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Constitutional Law - Commerce Clause - Commerce Clause Challenges to State Highway Safety Regulations Are to Be Reviewed under a Highly Deferential Standard

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CONSTITUTIONAL LAW—COMMERCE CLAUSE—COMMERCE CLAUSE CHALLENGES TO STATE HIGHWAY SAFETY REGULATIONS ARE TO BE REVIEWED UNDER A HIGHLY DEFERENTIAL STANDARD

American Trucking Associations, Inc. v. Larson (1982)

In 1980, Pennsylvania enacted an amendment to the Pensylvania Motor Vehicle Code, prohibiting motor carrier vehicles from operating on the Commonwealth's highways unless they "displayed a currently valid certificate of inspection" issued by Pennsylvania or by another state.[1] Several state trucking associations sought to enjoin enforcement of the statute[2] alleging that it violated, *inter alia*, the commerce clause of the United State Constitution.[3]

The United States District Court for the Middle District of Pensylvania granted a temporary restraining order[4] and on September 12, 1980 issued a preliminary injunction.[5] Following further hearings, the court concluded that the mandatory inspection requirement imposed an unconstitutional burden on interstate commerce[6] and therefore, issued a permanent injunc-

1. 515 F. Supp. 1327, 1328 (M.D. Pa. 1981), *rev'd*, 683 F.2d 787 (3d Cir.), *cert. denied*, 103 S. Ct. 448 (1982). The challenged statute, § 4703(a)(2) of the Pennsylvania Motor Code, provides: "No motor carrier vehicle shall be operated on a highway unless it displays a currently valid certificate of inspection issued under this chapter or by another state." 75 PA. CONS. STAT. § 4703(a)(2) (Purdon 1980). In addition, the plaintiffs challenged regulations proposed by the Pennsylvania Department of Transportation concerning the enforcement of § 4703(a)(2). *See* 683 F.2d at 789. *See also* 10 PA. BULLETIN 3397-98 (1980) (to be codified at 67 PA. ADMIN. CODE § 494).

2. 515 F. Supp. at 1328. American Trucking Associations, Inc., a federation of state trucking companies including Pennsylvania Motor Truck Association, Coastal Tank Lines, Inc., CRST, Inc., Smith Transfer Corp., Ryder Truck Lines, Inc. and Preston Trucking Corp., challenged the statute. *Id.* Steamship Operators Intermodal Committee (SOIC), "An unincorporated association whose members are common carriers by water . . . engaged in the intermodal transportation of containerized cargo in the interstate and foreign commerce of the United States, was permitted to intervene as plaintiff." *Id.*

3. 683 F.2d at 789. The commerce clause provides: "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States . . . ." U.S. CONST. art. I, § 8, cl. 3.

The plaintiffs challenged § 4703(a)(2) as also violating the equal protection and due process requirements of the Fourteenth Amendment. 683 F.2d at 789, 800. For the court's consideration and dismissal of plaintiffs' Fourteenth Amendment challenges, see *id.* at 799-801.

4. 515 F. Supp. at 1329. On September 2, 1980, following the granting of the temporary restraining order, SOIC was permitted to intervene. *Id.*

5. *Id.*

6. *Id.* The district court concluded that Pennsylvania's motor carrier vehicle inspection statute had only "illusory, slight or problematical safety benefits while it [imposed] substantial burdens on interstate commerce." *Id.* at 1340. The district

tion against the enforcement of section 4703(a)(2).[7]

On appeal by the Commonwealth of Pennsylvania, the United States Court of Appeals for the Third Circuit[8] adopted a highly deferential standard of review[9] and reversed, *holding* that the strong presumption of validity accorded section 4703(a)(2) of the Pennsylvania Motor Code, as a highway safety measure, had not been overcome by a showing that the safety benefits derived therefrom were illusory, and accordingly found the statute to not violate the commerce clause. *American Trucking Associations, Inc. v. Larson*, 683 F.2d 787 (3d Cir. 1982).

