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Comment, United States v. Ptasynski: A Windfall for Congress

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COMMENT, *UNITED STATES V. PTASYNSKI*: A WINDFALL FOR CONGRESS

I. INTRODUCTION

> [The power of Congress to collect taxes from the states] is a power, sir, to burden us with a standing army of ravenous collectors—harpies, perhaps, from another state, but who, however, were never known to have bowels for any purpose but to fatten on the life-blood of the people. In an age or two, this will be the case; and when the Congress shall become tyranical, these vultures, their servants, will be the tyrants of the village, by whose presence all freedom of speech and action will be taken away.[1]

This fear, stated so vitriolically in 1787, no doubt constituted a prophecy fulfilled when viewed through the eyes of the plaintiffs challenging the Crude Oil Windfall Profit Tax Act of 1980[2] (Act) in *United States v. Ptasynski*.[3] Substantively, the complaint paralleled the prophecy by accusing Congress of stepping beyond its constitutionally limited power to tax.[4] The Supreme Court, by unanimously reversing the opinion of the United States District Court for the District of Wyoming and upholding the constitutionality of the Act,[5] further extended the already broad discretion of Congress to impose taxes pursuant to its constitutional power. Following *Ptasynski*, Congress may frame an excise tax in geographic terms as long as the geographic classification used does not in fact discriminate against specific geographic areas.[6] This comment will analyze *Ptasynski*'s consistency with previous Supreme Court interpretations of the uniformity clause's[7] limitation on Congress' taxing power, and will discuss the decision's practical and legal consequences.

II. FACTS OF THE CASE AND THE DISTRICT COURT'S OPINION

A. *The Alaskan Oil Exemption*

On April 2, 1980, President Carter signed the Crude Oil Windfall Profit Tax Act of 1980,[8] thereby setting into law a means for the federal govern-

1. P. SMITH, THE CONSTITUTION—A DOCUMENTARY AND NARRATIVE HISTORY 242 (1980) (quoting William Symes, delegate to the Massachusetts State Assembly on the ratification of the Constitution).

2. I.R.C. §§ 4986-4998 (1982).

3. 103 S. Ct. 2239 (1983).

4. *See* Ptasynski v. United States, 550 F. Supp. 549, 552 (D. Wyo. 1982), *rev'd*, 103 S. Ct. 2239 (1983).

5. *See* United States v. Ptasynski, 103 S. Ct. 2239 (1983), *rev'g*, 550 F. Supp. 549 (D. Wyo. 1982).

6. *See* 103 S. Ct. at 2245.

7. U.S. CONST. art. I, § 8, cl. 1. This section provides in relevant part that "Congress shall have Power To lay and collect Taxes, Duties, Imports and Excises . . . but all Duties, Imports and Excises shall be uniform throughout the United States." *Id.*

8. Pub. L. No. 96-223, 94 Stat. 229 (codified in scattered sections of 26 U.S.C. (I.R.C.) (1982)).

ment to capture billions of dollars of revenue by taxing the "windfall profit" realized on the production of decontrolled domestic oil.[9] Pursuant to Title I of the Act,[10] different classifications of domestic oil are subject to tax rates ranging from thirty to seventy percent.[11] Each classification, or "tier," contains oil types defined by manner of production, quality of oil, or date production began from a well.[12] Essentially, though, four categories of crude oil exist for purposes of the Act: taxable oil in tiers 1, 2, and 3, and exempt oil.[13] This last category contains six classifications of oil which are exempt from "windfall profits" taxation, one of which is "exempt Alaskan oil."[14] The Alaskan oil exemption is the only exemption delineated solely by geographical terms.[15] For domestic crude oil to be classified as exempt Alaskan oil it must be obtained from a reservoir from which oil is being produced in commercial quantities through a well located north of the Arctic circle, or from a well located on the north side of the divide of the Alaskan-Aleutian Range and at least seventy-five miles from the nearest point on the Trans-Alaska Pipeline System.[16]

B. *The District Court's Decision*

Six months after the effective date of the Act, independent oil producers brought suit in the United States District Court for the District of Wyoming alleging that the windfall profit tax was unconstitutional.[17] The basis for this claim was the uniformity clause,[18] which prohibits excise taxes (such as

