 litigation, the Tax Equity and Fiscal Responsibility Act.  
14 The states routinely address their own origination clauses  
15 and, in fact, this Court has -- has addressed the clause.

16 To the merits. Is this a bill for raising  
17 revenue? I, of course --

18 QUESTION: What has been the -- what has been  
19 the view of the House with respect to court authority to  
20 adjudicate Origination Clause cases?

21 MS. CLARKE: Well, the --

22 QUESTION: Has -- has there been any clear view?

23 MS. CLARKE: I don't know that there has been  
24 any clear view except for the fact that the House --  
25 members of the House have debated what the Court would do

1 with this piece of litigation if they don't take care of  
2 the origination problem themselves.

3 I know in the District of Columbia case --

4 QUESTION: Have they relied on prior cases as to  
5 whether or not this one kind of a bill or another?

6 MS. CLARKE: Yes. There's been great discussion  
7 of the Nebeker and Norton and Miller cases in the debates  
8 of the Congress over the -- over the clause. And, in fact  
9 members of the House attempted to bring a lawsuit in the  
10 District of Columbia over TEFRA, to stop the TEFRA bill  
11 from -- from passing out of -- out of a concern that it  
12 was violating the Origination Clause. So there has been  
13 some concern of the House and an acknowledgment that the  
14 Court is actively involved.

15 But, to the merits. Is it a bill for raising  
16 revenue? We agree, as would be expected, with the Ninth  
17 Circuit's position on that.

18 There is nothing on the face of the assessments  
19 provision that says what it is except that it stands alone  
20 as a part of Title 18, not within the penalty provisions  
21 of Title 18 but it stands alone as a mandatory assessment  
22 provision.

23 If you look to the legislative history, the  
24 legislative history says basically that it will generate  
25 needed income to offset the cost of the victim's fund and

1 will constitute new income for the federal government.

2           There is a cap on the size of the fund. Now,  
3 Congress has raised that cap since 1984 from, I think it  
4 started at \$100 million and now it is up to \$150 million.  
5 And there is an end to the life of that fund. Originally  
6 1988 was to end the fund. Now 1994 is to end the fund.  
7 So there is a time where the monies going into that fund  
8 will stop going into that fund and will go into the  
9 general treasury.

10           In -- in fact in fiscal year 1986, a report of  
11 the Attorney General indicates that out of a concern over  
12 the budget deficit, \$3.2 million of that assessment money  
13 was held -- or, of the fund money was held from the fund  
14 to assist with deficit problems. So, we agree with the  
15 Ninth Circuit that in fact the bill was one for raising  
16 revenue.

17           QUESTION: How do you distinguish the Nebeker  
18 case on that point, Ms. Clarke?

19           MS. CLARKE: With the National Banking Act.  
20 Nebeker and Norton and Roberts, the three cases really to  
21 deal more directly with the issue, were situations where  
22 you pay and you get. There is a direct relationship  
23 between the person paying the tax and the person receiving  
24 the benefit in Nebeker, the National Banking Act. Those  
25 banks that chose to become part of the national currency

1 system paid the fee and they got the direct benefit in  
2 return.

3 The same thing happened in -- in Norton with the  
4 postal money order system.

5 QUESTION: What -- what was the direct benefit  
6 that the banks got in Nebeker?

7 MS. CLARKE: An ability to become -- to  
8 participate in the --in the currency system and to have  
9 their currency freely traded among all of the banks.

10 The banks could choose not to go into the  
11 national -- become part of the National Banking Act. They  
12 could choose not to pay that fee and not to participate in  
13 the system. But the -- the Act was really set up to  
14 encourage the banks to become part of this system because  
15 they would in the long run stand to make money and to do  
16 better if they participated in the system. But they paid  
17 and they got.

18 In Norton, the postal money order system, you  
19 pay, you get. You pay for the postal money orders, you  
20 get the benefit of using the postal money orders. There  
21 was a direct relationship.

22 Now I agree the that the Court has never really  
23 in those three cases discussed the fact of the direct  
24 relationship. But I think a reading of those three cases  
25 compels the conclusion that it's a pay as you go. I pay.

1 I get.

2 And in this case the incidental revenue test  
3 simply doesn't work unless it's a you pay, you get.  
4 Because in reality, the question that Justice O'Connor  
5 asked, could happen. The Senate could originate special  
6 purpose legislation, identify a class of people to be  
7 taxed, identify a purpose and avoid the origination  
8 requirement. We could write the Origination Clause out of  
9 the Constitution, if the incidental revenue test is read  
10 in any manner other than to compel a direct relationship  
11 between the person paying and the person receiving.