The United States Constitution grants Congress the power to regulate commerce among the states.[10] One purpose of this grant of power is to promote the national interest in free trade by restraining state action.[11] Congressional control over interstate commerce may be exercised concurrently with state actions regulating transactions occurring within the state.[12] Federal legislation enacted under the commerce clause, however, supersedes conflicting state legislation and, if Congress intended that the federal regulation preempt the subject matter of the statute, even parallel state action is pro-

court found that "[t]he cost for each inspection . . . would range from $12.00 to $18.00"; "[t]here would also be further costs connected with drivers' salaries and additional fuel consumption;" and that delays in certain deliveries could force the shutdown of production lines "at a cost of $6,000 per minute." *Id.* at 1333. In addition, plaintiff Coastal Tank Lines estimated an additional annual costs in excess of $150,000 in complying with the Pennsylvania mandatory inspection statute. *Id.* at n.26. In reaching its conclusion the district court purported to apply the test formulated by Justice Rehnquist in Kassel v. Consolidated Freightways Corp. *See* 450 U.S. 662, 691-92, 698-99 (1981) (Rehnquist, J. dissenting); notes 64-65 and accompanying text *infra*.

7. 515 F. Supp. at 1329, 1340.

8. The case was heard by Judges Sloviter and Adams of the United States Court of Appeals for the Third Circuit and Judge Van Artsdalen of the United States District Court for the Eastern District of Pennsylvania, sitting by designation. Judge Sloviter wrote the opinion for the court and Judge Adams filed a dissenting opinion.

9. 683 F.2d at 794-95. In choosing to follow the highly deferential standard of review, the Third Circuit expressly rejected the balancing approach to commerce clause jurisprudence. *Id.* at 795.

10. U.S. CONST. art. I, § 8, cl. 3. For the pertinent text of the commerce clause, see note 3 *supra*.

11. G. GUNTHER, CASES AND MATERIALS ON CONSTITUTIONAL LAW 113 (10th ed. 1980). Professor Gunther notes that Alexander Hamilton urged the grant of commerce power to Congress to suppress the "interfering and unneighborly regulations of some States" and advocated national control to avoid serious sources of animosity and control. *Id.* (citing THE FEDERALIST NO. 22 (A. Hamilton)). *See also* H.P. Hood & Sons v. DuMond, 336 U.S. 525 (1949) ("Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation, that no home embargoes will withhold his exports, and no foreign state will . . . exclude them").

12. *See, e.g.*, Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440 (1960) (city's smoke abatement code found valid notwithstanding federal statute regulating the inspection and licensing of steam vessels); Maurer v. Hamilton, 309 U.S. 598 (1940) (state safety regulation given deference despite regulatory power of the Interstate Commerce Commission).

hibited.[13] For example, in *Jones v. Rath Packing Co.*,[14] the Supreme Court determined that federal labeling requirements superseded parallel state labeling and packaging regulations on the basis that the implementation of the state legislation would prevent the goals of Congress from being met.[15]

When Congress has not acted in a particular area, the "dormant" power of the commerce clause may still limit or preclude state regulation.[16] This dormant power of the commerce clause will arise when state regulation, in an area in which Congress has remained silent, impedes the free flow of commerce from state to state or interferes with the need for national uniformity in that area.[17]

For example, in 1824, in *Gibbons v. Ogden*[18] the Supreme Court applied a dormant commerce clause analysis and invalidated a New York statute which conferred exclusive navigation rights on that state's waterways.[19] The Court broadly defined commerce as "intercourse between nations, and parts of nations"[20] and included navigation in that broad definition.[21] The Court determined that the state monopoly grant intruded upon the federal power over commerce[22] and further found that, although no federal legislation regulated the New York waterways, the state monopoly conflicted with federal laws licensing those engaged in coastal trade, and therefore, the statute was

13. *See* J. NOWAK, R. ROTUNDA & J. YOUNG, HANDBOOK ON CONSTITUTIONAL LAW 267 (1978 & Supp. 1982). If the subject is within the power of Congress to regulate, Congress may preempt the area under the authority of the supremacy clause of the U.S. Constitution.

14. 430 U.S. 519 (1977). In *Jones*, respondant's challenged California net-weight labeling statutes as contrary to federal legislation in that area. *Id.* at 523-24.

