No. 82-1913

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

JOE G. GARCIA,

Appellant,

v.

SAN ANTONIO METROPOLITAN TRANSIT AUTHORITY, *et al.*,

Appellees.

On Appeal from the United States District Court for the Western District of Texas

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JURISDICTIONAL STATEMENT

LAURENCE GOLD
(Counsel of Record)
815 - 16th St., N.W.
Washington, D.C. 20006
(202) 637-5390

LINDA R. HIRSHMAN
201 N. Wells St., Suite 1900
Chicago, Illinois 60606
(312) 372-1646

Attorneys for Appellant

Of Counsel:

EARLE PUTNAM
5025 Wisconsin Ave., N.W.
Washington, D.C. 20016

GEORGE KAUFMANN
2101 L St., N.W.
Washington, D.C. 20037

QUESTION PRESENTED

May the minimum wage and overtime provisions of the Fair Labor Standards Act constitutionally be applied to the employees of a publicly owned and operated mass transit system? *

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* The parties to this action are Raymond J. Donovan, Secretary of Labor of the United States, and Joe G. Garcia, plaintiffs in the court below, and San Antonio Metropolitan Transit Authority, and the American Public Transit Association, defendants in the court below.

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OPINIONS BELOW

The opinion of the United States District Court for the Western District of Texas is reported at 557 F. Supp. 445 and is reproduced in the Appendix at pp. 1a to 18a, *infra.* The prior judgment of the District Court, reproduced at pp. 23a to 24a, *infra,* is not officially reported, but appears at 25 Wage and Hour Cases (BNA) 274.

JURISDICTION

The appellee, San Antonio Metropolitan Transit Authority ("SAMTA") instituted a declaratory judgment action against the Secretary of Labor, alleging that the minimum wage and overtime provisions of the Fair Labor

Standards Act of 1938 as amended, 29 U.S.C. §§ 201 *et seq.* ("FLSA") could not, by virtue of the Tenth Amendment, constitutionally be enforced against SAMTA. Subject matter jurisdiction was founded on 28 U.S.C. §§ 1331 & 1337.

The judgment of the District Court declaring that the Secretary of Labor may not constitutionally apply or seek to enforce the FLSA against SAMTA or any other local public mass transit system was entered on February 18, 1983 and effective as of February 14, 1983 (pp. 19a-21a, *infra*). Appellant filed a notice of appeal on March 16, 1983 (p. 22a). On April 25, 1983, Justice White entered an order extending the time for filing this Jurisdictional Statement to and including June 1, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. § 1252. See, *e.g.*, *Donovan v. Richard County Assn.*, 454 U.S. 389.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves: Article I, § 8 of, and the Tenth Amendment to, the Constitution of the United States; and the Fair Labor Standards Act of 1938, as amended, 52 Stat. 1060, etc., 29 U.S.C. §§ 201 *et seq.* These constitutional and statutory provisions are reproduced in the Appendix, pp. 25a to 27a, *infra.*

STATEMENT OF THE CASE

I. The Factual Background

Prior to May 1, 1959 public transportation in San Antonio was provided by the San Antonio Transit Company ("SATC"). On May 1, 1959 the City of San Antonio created the San Antonio Transit System ("SATS") and bought SATC. Appellee San Antonio Metropolitan Transit Authority ("SAMTA") became the successor to SATS on March 1, 1978.[1]

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[1] SAMTA is a regional transit authority created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 1118x (Vernon Cum. Supp. 1981) to

During its first decade of operations, SATS had been a money-making venture whose operations were governed by the terms of a revenue bondholders' indenture.[2] However, in a statement prepared for delivery to the Subcommittee on Housing of the House Committee on Banking and Currency, on March 10, 1970, F. Norman Hill, general manager of SATS, advised that the system had experienced an operating loss for the first time in its history.[3]

Later that year SATS received a capital grant by the Urban Mass Transit Administration in the amount of $4,122,666.[4] Over the next 10 years SATS and its successor, SAMTA, received $51,689,000 in federal capital and operational grants.