9. The "windfall profit" is the difference between a statutory base price and the higher price at which domestic crude oil can be sold as a result of the gradual decontrol of crude oil prices which began on June 1, 1979. *See* I.R.C. §§ 4988(a), (c)(1), 4989 (1982). This "windfall profit" is the amount the Executive Branch believed would accrue to oil producers once domestic oil was deregulated; both President Carter and the Congress supported the imposition of an excise tax on the production of domestic crude in order to divert the large profits created by decontrol into a national energy program. *See* S. REP. NO. 394, 96th Cong., 2d Sess. 1,1 (1980), *reprinted in* 1980 U.S. CODE CONG. & AD. NEWS 413; H.R. REP. NO. 304, 96th Cong., 2d Sess 2, *reprinted in* 1980 U.S. CODE CONG. & AD. NEWS 589.

The government estimates that the net windfall profit tax revenue collected on domestic oil from the inception of the tax through the end of the 1987 fiscal year will be approximately 76 billion dollars. Appellant's Jurisdictional Statement at 8, United States v. Ptasynski, 103 S. Ct. 2239 (1983).

10. Title I of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, §§ 101-103, 94 Stat. 229, 230-56 (codified at I.R.C. §§ 4986-4998, 6076, 6050C, 7421 (1982)).

11. *See* I.R.C. § 4987 (1982).

12. *See id.* § 4991.

13. *See id.*

14. *See id.* § 4991(b)(3). The other categories of exempt oil are: oil from qualified governmental or charitable interests, Indian oil, front-end oil, exempt royalty oil, and exempt stripper well oil. *Id.* § 4991(1), (2), (4)-(6).

15. *Compare id.* § 4994(e) (defining exempt Alaska oil) *with id.* § 4994(a)-(d), (f), (g) (defining other categories of exempt oil).

16. *Id.* § 4994(e). Exempt Alaskan oil does not include production from the Sadlerochit reservoir on the Alaskan North Slope, an area rich in oil reserves and production. *Id. See also id.* § 4996(d)(3).

Legislative history reveals that the Alaska exemption was enacted because Congress was concerned that "taxation of this production would discourage exploration and development of reservoirs in areas of extreme climatic conditions." JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE, H.R. REP. NO. 817, 96th Cong., 2d Sess. 103 (1980), *reprinted in* 1980 U.S. CODE CONG. & AD. NEWS 642, 656.

17. *See* 103 S. Ct. at 2242.

18. U.S. CONST. art I, § 8, cl. 1.

the windfall profit tax) which are not "uniform throughout the United States."[19] Plaintiffs claimed that inclusion of the Alaskan oil exemption precluded the geographical uniformity required of an excise tax, rendering the Act unconstitutional and entitling them to a refund of windfall taxes already paid.[20]

On cross-motions for summary judgment, the court concluded the issues were ripe for review[21] and held that the "exempt Alaskan oil" provision rendered the Windfall Profit Tax Act unconstitutional when measured against the uniformity clause.[22] The court recognized Congress' extensive power to tax, but held that geographical uniformity, the constitutional limitation expressly and "unequivocally" applicable to excise taxes, was violated by the Alaskan oil exemption.[23] Although the production and removal of crude oil did not take place at the same time or in the same fashion in every state, that fact was irrelevant because the uniformity clause's underlying principle of geographical uniformity required that the Act operate "with the same force and effect in every place where the subject of it is found."[24] The court concluded that the subject of the Act was the removal of domestic crude oil,[25] and that the uniformity clause required that the removal of crude oil be taxed at the same rate regardless of where that activity took place.[26] The Act violated this requirement because "[t]he Act, on its face, says that one state, Alaska, is not subject to the same tax, at the same rate as all the other states."[27]

The district court rejected the United States' contention that a "rational justification" for the Alaskan oil exemption supported its validity.[28] The court emphasized that to be legitimate, an exemption from a tax must satisfy constitutional requirements.[29] Because the proposed exemption would violate the constitutional requirement of geographical uniformity,[30] the proposed exemption was constitutionally unacceptable.[31]

The court also rejected the United States' alternative argument that

19. *See supra* note 7. *See* Ptasynski v. United States, 550 F. Supp. 549, 552 (D. Wyo. 1982), *rev'd*, 103 S. Ct. 2239 (1983).