15. *Id.* at 543. The Court found that the "enforcement of [the California statute] would prevent 'the accomplishment and execution of the full purposes and objectives of Congress' in passing [the federal labeling regulations]." *Id.*

16. *See* Eule, *Laying the Dormant Commerce Clause to Rest*, 91 YALE L.J. 425 (1982). It is Congress that remains "dormant" when it has not acted in a particular area where the commerce clause gives Congress such authority. *Id.* at 425 n.1.

17. *See, e.g.*, Southern Pac. Co. v. Arizona, 325 U.S. 761, 767 (1945). For a further discussion of the *Southern Pacific* case, see notes 39-43 and accompanying text *infra*.

18. 22 U.S. (9 Wheat.) 1 (1824). The *Gibbons* Court declined to decide whether all state legislation regulating commerce was precluded by the commerce clause, although Chief Justice Marshall conceded that there was "great force" to this argument. *Id.* at 209-211.

19. *Id.* at 239-40. The state statute secured to Robert R. Livingston and Robert Fulton exclusive navigation rights to all waters within the State of New York, for boats moved by fire or steam. *Id.* at 1-2. Gibbons, the owner of two steamboats, was enjoined from operating them between New York and Elizabethtown, New Jersey, by virtue of the statute. *Id.* at 2.

20. *Id.* at 190.

21. *Id.* at 193. The Court provided that "[t]he mind can scarcely conceive a system for regulating commerce . . . which shall exclude all laws concerning navigation . . ." *Id.* at 190. The Court thus found that "a [federal] power to regulate navigation, is as expressly granted, as if that term had been added to the word 'commerce.' " *Id.* at 193.

22. *Id.* at 199-200.

also invalid under the supremacy clause.[23]

Although in *Gibbons* the Court declined to decide the extent to which the states retained the power to regulate commerce when Congress remained silent, in 1851 the Court faced this issue in *Cooley v. Board of Wardens*,[24] and concluded that the commerce clause, by its own force, bars some, but not all, state regulation.[25] The *Cooley* Court, as did the *Gibbons* Court, recognized that the power to regulate commerce included the power to regulate navigation,[26] but concluded that "the mere grant to Congress of the power to regulate commerce, did not deprive the State of the power to regulate [navigation]," and that Congress, by not regulating this subject, had left such regulation to the individual state.[27]

A state regulation which discriminates against out-of-state interests may be found to substantially impede the free flow of interstate commerce and accordingly found invalid under the commerce clause.[28] For example, in *City of Philadelphia v. New Jersey*,[29] the Court invalidated a New Jersey statute

23. *Id.* at 239-40. The Court determined that Congress had acted in this area by way of a federal statute licensing such interstate commerce and that *Gibbons* held such license pursuant to the act of Congress. *Id.* at 239. The exclusive grant of navigation rights was thus held void under the supremacy clause. *Id.* at 210-11.

24. 53 U.S. (12 How.) 299 (1851). *Cooley* involved a commerce clause challenge to a Pennsylvania law requiring vessels entering the Port of Philadelphia to engage local pilots or pay a fine of one-half the cost of pilotage. *Id.* at 311. The plaintiff in *Cooley* sought the return of fees levied against his vessels. *Id.*

25. *Id.* at 318, 319. The *Cooley* Court, in determining the validity of the statute, considered whether the subject of regulation was of local or national interest. *Id.* at 319. The Court stated that,

> [u]ntil Congress should find it necessary to exert its power, it should be left to the legislation of the States; that [pilotage] is local and not national; that [pilotage] is likely to be best provided for, not by one system . . ., but by as many as the legislative discretion of the several States should deem applicable to the local peculiarities of the ports within their limits.

Id.

26. *Id.* at 315. The Court further noted that the laws governing pilots "[did] constitute regulations of navigation, and consequently of commerce, within the just meaning of [the commerce clause] of the Constitution." *Id.* at 316.