12 The government, in order to defeat the revenue  
13 raising argument, has also argued that the clause -- that  
14 the assessment provision is in reality a penalty, a  
15 criminal sanction and they point really to two -- two  
16 identifiable things. One, the assessment is a consequence  
17 of a criminal conviction. Yes, it is. Two, the amount of  
18 the assessment differs between a felony and a misdemeanor.  
19 Yes, it does.

20 But that is where the similarity with penalties  
21 stops entirely. It is not in the sentencing provisions of  
22 Title 18. It is not identified in the statute in Title 18  
23 that identifies sentencing options -- probation, fine,  
24 imprisonment, notice to victims, forfeiture and  
25 restitution.

1           It is not one of the identified sentencing  
2 options. It is not in any way connected to the defendant.  
3 It is not in any way connected to the harm caused by the  
4 defendant which traditional sentencing, even under the  
5 Sentencing Reform Act, is connected -- the harm is  
6 connected to the -- to the penalty.

7           It is not like a fine except in the manner in  
8 which it's collected, because in imposing a fine the Court  
9 is statutorily mandated to consider the ability of the  
10 defendant to pay, the burdens on the defendant's family  
11 should he or she have to pay a fine, the amount of the  
12 illegal gain to the defendant. There are statutorily  
13 defined considerations in imposing a fine.

14           QUESTION: For the -- for the quantity of it.  
15 But above -- below the minimum you have to impose the  
16 minimum.

17           MS. CLARKE: I'm sorry.

18           QUESTION: If the -- if the statute provides for  
19 a fine in a certain range, the discretion only extends up  
20 from the minimum.

21           MS. CLARKE: To my knowledge, there are no  
22 statute that -- that require a minimum payment of a fine.  
23 I think they would run into severe equal protection  
24 problems and I think that probably is why the statutes  
25 don't. Now, there are statutes that require a minimum in

1 term of imprisonment minimum -- a minimum and then there's  
2 a maximum range.

3 But to my knowledge, there are no criminal  
4 statutes that require the minimum imposition of a fine.  
5 Now, the sentencing guidelines superimpose on top of the  
6 -- of the criminal code. But the guidelines also  
7 themselves say look to the ability of the defendant to pay  
8 and do not impose a fine unless the court finds that the  
9 defendant has the ability to pay. So it's a different  
10 situation.

11 Also in the -- in the failure to pay a fine.  
12 That can be a revocation of probation. You can be  
13 resentenced for failing to pay a fine and you can be  
14 prosecuted for the willful failure to pay a fine. These  
15 assessments are treated completely differently. They are  
16 simply collected bureaucratically in the same way that --  
17 that a fine is collected.

18 The argument that the government makes today on  
19 where did the bill originate, when you get right down to  
20 it, what the government seeks to do is to have -- is to  
21 shield from scrutiny a Senate amendment of a House bill.

22 The government in reality says the House passed  
23 a bill 648, the joint resolution, and the House passed  
24 5690 and the House sent 648 over to the Senate and then  
25 the House sends 5690 over to the Senate and by means of a



1 staple, the Senate packs the two together and sends them  
2 back to the House.

3 That's not what happened. 648 passes, 5690 --  
4 we need to look at what 648 was. It was the continuing  
5 appropriations for fiscal year 1985, it was us running the  
6 government basically. And the House tacked onto that the  
7 Senate crime bill, S.1762, that the Senate had passed in  
8 February, This is September.

9 So the House chose to take the Senate crime bill  
10 together with the appropriations bill and send it to the  
11 Senate. 5690 was the House anti-crime bill. Many of the  
12 provisions were similar to S.1762 that had already gone.  
13 They passed 5690 and sent it over to the Senate. What the  
14 Senate does is take language from 5690. They don't by  
15 means of a staple, tack 5690 on to 648. They take  
16 language from 5690 and send it back to the House.

17 QUESTION: Ms. Clarke, was there any substantial  
18 opposition to either of these bills?

19 MS. CLARKE: Well, no. And you have to look at  
20 -- at the way these bills have raced through the Congress.

21 QUESTION: Well -- the reason for my question is  
22 -- we're really talking about a fairly technical violation  
23 of the clause in question here, the -- the Origination  
24 Clause. It -- it doesn't look as if the Senate were  
25 trying to strong-arm the House or something like that.