20. Ptasynski v. United States, 550 F. Supp. 549, 552 (D. Wyo. 1982), *rev'd*, 103 S. Ct. 2239 (1983). Plaintiffs also alleged that the Act was an unconstitutional taking, and was irrational legislation violating the due process clause of the fifth amendment, U.S. CONST. amend. V, cl. 4. 550 F. Supp. at 552. These issues were not decided by either the district court, *id.* at 555, or the Supreme Court, *see* 103 S. Ct. at 2240.

21. The United States contended that because no exempt Alaskan oil had been produced during the period for which the refund was requested, the windfall profit tax had been uniformly applied during the relevant time frame. The court rejected that argument and said that the absence of production was irrelevant. Rather, "[t]he lack of uniformity, in the Act itself, exists now, and has existed since the Act was passed. This alone is sufficient for a finding that the controversy before the Court is now appropriate for adjudication." 550 F. Supp. at 552.

22. *Id.* at 553.

23. *Id.*

24. *Id.* (quoting The Head Money Cases, 112 U.S. 580, 584 (1884)).

25. 550 F. Supp. at 553.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *See supra* notes 22-27 and accompanying text.

31. 550 F. Supp. at 553.

even if inclusion of the exempt Alaskan oil provision violated the uniformity clause, that provision was severable, allowing the remaining sections of the Act to stand as constitutionally valid.[32] The government maintained that the general separability clause set forth in section 7852(a) of the Internal Revenue Code[33] effected the validity of the remaining provisions in the Act.[34] The court observed that it would have given a separability clause specifically written into the Act "more deferential consideration,"[35] but held that the general separability clause did not itself provide a suitable basis upon which the rest of the Act could stand.[36] The court invoked legislative intent as the acid test determinative of the exemption's separability,[37] and concluded that because the Act would not have been passed without the constitutionally infirm provision intact, the Act was void in its entirety.[38]

The district court stayed the effect of its adjudication awaiting appellate consideration.[39] Hence, no refunds were issued to plaintiffs and the windfall profit tax continued to be collected pendente lite until a higher court ruled upon the correctness of the trial court's decision.[40]

III. THE SUPREME COURT DECISION

On direct appeal,[41] the Court reversed the district court and held the Act constitutional.[42] In reversing the district court's opinion, the Court sanctioned the government's argument that Congress' decision to characterize apparently similar activities as distinctive for taxation purposes is an important factor when considering a tax's constitutionality under the uniformity clause.[43] The Court held that the relevant inquiry under the

32. *See id.* at 555.

33. I.R.C. § 7852(a) (1982). This section provides that "[i]f any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby." *Id.*

34. 550 F. Supp. at 554.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* The court stated:

> [I]t is . . . clear that the Alaska exemption was the result of negotiations and compromise, and that the Act as it exists today would not have been passed without the invalid Alaska provision.
>
> . . . [T]he exemption does carry sufficient import to justify a finding that its invalidation renders the entire Act void.

Id. at 554-55.

The court also cited another basis for its decision, the impermissibility of judicial legislation. If the Act was permitted to stand, the tax would have extended to all crude oil producers in Alaska, which was a decision legislative in nature and beyond the scope of the judicial function. *Id.* at 555.

39. *Id.* at 556.

40. *See* Appellant's Jurisdictional Statement at 7 n.11, United States v. Ptasynski, 103 S. Ct. 2239 (1983) (setting forth the Court's final amended judgment).