27. *Id.* at 320. The Court found, in effect, that Congress had legislated on this subject, but that the legislation manifested an intention to leave the power to regulate pilots to the individual state. *Id.*

28. *See, e.g.*, Hughes v. Oklahoma, 441 U.S. 322 (1979) (Oklahoma statute prohibiting the transfer and sale of Oklahoma minnows out of the state found to be discriminatory against interstate commerce); Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333 (1977) (North Carolina apple-packaging statute found to unduly burden interstate commerce); Great Atl. & Pac. Tea Co., Inc. v. Cottrell, 424 U.S. 366 (1976) (Mississippi statute requiring reciprocal milk sale, not justifiable as a health requirement, struck down as unduly burdening interstate commerce); Dean Milk Co. v. City of Madison, 340 U.S. 349 (1951) (city ordinance requiring that all milk sold within city limits be pasteurized at a plant within five miles of the city invalidated as discriminating against out-of-state interests); H.P. Hood & Sons v. DuMond, 336 U.S. 525 (1949) (New York milk distribution licensing statute struck down as it promoted local economic interests and discriminated against out-of-state distributors).

29. 437 U.S. 617 (1978).

prohibiting the importation of waste collected outside the state on the basis that the statute erected a barrier against the movement of interstate trade and thus discriminated against out-of-state commercial interests.[30]

In addition, although a state statute may not be discriminatory, it may still contravene the commerce clause if it imposes an undue burden on interstate commerce.[31] Moreover, state legislation will fall, in the absence of federal action, where national uniformity is inherently required in the area being regulated.[32]

The Supreme Court has applied varying analyses over the years in determining whether a state statute contravenes the commerce clause. For example, the *Cooley* Court adopted a balancing approach to determine whether a Pennsylvania law, requiring the use of local pilots entering the Port of Philadelphia, was a proper exercise of the state's power to regulate navigation.[33] By weighing the local interests in regulating navigation within the state against any need for national uniformity in this area,[34] the Court determined that the Pennsylvania law should be upheld.[35]

The Court subsequently departed from the *Cooley* "balancing" ap-

30. *Id.* at 628. The Court determined that the New Jersey prohibition on the importation of waste constituted protectionist legislation which imposed the full burden of conserving New Jersey's remaining landfill space upon out-of-state commercial interests. *Id.* The Court found that such discriminatory legislation fell squarely within the area that the commerce clause was meant to protect. *Id.*

31. *See, e.g.*, Southern Pacific Co. v. Arizona, 325 U.S. 761, 770-71 (1945). For a further discussion of the *Southern Pacific* case, see notes 39-43 and accompanying text *infra*.

32. *See, e.g.*, Edwards v. California, 314 U.S. 160 (1941). The petitioner in *Edwards* was convicted for violating a California statute prohibiting the transportation of a nonresident indigent person into California. *Id.* at 171. The Court recognized that the commerce clause established an immunity from state interference respecting all subjects which would require, under the authority of the commerce clause, regulation by a single authority and that the transportation of people from state to state was such a subject. *Id.* at 176 (quoting Milk Control Bd. v. Eisenberg Farm Prods., 306 U.S. 346, 351 (1939)).

33. 53 U.S. (12 How.) at 319-21.

34. *Id.* at 319. The Court noted that those subjects of commerce which required national uniformity were to be regulated solely by Congress, but that there was no significant national interest in the regulation of pilots and pilotage and that "until Congress should find it necessary to exert its power, it should be left to the legislation of the States . . . ." *Id.*

35. *Id.* at 321. The Court held that, since the Pennsylvania pilotage statute did not conflict with any Congressional law or regulation, and since it was enacted by virtue of the state's power to legislate in that area, the statute was valid. *Id.* *See generally* Schwartz, *Commerce, the States, and the Burger Court*, 74 N.W. L. REV. 409 (1979). Schwartz notes that the *Cooley* "balancing" approach requires weighing the national and local interests involved in order to determine the validity of the state regulation in question. *Id.* at 411-12.