II. The Proceedings In This Case

In response to a specific inquiry about the applicability of the FLSA to employees of SAMTA, the Wage and

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serve the San Antonio metropolitan area. The City Council of San Antonio created VIA Metropolitan Transit to do the business of the SAMTA on February 3, 1977. VIA purchased the facilities and equipment of SATS from the City of San Antonio as of March 1, 1978 and commenced operations on that date.

[2] The National Bank of Commerce of San Antonio, acting as the bondholders' trustee, was the depository for all of the system's revenues and would release monthly operating funds to the system in accordance with the annual budget. As of March 1, 1978, when SAMTA assumed transit operations, the bonds were paid in full.

[3] Mr. Hill, was speaking on behalf of the American Transit Association in support of H.R. 1626. That bill (see, 116 Cong. Rec. 5785 (1970)) was one of several introduced that session "to provide long-term financing for expanded urban mass transportation programs, and for other purposes." Compare the preamble to the Urban Mass Transportation Act of 1970, P.L. 91-453, which, in part, amended the Urban Mass Transportation Act of 1964, P.L. 88-365, 49 U.S.C. § 1601 *et seq.* The significance of that Act for this case is discussed at pp. 8-12, *infra.*

[4] Project No. TX03005, approved December 23, 1970.

Hour Administration of the Department of Labor rendered an opinion "that the operations of the San Antonio Transit System are not constitutionally immune from the application of the Fair Labor Standards Act." (Opinion WII-499, dated September 17, 1979, reprinted in Wage Hour Manual (BNA) 91:1138-1140). (See also § 775.3(b) of the FLSA regulations (Code of Federal Regulations, Title 29, Part 775), which includes "local mass transit systems" as one of a list of "functions of a State or its political subdivision [that] are not traditional." (44 Fed. Reg. 75628.).)

On November 21, 1979, SAMTA filed this action for declaratory judgment against the Secretary of Labor seeking a determination that SAMTA was exempt from the provisions of the FLSA.[5] SAMTA moved for summary judgment asserting that under *National League of Cities v. Usery*, 426 U.S. 833 the FLSA "cannot be constitutionally applied to it." Alternatively, SAMTA argued that the decision in *National League of Cities* precludes enforcement of the FLSA against any state or local governmental body in the absence of a Congressional reenactment of a constitutionally valid amendment to that Act. The Secretary of Labor thereafter filed a motion for partial summary judgment.

On November 17, 1981, the District Court granted SAMTA's motion for summary judgment, finding that "local public mass transit systems (including San Antonio Metropolitan Transit Authority) constitute integral

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[5] On that same date appellant Joe G. Garcia, and fellow employees, had instituted an action in the district court against SAMTA for overtime pay under the FLSA. (*Garcia* v. *SAMTA*, SA 79 CA 458.) That suit was stayed pending disposition of the constitutional challenge herein. Garcia was granted leave to intervene as a defendant in this suit and the American Public Transit Association was permitted to intervene as a plaintiff.

operations in areas of traditional functions . . . and that the Secretary of Labor of the United States cannot apply or seek to enforce the minimum wage and overtime pay provisions of the Fair Labor Standards Act. . . ." (p. 24a, *infra*) Consequently, the Department of Labor's classification of a public mass transit system as not being an integral operation in an area of traditional governmental functions (29 CFR § 775.3(b)(3)) was held to be "null and void" (p. 24a, *infra*). On January 19, 1982, the District Court stayed, pending an appeal, that portion of its judgment which enjoined the Secretary of Labor from applying or seeking to enforce the FLSA against all other public mass transit systems in the nation.

The Secretary of Labor and Garcia each appealed to this Court (Nos. 81-1728 and 81-1735). On June 7, 1982, this Court entered an order (457 U.S. 1102) vacating the judgment below and remanding the case to the District Court for reconsideration in light of *Transportation Union v. Long Island R. Co.*, 455 U.S. 678.