41. The Supreme Court possessed jurisdiction over this case by virtue of 28 U.S.C. § 1252 (1982). This statute authorizes an appellant to appeal directly to the Court from a final judgment of a United States court which holds an Act of Congress to be unconstitutional in a civil action to which the United States is a party. *Id.*

42. United States v. Ptasynski, 103 S. Ct. 2239 (1983), *rev'g* 550 F. Supp. 549 (D. Wyo. 1982).

43. *See* 103 S. Ct. at 2245-46.

uniformity clause is not the words used to describe a tax classification, but is whether "actual geographic discrimination" occurs when the classification is framed in geographic terms.[44] Therefore, although Congress may frame an excise tax classification in geographic terms, it must still adhere to the stricture that the tax must, in fact, operate with uniform effect in every state where the subject of the tax is found.[45]

The Court's rationale was dependent on both prior uniformity clause decisions, and on its recent interpretations of the uniformity requirement in the bankruptcy clause.[46] The Court began its analysis by observing that the *Head Money Cases*[47] and analogies had established beyond peradventure the basic contours of uniformity clause analysis.[48] At issue in the *Head Money Cases* was the constitutionality of a duty levied against transportation companies carrying foreign passengers entering the United States by boat.[49] Plaintiffs argued that unless the tax was also applied to foreign passengers entering the United States by railroad or other land transport the tax was unconstitutional for failing to operate with intrinsic equality, *i.e.* for failing to act uniformly on all states and on all persons engaged in the business of transporting passengers.[50] The Court squarely rejected this argument by ruling that although an excise tax might operate unequally and thus be intrinsically disparate, a tax was constitutionally uniform when it operated "with the same force and effect in every place where the subject of it is found."[51] Defining the "subject" of the tax was, without question, the prerogative of Congress.[52] Consequently, although geographical considerations played a role in determining which foreign passengers were to be subject to taxation,[53] the tax was constitutional because it operated with precisely the same effect in every place in the United States where the subject of the tax (foreign passengers arriving by sea) was found.[54]

In light of the principles of geographic uniformity and congressional discretion announced in the *Head Money Cases* and reaffirmed in *Knowlton v. Moore*,[55] the Court framed the issue in *Ptasynski* as whether the uniformity clause precluded the use of geographical terms to define a class of taxable

44. *Id.* at 2245.

45. *Id.*

46. U.S. CONST. art. I, § 8, cl. 4 provides that Congress shall have the power "To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States."

47. 112 U.S. 580 (1884).

48. *See* 103 S. Ct. at 2244.

49. 112 U.S. at 589.

50. Argument for Cunard Steamship Co., The Head Money Cases, 112 U.S. 580, 583-84 (1884).

51. 112 U.S. at 594.

52. *See id.* at 595 (citing State Railroad Tax Cases, 92 U.S. 575, 612 (1875) (holding that in enacting tax statutes legislatures can draw distinctions between apparently similar classes)). *Accord* Nicol v. Ames, 173 U.S. 509, 521 (1899) (under the uniformity clause, classifications are valid when they are based on reasonable ground and are not "arbitrary, based upon no real distinction and entirely unnatural").

53. *See* 112 U.S. at 594 (recognizing that the "evil to be remedied . . . has no existence on our inland borders, and immigration in that quarter needed no such regulation").

54. *Id.*

55. 178 U.S. 41 (1900).

activities.[56] Although dictum in *Downes v. Bidwell*[57] unequivocally stated that the uniformity clause proscribed tax statutes explicitly limiting their operation to a specified geographic area,[58] the Court chose not to follow *Downes*.[59] Having eliminated *Downes* as controlling precedent, the Court acknowledged that although the purposes underlying the uniformity and bankruptcy clauses were "not identical," the Court would look to the interpretation of one to aid in the interpretation of the other.[60]

The *Regional Rail Reorganization Act Cases*[61] (*3R Act Cases*) were invoked for the proposition that Congress may resolve geographically isolated problems by enacting legislation applicable to only one region of the country.[62] In the *3R Act Cases* one of the issues was whether a reorganization statute,[63] which subjected bankrupt railroads undergoing reorganization in a specified geographical region[64] to a unique set of reorganization laws,[65] violated the uniformity requirement of the bankruptcy clause.[66] The Court held that the statute did not violate the uniformity requirement because there was no pending railroad reorganization proceeding outside the defined region during the period that the Act applied.[67] Thus, the Act in fact operated uniformly throughout the United States upon all members of the class of debtors and creditors affected: no creditor's right to obtain relief was restricted by the regional limitation.[68]

In explaining its decision to allow the legislation to stand despite the limited class of debtors and creditors affected and despite the reorganization act's limited geographic scope, the Court stated that the uniformity requirement did not deny Congress the power to take into consideration the differences that exist between different parts of the country when it attempts to tailor bankruptcy legislation to resolve geographically isolated problems.[69] The *Head Money Cases* were cited to support this conclusion;[70] the Court read

56. 103 S. Ct. at 2244. *See also id.* at 2245 (observing that the Alaskan exemption was merely a geographic description of an otherwise permissible tax classification).