See also Pike v. Bruce Church, Inc., 397 U.S. 137 (1970). The *Pike* Court asserted that "[w]here the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Id.* at 142.

proach in *South Carolina State Highway Department v. Barnwell Brothers*.[36] The *Barnwell* Court, applying a rational-basis approach,[37] determined that a South Carolina statute regulating the width and weight of trucks using the state's highways was valid because, although stricter than the standards of surrounding states, the means of regulation chosen were reasonably adapted to the ends sought.[38]

In 1945, the Supreme Court returned to the *Cooley* "balancing" approach to commerce clause jurisprudence in *Southern Pacific Co. v. Arizona*.[39] Southern Pacific Co., an operator of interstate trains, challenged an Arizona statute limiting the number of cars which could comprise a railroad train.[40] By balancing the state's asserted safety interest of reducing the number of train accidents within the state[41] against the burdens imposed upon the national interest in the free flow of interstate commerce and its freedom from local restraints where national uniformity is necessary, the Court found the Arizona train-length regulation invalid.[42] The *Southern Pacific* Court distin-

36. 303 U.S. 177 (1938). The *Barnwell* Court recognized that Congress had the authority to determine whether burdens imposed upon interstate commerce by state regulation were impermissible and to secure uniformity in such areas by legislation, but stated that in the absence of Congressional action, it was not a judicial function to weigh burdens against benefits. *Id.* at 189-90 (citations omitted).

37. *Id.* at 195. When a court applies the "rational basis" test, it "will not second guess the legislature as to the wisdom or rationality of a particular statute if there is a rational basis for its enactment." *See* BLACK'S LAW DICTIONARY 1136 (rev. 5th ed. 1979).

38. 303 U.S. at 195. The *Barnwell* Court found that "the judicial function, under the commerce clause . . . , stops with the inquiry whether the state legislature in adopting regulations . . . has acted within its province, and whether the means of regulation chosen are reasonably adapted to the end sought." *Id.* at 190 (citations omitted). Thus, the Court concluded that South Carolina was not bound by the judgment of other state legislatures, that the measures taken by the state were within its legislative power and that the incidental burden on interstate commerce arising from the South Carolina weight-width regulation was not forbidden. *Id.* at 195-96.

39. 325 U.S. 761 (1945). The *Southern Pacific* Court stated,

> [T]he matters for ultimate determination here are the nature and extent of the burden which the state regulation . . . , adopted as a safety measure, imposes on interstate commerce, and whether the relative weights of the state and national interests involved are such as to make inapplicable the rule, generally observed, that the free flow of interstate commerce and its freedom from local restraints in matters requiring uniformity of regulation are interests safeguarded by the commerce clause from state interference.

Id. at 770-71.

40. *Id.* at 763. The Arizona statute imposed fines on any person or corporation operating a railroad train of more than 14 passenger or 70 freight cars within the state. *Id.*

41. *Id.* at 776-79. Arizona asserted that, by regulating the length of trains, "slack action" accidents would be reduced. *Id.* at 776. "Slack action is the amount of free movement of one car before it transmits its motion to an adjoining coupled car." *Id.*

42. *Id.* at 783-84. The Court concluded that the Arizona legislature had gone too far in its regulation of train lengths in that the law passed beyond what was plainly essential for safety since it did not appear that the regulation would lessen the danger of an accident. *Id.* at 781-82. The Court concurred with the trial court's

guished the *Barnwell* decision on the grounds that in *Barnwell* the Court had justified the state regulation as a highway safety measure and hence a subject of local concern.[43]

The Court continued to follow a "balancing" approach in reviewing a challenge to a nondiscriminatory state highway safety regulation in *Bibb v. Navajo Freight Lines*.[44] The *Bibb* "balancing" test weighed the safety benefits sought to be achieved by the regulation against the burden the law imposed upon interstate commerce.[45] The Court recognized that state safety measures carry a strong presumption of validity when challenged in a federal court,[46] but found that a regulation requiring "contour" mudflaps imposed substantial costs upon those required to install them[47] and that additional safety hazards were created by their use[48] and thus held the purported safety purposes to be outweighed by the national interests in free flowing commerce.[49]

In 1978, the Supreme Court, in *Raymond Motor Transportation, Inc. v. Rice*,[50] invalidated Wisconsin highway safety regulations limiting the length of trucks allowed on that state's highways.[51] Justice Powell, writing for the

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finding "that the Arizona Train Limit Law, viewed as a safety measure, affords at most slight and dubious advantage, if any, over unregulated train lengths . . . ." *Id.* at 779.