On remand, the District Court, after receiving briefs from the parties, reaffirmed its original decision and reentered summary judgment in favor of SAMTA and the American Public Transit Association (pp. 1a-18a, *infra*).

REASONS FOR GRANTING PLENARY CONSIDERATION OR SUMMARY REVERSAL

1. In *National League of Cities v. Usery*, 426 U.S. 833 ("*National League*"), this Court held that insofar as the minimum wage and maximum hours provisions of the Fair Labor Standards Act "operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress by Art. I, § 8, cl. 3 [the Commerce Clause]" (426 U.S. at 852). Then in *Hodel v. Virginia Surface Mining & Recl. Assn.*, 452 U.S. 264 ("*Hodel*") the Court set out a three pronged test to be applied in evaluating claims under *National League*:

> [I]n order to succeed, a claim that congressional commerce power legislation is invalid under the reasoning of *National League of Cities* must satisfy *each* of three requirements. First, there must be a showing that the challenged regulation regulates the 'States as States.' [426 U.S.], at 584. Second, the federal regulation must address matters that are indisputably 'attributes of state sovereignty.' *Id.*, at 845. And third, it must be apparent that the States' compliance with the federal law would directly impair their ability 'to structure integral operations in areas of traditional governmental functions.' *Id.*, at 852. [452 U.S., at 287-288.] [6]

Hodel was reaffirmed in *Transportation Union v. Long Island R. Co.*, 455 U.S. 678, 684 ("*Transportation Union*") where the issue was "whether the Tenth Amendment prohibits application of the Railway Labor Act to a state-owned railroad engaged in interstate commerce" (*id.* at 680). Analyzing the case on the basis of the third prong in the foregoing test—whether "the States' compliance with the federal law would directly impair their ability 'to structure integral operations in areas of traditional governmental functions.'" (*id.* at 684)—this Court answered that question in the negative, and upheld the application of the Railway Labor Act to the Long Island Railroad which had been "acquired by New York State through the Metropolitan Transportation Authority" (*id.* at 680). Thereafter, as previously noted, this Court remanded this case for reconsideration in light of *Transportation Union*, and the District Court determined that this Court's decision did not affect that court's prior con-

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[6] In *Hodel*, the Court added:

> Demonstrating that these three requirements are met does not, however, guarantee that a Tenth Amendment challenge to congressional commerce power action will succeed. There are situations in which the nature of the federal interest advanced may be such that it justifies state submission. See *Fry* v. *United States*, 421 U.S. 542 (1975), reaffirmed in *National League of Cities* v. *Usery*, 426 U.S., at 852-853. See also *id.*, at 856 (BLACKMUN, J., concurring). [452 U.S. at 288, n.29]

clusion that application of the FLSA to appellee SAMTA would be unconstitutional.

The holding of the District Court is contrary to decisions of three Courts of Appeals, each of which has unanimously decided, in light of *Transportation Union*, that Congress does have power under the Commerce Clause, to apply the minimum wage and maximum hour provisions of the FLSA to publicly owned transit companies. *Kramer v. New Castle Area Transit Authority*, 677 F.2d 308 (C.A. 3), *cert. den.* —— U.S. ——, 51 L.W. 3533 (Jan. 17, 1983); *Dove v. Chattanooga Area Reg. Transp. Auth.* (*CARTA*) 701 F.2d 50 (C.A. 6, March 4, 1983); *Alewine v. City Council of Augusta, Ga.*, 699 F.2d 1060 (C.A. 11, March 7, 1983). When the present case was here before, the Solicitor General wrote in support of his appeal, "In light of this Court's decision in *United Transportation Union* and the Third Circuit's decision in *Kramer*, which conflicts with the decision below, appellees' suggestion that this case does not warrant plenary consideration is frivolous."[7] Now that two other Courts of Appeals have agreed with the Third Circuit's decision in *Kramer*, any suggestion by the present appellees that the judgment below should be affirmed without plenary consideration would be *trebly* "frivolous". Thus, the only nonfrivolous issue before the Court at this time is whether summary reversal of the District Court's aberrant conclusion is warranted. We shall state briefly the reasons why this course is appropriate.