1 MS. CLARKE: By -- by its very nature, the  
2 Origination Clause is talking about who passes it first  
3 and -- and by its very nature, you can always say, well,  
4 the House passed it ultimately. Who cares?. It was a  
5 technical violation. You can say that about the search  
6 warrant that the police officer could have gotten but  
7 didn't.

8 QUESTION: Yes -- yes, but somehow the search  
9 warrant that the police officer could have gotten but  
10 didn't doesn't seem quite the same to me in terms of -- of  
11 what we're talking about as a practical matter.

12 And I realize its in the Constitution and  
13 perhaps it should be enforced just as rigorously as any  
14 other provision. But it -- it just does not seem that it  
15 amounts to much more within the technicality of this  
16 particular case.

17 MS. CLARKE: Well, here's the problem. It calls  
18 upon the Court to evaluate the test for origination and  
19 the government suggests there can be a variety of ways to  
20 originate bills.

21 Origination indicates, by its very language,  
22 that you originate once. If the language test is the test  
23 adopted by the Court, then this Court would completely  
24 topsy-turvy the existing procedures of the House which  
25 this case, from Respondent's point of view, does not

1 require the Court to do.

2 Right now, if the Senate passes a revenue bill  
3 and sends it to the House and the House is now considering  
4 a revenue bill and it's the same revenue bill, let's say.  
5 It is the same language. The staffers have talked and the  
6 Senate just gets their bill over to the House first.

7 The House will not simply insert its own  
8 language after the enacting clause. They will set the  
9 Senate bill aside. They will table the Senate bill and  
10 they will pass the same bill with a House number on it and  
11 send it back to the Senate.

12 If the language test is the test for  
13 origination, it will stop that procedure from happening  
14 because the Senate would have passed the language first.

15 MS. CLARKE: But you don't understand. The  
16 language test only applies when the result is to say that  
17 it did originate in the House. Then the language test  
18 applies. The language does not apply --

19 MS. CLARKE: Well, that's exactly right. That's  
20 the problem. That's exactly -- could we trade places for  
21 just a moment?

22 (Laughter.)

23 MS. CLARKE: That's exactly right. A further  
24 problem with the language test is the context in which the  
25 language comes from and gets stuck into. We've had cases,

1 arguments, hours and hours over commas and semicolons,  
2 capital letters and breaks in sentences.

3 So the language test could throw us into an  
4 enormous problem with -- with the Origination Clause and  
5 it would also stop the House from doing precisely what  
6 it's done for hundreds of years. And that is take Senate  
7 language and turn it into a House bill.

8 The clause does not say all language raising  
9 revenue. It says all bills raising revenue. We're not  
10 talking about language, we're talking about bills.

11 QUESTION: May I ask you perhaps a stupid  
12 question?

13 When in your view did this piece of legislation  
14 first earn the title of being a bill for raising revenue?  
15 At what stage in the legislative process did it become a  
16 bill? Was there a bill for raising revenue that was later  
17 enacted?

18 MS. CLARKE: It was always a bill for raising  
19 revenue because of --

20 QUESTION: Well, what do you --

21 MS. CLARKE: -- because of the arguments --

22 QUESTION: -- mean by always because you have  
23 got both Senate and House and -- at what point in time  
24 would you say this bill originated, the bill for raising  
25 revenue?

1 MS. CLARKE: When the Senate stuck it into the  
2 bill that passed. When the Senate stuck it --

3 QUESTION: In other words, when the two -- when  
4 the two pieces previously passed by the House were stapled  
5 together as your opponent described.

6 MS. CLARKE: It was not a stapling together --

7 QUESTION: Well, but whenever that happened --

8 MS. CLARKE: Yes, in the Senate.

9 QUESTION: And then -- and the Senate gave it a  
10 new number at that time?

11 MS. CLARKE: No. It went back as H.J. Res. 648.  
12 It was still part of the House bill. It was -- in reality  
13 what we've got is an amendment to the House bill. And the  
14 question is -- then becomes, can the Senate amend a House  
15 appropriation and crime bill. And we get to really the  
16 final argument of -- of the case. The government wants  
17 the Court to --

18 QUESTION: Well, just be sure -- I want to be  
19 sure I haven't lost your answer. I don't mean to  
20 interrupt, but you're saying when the Senate passed the  
21 amended version of H.J. 648, that was when it was first a  
22 bill for raising revenue?

23 MS. CLARKE: That was when it originated.

24 QUESTION: When it originated.

25 MS. CLARKE: Yes.

1 QUESTION: Thank you.

2 MS. CLARKE: The amendment process --

3 QUESTION: Of course, there's -- there's a  
4 textual problem with that because it couldn't be in the  
5 language of Section 7 a bill for raising revenue unless it  
6 originated in the House.