43. *Id.* at 783. The Court noted that, "[u]nlike the railroads, local highways are built, owned and maintained by the state . . . ." *Id.* One commentator notes that, "[b]ecause the *Barnwell* law was aimed at both safety and highway conservation, it was a justified exercise of state power despite the fact that what was said in *Southern Pacific* might otherwise be fully applicable." Schwartz, *supra* note 35, at 415.

44. 359 U.S. 520 (1959). The *Bibb* plaintiffs challenged an Illinois statute requiring that trucks and trailers using the state's highways be equipped with contour mudguards. *Id.* at 521-22. The statute was challenged on the basis that it made the straight mudflap, legal in an overwhelming majority of states, illegal in Illinois, thus unreasonably burdening interstate commerce. *Id.* at 523.

45. *Id.* at 529-30. The *Bibb* Court considered the question of whether the state interest in its safety regulation was so compelling as to outweigh the burden imposed upon interstate commerce by the statute in question. *Id.*

46. *Id.* at 524, 529 (citations omitted).

47. *Id.* at 525. The Court noted that "the initial cost of installing [contour] mudguards on all the trucks owned by the appellees ranged from $4,500 to $45,840" and that there were also substantial costs relating to maintenance and replacement of the mudguards. *Id.*

48. *Id.* The Court recognized that evidence had been introduced in the district court which demonstrated that the contour mudguard "tended to cause an accumulation of heat in the brake drum, thus decreasing the effectiveness of the brakes . . . ," and that they were susceptible to falling off on the highway. *Id.*

49. *Id.* at 529-30. The Court also distinguished its findings from those made in *Barnwell* by noting that the restrictions imposed by the *Barnwell* regulation "could pass muster in any State" whereas the Illinois mudflap law was in direct conflict with the legislation of a majority of states. *Id.* at 526.

50. 434 U.S. 429 (1978). The Wisconsin statute challenged in *Raymond* prohibited the use of double-trailers or trucks exceeding fifty-five feet in length on the state's highways without a special permit. *Id.* at 432-33.

51. *Id.* at 430. The question considered by the *Raymond* Court was whether Wisconsin's truck-length regulations "violate the Commerce Clause because they uncon-

Court, applied a balancing approach stating that the inquiry involves "a sensitive consideration of the weight and nature of the state regulatory concern in light of the extent of the burden imposed on the course of interstate commerce,"[52] and determined that the burden imposed upon interstate commerce was no less than that imposed by the "mudflap" requirement in *Bibb*, and thus invalidated the truck-length regulation.[53] More recently, in *Kassel v. Consolidated Freightways Corp.*,[54] the Court considered a commerce clause challenge to an Iowa truck-length statute, similar to the regulation involved in *Raymond*.[55] The *Kassel* opinion illustrates that the case created much confusion within the Court as to the appropriate standard of review to be followed.[56] Justice Powell, speaking for the plurality,[57] appeared to favor a deferential standard of scrutiny,[58] yet applied a "balancing" approach and

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stitutionally burden or discriminate against interstate commerce." *Id.* at 430. The United States District Court for the Western District of Wisconsin had previously determined that the regulations did not impose an unconstitutional burden on interstate commerce. *Id. See* 417 F. Supp. 1352, 1358-61 (W.D. Wis. 1976).

52. 434 U.S. at 441. *See generally* Maltz, *The Burger Court, the Regulation of Interstate Transportation and the Concept of Local Concern: The Jurisprudence of Categories*, 46 TENN. L. REV. 406, 417 (1979). Maltz notes that the *Raymond* Court relied heavily on *Pike v. Bruce Church* in drawing this conclusion even though the statute invalidated in *Pike* was discriminatory on its face. *Id.* at 417, 418 n.73. *See* Pike v. Bruce Church, Inc., 337 U.S. 137 (1970). Maltz also asserted that the *Raymond* Court did not rule out "localness" as an important element in commerce clause jurisprudence, but that the local-national interest distinction was embedded in the *Raymond* "balancing" approach as the Court reaffirmed the strong presumption of validity accorded to state safety regulations. Maltz, *supra*, at 418. For a further discussion of the *Pike* decision, see note 35 *supra*.