2. In this case, as in *Transportation Union*, the claim of unconstitutionality founders on the third of the tests delineated in *Hodel*.[8] In *Transportation Union* this Court said:

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[7] Reply Memorandum for the Appellant, No. 81-1728, p. 5.

[8] In light of *Transportation Union*, we do not, in this Jurisdictional Statement, address the other matters which must be considered under *Hodel*, reserving those for discussion if this Court directs briefing and oral argument.

> Operation of passenger railroads, no less than operation of freight railroads, has traditionally been a function of private industry, not state or local governments. It is certainly true that some passenger railroads have come under state control in recent years, as have several freight lines, but that does not alter the historical reality that the operation of railroads is not among the functions *traditionally* performed by state and local governments. [455 U.S. at 686, emphasis in original, footnote omitted.]

The "historical reality" is that the operation of nonrail mass transit systems is likewise "not among the functions *traditionally* performed by state and local governments" (*id.*). As the Third Circuit detailed in *Kramer*, *supra*:

> Local mass transit systems have historically been owned and operated by private companies. Some public operation started in the early part of this century—Seattle (1911), San Francisco (1912), Detroit (1921), and New York (1932)—yet as late as 1960, 95% of transit companies in the nation were privately owned and operated. H.R. Rep. No. 204, 88th Cong., 2d Sess., *reprinted in*, [1964] U.S. Code Cong. & Ad. News 2569, 2590. [677 F.2d at 309.]

In *Transportation Union*, the Court did not "look[] only to the past to determine what is 'traditional' ". (455 U.S. at 686.) Rather, as the Court explained:

> In essence, *National League of Cities* held that under most circumstances federal power to regulate commerce could not be exercised in such a manner as to undermine the role of the states in our federal system. This Court's emphasis on traditional governmental functions and traditional aspects of state sovereignty was not meant to impose a static historical view of state functions generally immune from federal regulation. Rather it was meant to require an inquiry into whether the federal regulation affects basic state prerogatives in such a way as would be likely to hamper the state government's ability to fulfill its role in the Union and endanger its "sep-

> arate and independent existence." 426 U.S., at 851. [455 U.S. at 686-687].

Applying that principle the Court said:

> Just as the Federal Government cannot usurp traditional state functions, there is no justification for a rule which would allow the states, by acquiring functions previously performed by the private sector, to erode federal authority in areas traditionally subject to federal statutory regulation. [455 U.S. at 687].

Private mass transit, like the railroads, has long been subject to federal regulation under the Commerce Clause, as for example, the National Labor Relations Act. See *Bus Employees v. Wisconsin Board*, 340 U.S. 383; *Bus Employees v. Missouri*, 374 U.S. 74. Conversely, railroads, like mass transit companies, have long been subject to state as well as federal regulation. See, *e.g.*, *Chicago, R.I. & P.R. Co. v. Arkansas*, 219 U.S. 453 ("full crew" law); *Engineers v. Chicago, R.I. & P.R. Co.*, 382 U.S. 423 (same); *Smith v. Alabama*, 121 U.S. 465 (licensing engineers who operate trains within the state); *Nashville, Etc. Railway v. Alabama*, 128 U.S. 96 (requiring engineers to obtain a certificate of fitness with regard to color-blindness and visual powers); and *N.Y., N.Y. & H. Railroad v. New York*, 165 U.S. 628 (regulating the mode of heating system passenger cars). Certainly then the pattern of federal and state regulation does not distinguish this case from *Transportation Union.*

The claim that federal statutory regulation is unconstitutional is especially unjustified here. In *Transportation Union*, the Court noted that "some passenger railroads have come under state control in recent years" (455 at 686). The same trend has been evident in mass transit. But as the Third Circuit also wrote in *Kramer*, *supra*:

> In 1964, Congress passed the Urban Mass Transportation Act of 1964, Pub. L. No. 88-365, 78 Stat.