57. 182 U.S. 244 (1901).

58. *Id.* at 249 (Brown, J., concurring). In *Downes* the Court was asked to consider whether the Foraker Act, ch. 191, 31 Stat. 77 (1900) (codified as amended in scattered sections of 48 U.S.C.), which imposed a duty only on goods brought into the United States from Puerto Rico and vice versa, was violative of the uniformity clause. The Court upheld the tax, without a majority opinion, on the ground that for purposes of the uniformity clause Puerto Rico was a territory and therefore not a part of the United States. *See generally* 182 U.S. at 247 (Brown, J., concurring); *id.* at 287 (White, J., concurring); *id.* at 345 (Gray, J., concurring). Justice Brown's statements in *Downes* are therefore clearly dictum.

59. *See* 103 S. Ct. at 2244 n.12.

60. *Id.* at 2244 n.13.

61. 419 U.S. 102 (1974).

62. 103 S. Ct. at 2245.

63. Regional Rail Reorganization Act, 45 U.S.C. §§ 701-794 (1982).

64. *See id.* § 702(17).

65. *See id.* § 717; *3R Act Cases*, 419 U.S. at 109-10.

66. 419 U.S. at 122. For text of the bankruptcy clause, *see supra* note 46.

67. *Id.* at 159-60. The Act's exclusive reorganization provisions could only be applied for a 180-day period following the Act's effective date. *See* 45 U.S.C. § 717(b) (1982).

68. 419 U.S. at 160. *Cf.* Railway Labor Executives' Ass'n v. Gibbons, 455 U.S. 457, 471 (1982) (legislation affecting only creditors of a single railroad violated the uniformity requirement of the bankruptcy clause).

69. 419 U.S. at 161.

70. *See id.* at 160 (citing The Head Money Cases, 112 U.S. 580 (1884)).

the *Head Money Cases* as interpreting the uniformity clause to permit geographically restricted legislation.[71] Because the Rail Act was also designed to solve a geographically limited "evil," and had in fact been applied uniformly to all persons falling within its purview, the mere use of a geographic term did not violate the uniformity requirement of the bankruptcy clause.[72]

Applying the principles of the *Head Money Cases* and the *3R Act Cases* to the Alaskan exemption, the Court held that the use of a geographical term to describe the subject of an exemption did not violate the uniformity clause.[73] The Court pointed to legislative history which showed that there were unique technological and ecological problems associated with drilling for oil in certain regions of Alaska.[74] Congress was responding to a "geographically isolated problem,"[75] and enacted an exemption for oil wells subject to the identified problems. Those wells were located above the Arctic Circle, or north of the Alaskan-Aleutian Range and 75 miles from the nearest point on the Trans-Alaskan Pipeline.[76] Because no other subjects which fell into this category existed in any other state, the Act did not discriminate between places where the subject of the classification was found. Therefore, the geographic uniformity test as articulated in the *Head Money Cases* had been met and it mattered not that Congress had used a geographic term to identify the tax classification; the classification was constitutional because its application was *in fact* geographically uniform.[77] The end result was couched in cautious terms, however. While the uniformity clause permits Congress "wide latitude in deciding what to tax and does not prohibit it from considering geographically isolated problems,"[78] geographically-framed tax classification must be examined "closely" to see if a classification reflects "actual geographic discrimination."[79]

IV. ANALYSIS

A. *Introduction*

By upholding the validity of a geographically-described tax classification, *Ptasynski*—to the federal government's immense relief—put the Court's stamp of approval on the collection of enormous amounts of revenue. The government estimated that the net windfall profit tax revenues would exceed twenty-six billion dollars by the end of the 1982 fiscal year and that approximately fifty billion dollars in net revenues would be collected during the

71. *See* 419 U.S. at 161 (citing The Head Money Cases, 112 U.S. at 594 (recognizing that the "evil" addressed by statute was geographically limited)).