53. 434 U.S. at 446. The *Raymond* Court concluded that the challenged regulations violated the commerce clause because they substantially burdened interstate commerce and because the "State of Wisconsin failed to make even a colorable showing that its regulations contribute[d] to highway safety." *Id.* at 447-48. In his concurring opinion, Justice Blackmun sought to emphasize the narrow scope of the *Raymond* decision by asserting that the Court did not make a legislative choice, but concluded that the safety interests asserted had not been shown to exist as a matter of law. *Id.* at 450 (Blackmun, J., concurring).

54. 450 U.S. 662 (1981).

55. *Id.* at 664. The Iowa statute challenged in *Kassel* prohibited the use of 65 foot double trailers within the state's borders. *Id.* at 665. Iowa defended the statute against the constitutional challenge "as a reasonable safety measure enacted pursuant to its police power." *Id.* at 667. Iowa justified its position by presenting evidence that 55 foot single trailers were superior to 65 foot double trailers in the area of highway safety. *Id.* at 672.

56. *See* American Trucking Association, Inc. v. Larson, 683 F.2d 787, 793 (3d Cir. 1982). The Third Circuit noted that the *Kassel* Court was "openly divided on the issue of which analytical approach to apply in examining the constitutionality of Iowa's scheme and no opinion was denominated as the Opinion of the Court." *Id. See also* Note, *State Regulation of Interstate Transportation*, 95 HARV. L. REV. 93 (1981).

57. Justice Powell's opinion was joined by Justices Blackmun, Stevens and White. Justice Brennan, joined by Justice Marshall, filed a separate concurring opinion. Justice Rehnquist, joined by Chief Justice Burger and Justice Stewart, filed a dissenting opinion.

58. 450 U.S. at 670. Justice Powell stated that "if safety justifications are not illusory, the Court will not second guess legislative judgment about their importance

determined that the truck-length regulations imposed substantial burdens upon interstate commerce, in the form of costs and delays,[59] without a significant countervailing safety interest.[60] Justice Powell characterized the state's asserted interest in highway safety as illusory[61] and concluded that, since the "regulations impair significantly the federal interest in efficient and safe interstate transportation, the [statutes] cannot be harmonized with the commerce clause."[62] Justice Powell thus invalidated the Iowa truck-length limitations as unconstitutionally burdening interstate commerce.[63] Justice Rehnquist, dissenting in *Kassel*, contended that a highly deferential standard of review was applicable and that highway safety regulations were entitled to the strongest presumption of validity against commerce clause challenges.[64] Thus, the dissent rejected the balancing approach and opined that the majority had "overstep[ped its] 'limited authority to review state legislation under the commerce clause.' "[65]

Against this background, the Third Circuit considered the question of whether a state's nondiscriminatory highway safety regulation should be examined under the "balancing" approach or under a highly deferential stan-

in comparison with related burdens on interstate commerce." *Id.* (quoting Raymond Motor Transp., Inc. v. Rice, 434 U.S. at 449). *See also* Note, *supra* note 56, at 95.

59. 450 U.S. at 674. Justice Powell noted that compliance with the Iowa statute would require trucking companies to detach their 65 foot double trailers and ship them through Iowa separately or to route the trailers around Iowa. The evidence of record indicated that the statute would impose an additional $12.6 million each year in costs to the trucking industry. *Id.*

60. *Id.* at 678.

61. *Id.* at 671. Justice Powell recognized statistical studies which "supported the view that 65 foot doubles [were] at least as safe overall as 55 foot singles . . . ." *Id.* at 673. Justice Powell stated that Iowa's effort in supporting the safety rationale of its statute was much more serious than that of the State of Wisconsin in *Raymond*, but he regarded its effort as no more persuasive. *Id.* at 671-72.

62. *Id.* at 671.