7 MS. CLARKE: Well, that -- that would be the  
8 tail chasing the cat.

9 QUESTION: Well, that's what the Constitution  
10 says.

11 MS. CLARKE: It's --

12 QUESTION: One of the requirements for it to be  
13 a bill for raising revenue is that it must have originated  
14 in the House.

15 MS. CLARKE: Well, no, I think that is backwards  
16 --that bills for raising revenue must originate in the  
17 House, not just because they originate in the House they  
18 are bills for raising revenue. That --

19 QUESTION: Well, it can be a bill even though it  
20 did not -- it can be a bill -- well, I understand what  
21 you're saying but I'm not sure it squares with the text.

22 MS. CLARKE: All bills for raising revenue must  
23 originate in the House of Representatives.

24 QUESTION: And so --

25 MS. CLARKE: Therefore, if it originates in the

1 House --

2 QUESTION: Ergo something that doesn't originate  
3 in the House is not a bill for raising revenue.

4 (Laughter.)

5 MS. CLARKE: Well, then I could never be here.  
6 You're right. If -- if the case is decided that way, we  
7 might as well go off on political --

8 QUESTION: -- not justicial because the House  
9 can always cure it.

10 MS. CLARKE: There you go. That's what I was  
11 going to say. We could just go off --

12 QUESTION: No, your argument then would be --  
13 let me -- let me trade places with you for a minute --

14 (Laughter.)

15 MS. CLARKE: Happily.

16 QUESTION: Your argument then would be that when  
17 it became a bill for raising revenue -- when it first  
18 passed the House and it never subsequently passed the  
19 Senate.

20 MS. CLARKE: It became a bill for raising  
21 revenue when it first passed the House. When the House  
22 passed the bill it didn't have revenue in it.

23 QUESTION: No. I'm saying when it went to the  
24 House -- the House later passed it didn't it?

25 MS. CLARKE: That's right. But the House

1 didn't --

2 QUESTION: But if that's the first time it  
3 became a bill for raising revenue, did the Senate pass it  
4 a second time --

5 MS. CLARKE: You never had the question.

6 QUESTION: -- and the answer is no.

7 MS. CLARKE: Yes, the Senate passed it a second  
8 time. But it originated in the Senate. You would never  
9 have the question if you have that kind of circularity.

10 QUESTION: Yes, you would.

11 QUESTION: Don't you need some --

12 QUESTION: You would never have to be here.

13 MS. CLARKE: Thank you, Mr. Justice White.

14 QUESTION: Don't you need some --

15 QUESTION: And you would lose.

16 QUESTION: -- additional language that --

17 MS. CLARKE: No, we don't want that.

18 QUESTION: -- language like bills and amendments  
19 must originate in the House?

20 MS. CLARKE: Well, in reality we do have that  
21 because the -- but the Senate may propose or concur with  
22 amendments as on other bills as has been read to me --

23 QUESTION: I'm talking about the one phrase --  
24 all revenue bills must originate in the House.

25 MS. CLARKE: That's correct.



1 QUESTION: If it said all bills and amendments  
2 must originate in the House, you'd be pretty --

3 MS. CLARKE: It doesn't say that. But it --

4 QUESTION: It sure doesn't.

5 MS. CLARKE: No, it doesn't.

6 QUESTION: And that is your problem.

7 MS. CLARKE: No, I don't think that's -- that's  
8 my problem at all. That would be more the -- the  
9 government's problem. Because the Senate can amend a  
10 House revenue bill, but the bill, as it comes to the  
11 Senate, must be a revenue bill and 648 was not a revenue  
12 bill.

13 Now, that's where we get into the final argument  
14 basically and that is can the Senate amend a House  
15 appropriations bill? I say we don't have to reach that in  
16 this case because, as the district court found, and the  
17 government didn't complain and, as the court of appeals  
18 found, the amendment was to crime control. And you don't  
19 even have to go beyond and look at the appropriations.

20 And if you do go beyond and look at the entirety  
21 of the bill, nothing in 648 -- I don't think this Court  
22 has to address the appropriation context, but nothing in  
23 648, either the appropriations portion or the crime  
24 portion, were revenue raising. And that's the bottom  
25 line.