72. 419 U.S. at 161.

73. 103 S. Ct. at 2245.

74. *Id.* at 2242 (citing JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE, H.R. REP. NO. 817, 96th Cong., 2d Sess. 103 (1980), *reprinted in* 1980 U.S. CODE CONG. & AD. NEWS 642, 656).

75. *See* 103 S. Ct. at 2245 n.14.

76. *See id.* at 2245.

77. *Id.* The Court stated: "[h]ad Congress described this class of oil in nongeographic terms, there would be no question as to the Act's constitutionality. We cannot say that identifying the class in terms of its geographic boundaries renders the exemption invalid." *Id.* at 2246.

78. *Id.* at 2245.

79. *Id.*

fiscal years of 1983-1988.[80] This section, while noting the practical political considerations which may have played a role in the Court's decision, will concentrate on the decision's legal analysis.

B. *Geographic Uniformity Requirements in the Uniformity and Bankruptcy Clauses: The Problems with* Ptasynski

1. The Bankruptcy Clause is not Analogous to the Uniformity Clause

The Court in *Ptasynski* agreed that the general purpose of the uniformity clause is to limit the federal government's exercise of its commerce power.[81] Conversely, the purpose giving rise to the bankruptcy clause was the protection of discharged debtors in the federation of states.[82] Thus, the bankruptcy clause is a measure designed to *facilitate*, rather than limit, Congress' power to promote commerce between states with different laws.[83] A fortiori, the interpretation of one clause as a guideline for the interpretation of the other is not altogether desirable.

While it is natural that the uniformity requirement in the bankruptcy clause has been construed liberally in light of the clause's purpose,[84] it is not proper to assume that the parameters of that clause's uniformity requirement conform with those of a uniformity requirement imposed as an express limitation on Congress' power to tax. The fact that Congress may "fashion legislation to resolve geographically isolated problems" when enacting bankruptcy laws, as long as the effect of the legislation is uniform throughout the country,[85] comports with the broad construction of the clause needed to accommodate American commercial needs. The flexible standard of construction appropriate for the bankruptcy clause does not necessarily withstand

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80. *See supra* note 9.

81. 103 S. Ct. at 2243 (citing Knowlton v. Moore, 178 U.S. 41, 103-06 (1900); 2 M. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 417-18 (rev. ed. 1937)).

82. *See* Nadelman, *On the Origin of the Bankruptcy Clause*, 1 AM. J. LEGAL HIST. 215, 224-25 (1957) (comprehensive review of the history and purpose of the bankruptcy clause).

83. *E.g.*, THE FEDERALIST No. 42, at 271 (J. Madison) (C. Rossiter ed. 1961). Madison's discussion of the clause, in its entirety, reads:

> The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different states, that the expediency of its seems not likely to be drawn into question.

Id.

84. *See* Regional Rail Reorganization Act Cases, 419 U.S. 102, 158-59 (1974) (the Court recognized the "flexibility inherent in the . . . provision" and stated that "the uniformity clause was not intended 'to hobble Congress by forcing it into nationwide enactments to deal with conditions calling for remedy only in certain regions.' " (quoting *In re* Penn Central Transp. Co., 384 F. Supp. 895, 915 (Sp. Ct. R.R.R.A. 1974)); Continental Ill. Nat'l Bank & Trust Co. v. Chicago, R.I. & Pac. Ry. Co., 294 U.S. 648, 668 (1935) ("[f]rom the beginning, the tendency of legislation and . . . judicial interpretation has been uniformly in the direction of progressive liberalization . . . of the bankruptcy power"); Sturges v. Crowninshield, 17 U.S. (4 Wheat) 122, 195 (1819) ("[t]he bankrupt law is said to grow out of the exigencies of commerce . . . (i)t is . . . (a subject) on which the legislature may exercise an extensive discretion").