802, *codified at* 49 U.S.C. §§ 1601 *et seq.* (UMTA), in recognition of the difficulties being experienced by the private mass transit industry. The principal purpose of the Act was to "provide [federal] assistance to State and local governments and their instrumentalities in financing . . . [transportation] systems, to be operated by public or private mass transportation companies as determined by local needs." 49 U.S.C. § 1601(b)(3).

The UMTA put inexorable forces in motion whereby, at an accelerated pace, transportation companies changed hands from the private sector to the public sector. By 1978, local publicly owned transit systems received 90% of the revenues from all transit operations; accounted for 91% of total vehicle miles operated and 91% of all linked passenger trips; and owned or leased 87% of total transit vehicles. (Scheuer Affidavit—App. 20a). Nonetheless, between 45 and 52% of all transit operations (counting each system, irrespective of size, as one unit) were privately owned. U.S. Dep't of Transportation, Urban Mass Transportation Administration. [References omitted.] The feedral government is actively involved in local mass transportation. It provides: (1) capital grants, funded on a "80% federal/20% local" matching basis, (2) operating grants, on a "50% federal/50% local" matching basis; and (3) technical assistance to state and local planning agencies on an "80% federal/20% local" matching basis. [677 F.2d at 309-310].

The *Kramer* court drew the following lesson:

The whole move away from private transit systems and into public systems was started and effected by the federal government which provided the financial support to allow the changeover to public transportation companies. Moreover, the federal government has, through the matching funds programs, maintained an intimate involvement with the operation of such public systems. The result has been a network of publicly run systems which are cooperations between the federal government and the states. The

> tradition that has evolved encompasses not only state involvement in local mass transportation but also an important federal role in the matter. The Authority cannot recast this development as one in which the states took over transit services on their own while the federal government only provided *post hoc* financial assistance. Massive state involvement with mass transit was *created* by the national government and the states are precluded from claiming, at this late date, that mass transit is a service which they traditionally provide. Tradition must be gauged in light of what actually happened, and what happened is a federal program of local transit service in which the states participate as late comer junior partners. There is, therefore, no tradition of the states *qua* states providing mass transportation. Moreover, since it is undisputed that the national government can set the employment relations in the area of mass transit, it would be unjustified to allow the states, by acquiring functions previously performed by the private sector, to erode federal authority in this area. *See generally, United Transportation Union, supra,* ——U.S. at ——, 102 S.Ct. at 1354. [677 F.2d at 310, emphasis in original, footnote omitted.]

See also *Alewine, supra,* 699 at 1069, where much of the foregoing passage is quoted with approval. As the Sixth Circuit concluded in *Dove, supra*:

> In this case, a traditionally private service has become predominantly a public service due to federal aid. *Kramer*, 677 F.2d at 809-10. In such a case, the concerns stated in *National League of Cities* are not implicated. It would indeed be peculiar to hold that federal aid for transit created a situation where a state which provides transit service is immune from federal labor regulations. [701 F.2d at 53.]

In sum, the proposition that Congress by its generosity forfeited its authority under the Commerce Clause to regulate mass transit ssytems is too paradoxical to be entertained or even to warrant the serious consideration of this Court.

CONCLUSION

For the foregoing reasons the judgment of the District Court should be summarily reversed. Failing that, probable jurisdiction should be noted.

Respectfully submitted,

LAURENCE GOLD
(Counsel of Record)
815 - 16th St., N.W.
Washington, D.C. 20006
(202) 637-5390

LINDA R. HIRSHMAN
201 N. Wells St., Suite 1900
Chicago, Illinois 60606
(312) 372-1646

Attorneys for Appellant

Of Counsel:

EARLE PUTNAM
5025 Wisconsin Ave., N.W.
Washington, D.C. 20016

GEORGE KAUFMANN
2101 L St., N.W.
Washington, D.C. 20037