1 If there are not further questions.

2 QUESTION: Well, I'm -- I'm curious -- I assume  
3 it's -- I assume it's the same answer you gave to the  
4 quorum provision. But what about the horrible that the  
5 government put forward, and that is the President returns  
6 a vetoed bill to the wrong House --

7 MS. CLARKE: I think that --

8 QUESTION: -- and -- and then they proceed to  
9 override but in the wrong sequence?

10 MS. CLARKE: I think that they could simply redo  
11 the bill and repass it to the President.

12 MS. CLARKE: Oh, I know that they could, but  
13 they didn't. They did it in the wrong order and the bill  
14 is then promulgated and there is a lawsuit and you --

15 MS. CLARKE: I think there's a problem with  
16 that. I think I have to say that.

17 QUESTION: Thank you, Ms. Clarke.

18 Mr. Bryson, you have three minutes remaining.

19 REBUTTAL ARGUMENT OF WILLIAM C. BRYSON

20 ON BEHALF OF THE PETITIONER

21 MR. BRYSON: Thank you. Briefly, on the  
22 question of Nebeker and whether this was a voluntary  
23 contribution as it was characterized, I think, by the  
24 Respondent. Sure, the national banks associations could  
25 have stop being national banking associations and wouldn't

1 have had to pay the tax that was imposed on them. But I  
2 could avoid the income tax by quitting my job.

3 The fact is that as long as they wanted to  
4 remain in the national bank system, they were required to  
5 pay the tax for a benefit which the Court specifically  
6 described as being for all the people. So this isn't a  
7 quid pro quo.

8 And in any event, this case satisfies the test  
9 -- the very test that Respondent argues for which is, and  
10 I think I am quoting -- "a direct relationship between the  
11 person paying and the person receiving."

12 The person paying here is the person who is  
13 engaged in crime. The person receiving is a person who is  
14 a victim of crime. This was very specifically  
15 acknowledged by Congress to be a direct relationship  
16 between the person who caused the injury and the person  
17 who suffered the injury. So it does satisfy the quid pro  
18 quo. It's a negative quid pro quo.

19 QUESTION: No, but it's not the government  
20 giving and -- and the taxpayer receiving. I mean, it's  
21 quite a different thing.

22 MR. BRYSON: No, because the government is  
23 acting as a stakeholder for the --

24 QUESTION: And in a sense you say, no, it's for  
25 the benefit of all the people. Well, every statute is for

1 the benefit of all the people. The government doesn't  
2 pass any statute that isn't purportedly for the -- for the  
3 common good, not for the

4 MR. BRYSON: Well, it is --

5 QUESTION: Right?

6 MR. BRYSON: It was deemed to be the common good  
7 to benefit this particular class of individuals. It was  
8 the class that was unknowable in advance.

9 QUESTION: That's all that she was saying about  
10 the earlier cases that -- that, sure, they -- they  
11 benefitted all the people ultimately but proximately they  
12 benefitted the banks.

13 MR. BRYSON: Well, but proximately, we submit  
14 that -- that it didn't benefit the banks. The banks  
15 happened to achieve a general benefit of being able to  
16 participate in a more efficient system. But it was not a  
17 case in which they were getting something for which they  
18 were paying and getting full value for what they were  
19 paying.

20 They were supporting a system that was a  
21 nationwide currency system that was having some marginal  
22 benefit to them no doubt. But basically it was for the  
23 purpose of benefitting all the people.

24 QUESTION: You -- you cannot characterize this  
25 as using the courts to aid victims?

1 MR. BRYSON: It is in a sense using the courts  
2 to aid victims in that the courts are one of the agencies  
3 that collects the money that ultimately goes to the  
4 victim. But it is Congress that has set up a system under  
5 which the victims are to be the beneficiaries and the  
6 defendants are to be the people who are supporting, in  
7 part, this program.

8 QUESTION: So this is not like a user fee -- the  
9 use of the courts, even though it's involuntary. It's  
10 somewhat twisted --

11 MR. BRYSON: I think not good use of the courts.  
12 It is a fee imposed on people who impose costs on others  
13 just as in my example, the fee charged to people who use  
14 the national park in order to clean up the litter that  
15 they have left.

16 The sunset provisions of the Act were designed,  
17 as the legislative history makes clear, not to allow all  
18 this money to go into the treasury at the end of X period  
19 of time, but to enforce -- to force Congress to reconsider  
20 the statute.

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

23 (Whereupon, at 11:02 a.m., the case in the  
24 above-entitled matter was submitted.)

25

CERTIFICATION

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#88-1932 - UNITED STATES, Petitioner V. GERMAN MUNOZ-FLORES

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