85. *Compare* Regional Rail Reorganization Cases, 419 U.S. 102, 158-61 (1974) (upholding statute giving equal treatment to similarly situated classes of creditors and debtors) *with* Railway Labor Executives' Ass'n v. Gibbons, 455 U.S. 457, 471 (1982) (striking down statute giving special treatment to one segment of a group of similarly situated creditors).

constitutional muster when applied to the uniformity clause, however. As revealed by the clause's legislative history, the Framers were concerned that either one state or a combination of states might muscle their industries (vis-a-vis congressional intervention) into a position of power at the expense of another state's industries.[86] To prevent that situation from occurring, the uniformity clause was enacted expressly to limit Congress' ability to impose indirect taxes upon targeted regions or states.[87] The purpose and history of the clause therefore reveal an intention to make the limitation on Congress' taxing power absolute, without any circumstances suggesting the necessity or propriety of an "inherent flexibility" in its application. Historically, rulings by the Court have embodied this strict construction without exception, including the *Head Money Cases* so heavily relied upon by the *Ptasynski* Court.[88]

2. *Ptasynski* is not Justified by Existing Uniformity Clause Precedent

The Court in *Ptasynski* correctly cited the *Head Money Cases* for the proposition that an excise tax must apply at the same rate throughout the United States wherever the subject of the tax is found.[89] The Court then decided that three significant factors reconciled the Alaskan exemption with the rule of the *Head Money Cases*: 1) the Alaskan classification, although classified in geographic terms, did not encompass the whole of Alaska;[90] 2) no other subjects of the group were found to exist in any other state;[91] and 3) the effect of the statute in the *Head Money Cases* was to distinguish between geographic regions, thereby giving that practice the imprimatur of constitutionality.[92]

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86. *See* C. WARREN, THE MAKING OF THE CONSTITUTION 570-74 (2d ed. 1937). See also 2 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 428 (1st ed. 1833):

> [The purpose of the clause] was to cut off all undue preferences of one state over another in the regulation of subjects affecting their common interests. Unless . . . excises were uniform, the grossest and most oppressive inequalities, vitally affecting the pursuits and employments of the people of different states, might exist. The agriculture, commerce or manufacture of one state might be built upon the ruins of those of another; and a combination of a few states in congress might secure a monopoly of certain branches of trade and business to themselves, to the injury, if not to the destruction, of their less favoured neighbors.

Id.

87. 2 J. STORY, *supra* note 86, at 428. Mr. Justice Story's interpretation of the uniformity clause echoed a statement made by North Carolina's Hugh Williamson after the ratification debates:

> The clear and obvious intention of the (uniformity clause) . . . was, that Congress might not have the power of imposing unequal burdens; that it might not be in their power to gratify one part of the Union by oppressing another . . . . I do not hazard much in saying, that the present constitution had never been adopted without th[is] preliminary [guard] in it.

3 ANNALS OF CONG. 379 (1792).

88. *See* 103 S. Ct. at 2244.

89. *See Head Money Cases*, 112 U.S. at 589, *quoted in* 103 S. Ct. at 2244.

90. *See* 103 S. Ct. at 2246.

91. *See id.* at 2241-42. The Court noted that certain exempt Alaskan oil was located in offshore territorial waters not part of Alaska, and that the exemption was therefore not drawn along "state political lines." *Id.* at 2242. Because Congress' taxing power is not subject to the uniformity clause when applied to activities outside the United States, Downes v. Bidwell, 182 U.S. 244 (1901); Mercury Press v. District Court, 173 F.2d 636 (D.C. Cir. 1948), the practical effect of the exemption, for purposes of applying the uniformity clause, was to exempt only oil found within Alaskan borders.

92. 103 S. Ct. at 2244.

In this case the subjects of the Windfall Profit Tax Act were different classifications of domestic crude oil, one of which was "exempt Alaskan oil."[93] One cannot quarrel with the conclusion that because the subject of the classification was contained solely within Alaska, the tax operated with "geographic uniformity." Such an approach, however, appears to beg the question; by precise definition of classifications taxes can be restricted to particular states, with geographical uniformity following as a necessary result of the classification.

Further, although the uniformity clause does not bar Congress from choosing as a subject of a tax an activity which, as a matter of geographical locus, exists only in certain states[94] (as long as the requirement of geographic uniformity is met), it seems to violate the purpose of the uniformity clause to allow the subject of a tax or exemption to be chosen *because* of its geography. Thus, the reasoning used in *Ptasynski*, although superficially consistent with prior uniformity clause limitations, appears on a deeper level to deviate from prior decisions.

3. *Ptasynski*'s "Rational Justification" Test Must Include a Substantive Standard

A most critical development in *Ptasynski* was the Court's implied acceptance of Congress' "rational justification" for a geographical designation as a standard for measuring the constitutionality of a tax under the uniformity clause.[95] Prior uniformity clause opinions have examined legislative considerations in order to arrive at "the evil to be remedied" by an indirect tax, but have always based their determination of a tax's constitutionality solely on whether the tax adheres to the principle of geographic uniformity.[96] Neither the legislative history nor purpose of the clause suggest that legislative considerations are permitted to justify the imposition of geographically non-uniform taxes. Deference to congressional consideration, however, clearly played a significant role in the outcome of *Ptasynski*,[97] and it is reasonable to conclude that the "rational justification" test will assume increasing importance in future decisions involving the uniformity clause.

The importance attributed by the Court to congressional considerations in *Ptasynski* is reminiscent of the deference with which Congress' rational justification is treated in cases dealing with the constitutionality of legislation challenged as violating equal protection guarantees. A fundamental distinction exists, however, between the constitutional restrictions imposed through the uniformity and equal protection clauses. The uniformity clause requires that geographic uniformity be used as the exclusive standard to test

93. *See supra* notes 10-16 and accompanying text.

94. Knowlton v. Moore, 178 U.S. 41,109 (1900).

95. *See* 103 S. Ct. at 2246 (where Congress has exercised its "considered judgment" in determining proper classifications in a complex field, the Court is reluctant to overturn a congressional decision).

96. *E.g.*, Florida v. Mellon, 273 U.S. 12 (1927); Knowlton v. Moore, 173 U.S. 41 (1900); The Head Money Cases, 112 U.S. 580 (1884).

97. *See* 103 S. Ct. at 2244 (the uniformity clause does not restrict congressional power to draw tax classifications); *id.* at 2246 (the Court is reluctant to disturb congressional classifications addressing complex taxation problems).

the constitutionality of an arguably rational indirect tax.[98] The equal protection clause only requires that a classification scheme have some arguable relation to the purpose for which it is made "and does not contain the kind of discrimination against which the equal protection clause affords protection."[99] The uniformity clause, unlike the equal protection clause, therefore includes a substantive standard against which congressional exercise of the taxing power must be measured. The Court's treatment of that standard as practically analagous to the equal protection standard subverts the purpose of the uniformity clause.

V. CONCLUSION

The major legal consequence arising out of *Ptasynski* is an expansion of Congress' power to impose indirect taxes. Concededly, the ability of Congress to frame tax classifications in geographic terms may not be a benefit of enormous magnitude, given the Court's statement that it will scrutinize the practical application of the tax to prevent geographic discrimination.[100] The practical advantages of this new rule, however, are exemplified by the billions of dollars in revenue which Congress is now able to reap despite the faulty draftsmanship which endangered the Act and its operation.

Ptasynski also leaves Congress less encumbered in its taxing power as a consequence of the Court's reluctance to review legislative decisions. The Court's deference has spawned a rational basis test of sorts which will very likely be significant in future uniformity clause challenges. Essentially, the interests of the congressional majority may now play a determinative role in the outcome of such challenges.

Finally, *Ptasynski* left no doubt that the Court will continue to apply the liberally construed uniformity standard of the bankruptcy clause to uniformity clause cases. This trend will be responsible for a movement away from the absolute geographic uniformity requirement which has characterized the uniformity clause standard in the past.

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98. *E.g.*, Knowlton v. Moore, 178 U.S. 41 (1901); The Head Money Cases, 112 U.S. 580 (1884).

99. Railway Express Agency v. New York, 336 U.S. 106, 110 (1949).

100. 103 S. Ct. at 2245.