63. *Id.* Justice Brennan concurred with this result, but contended that the balancing test should be one of weighing the burdens imposed on interstate commerce against those benefits actually sought to be achieved by the state legislature, *i.e.*, the articulated purpose of the legislation, "not against those suggested after the fact by counsel." *Id.* at 680 (Brennan, J., concurring). Justice Brennan also asserted that commerce clause challenges must take into account that protectionist legislation, even when safety related, is *per se* unconstitutional. *Id.* Justice Brennan noted that Iowa, through its truck-length statute, attempted to "shut off its fair share of the burden of maintaining interstate truck routes" by making the "Nation's highways as a whole, more hazardous." *Id.* at 686 (Brennan, J., concurring).

64. *Id.* at 691-93 (Rehnquist, J., dissenting). Justice Rehnquist noted that the " 'strong presumption of validity' accorded highway safety measures could be overcome only when the safety benefits were 'slight or problematical.' " *Id.* at 692 (Rehnquist, J., dissenting) (quoting Bibb v. Navajo Freight Lines, 359 U.S. at 524).

65. *Id.* at 687 (Rehnquist, J., dissenting) (quoting Brotherhood of Locomotive Fireman v. Chicago, R.I. & P.R. Co., 393 U.S. 129 (1968)). Justice Rehnquist asserted that a balancing approach makes an empty gesture of the strong presumption of validity accorded state safety measures. *Id.* at 691 (Rehnquist, J., dissenting). Justice Rehnquist concluded that the statute was not unconstitutional as Iowa had produced sufficient evidence that a rational relation existed between highway safety and its truck length regulation. *Id.* at 694 (Rehnquist, J., dissenting).

dard of review, in determining whether the statute unduly burdened interstate commerce.[66]

Judge Sloviter[67] began her analysis by examining the apparent division among the Justices of the United States Supreme Court as to which legal standard federal courts should apply in reviewing a state safety regulation challenged under the commerce clause.[68] The Third Circuit acknowledged that highway regulation has been given special deference[69] and recognized that the division among the Justices has arisen chiefly in cases in which the Court "invalidated state regulation purportedly enacted in the name of highway safety."[70] Although the "balancing" approach was clearly supported by a majority of the Court in the earlier highway-safety cases, the Third Circuit noted that multiple opinions in the more recent cases indicate a divergence of views.[71] The court paid particular attention to the split of the Justices in *Kassel*, comparing Justice Powell's "balancing" approach with Justice Rehnquist's "highly deferential" standard.[72]

Next, the *American Trucking* court determined that it would adopt the "highly deferential" standard of review of commerce clause jurisprudence

66. 683 F.2d at 794. The court stated that it was not confident that the selection of the legal standard would not be outcome determinative. *Id.* at 794-95.

67. Judge Sloviter was joined in her opinion by Judge Van Artsdalen with Judge Adams dissenting.

68. 683 F.2d at 790-94. This examination was concerned mainly with the division of Justices in the Court's recent plurality opinion in *Kassel*. *Id.* at 793-94. For a discussion of the *Kassel* opinions, see notes 54-65 and accompanying text *supra*.

69. 683 F.2d at 790. The majority noted that the issue of state power arises only upon Congress' inaction. *Id.* One commentator has recently opined that a more appropriate basis for analysis of discriminatory or disproportionate state legislative treatment of commerce might exist with the privilege and immunities clause of Article IV. *See* Eule, *supra* note 16, at 428. The *American Trucking* majority noted Professor Eule's theory but found itself bound by precedent in the area of commerce clause jurisprudence. 683 F.2d at 790.

70. 683 F.2d at 791. The court noted that the Supreme Court had invalidated state highway safety regulations only three times in the preceeding 30 terms. *Id.* The court determined that it was from the trilogy of highway regulation cases that the proper analytical approach was to be derived. *Id.* (citing Bibb v. Navajo Freight Lines, 359 U.S. 520 (1959); Raymond Motor Transp., Inc. v. Rice, 434 U.S. 429 (1978); Kassel v. Consolidated Freightways Corp., 450 U.S. 662 (1981)).

71. *Id.* at 791-94. The *American Trucking* court characterized the 1959 *Bibb* decision as a "balancing" approach, where state safety interests were found to be outweighed by a heavy burden on interstate commerce. *Id.* at 791. *See* Bibb v. Navajo Freight Lines, 359 U.S. 520 (1959). Judge Sloviter saw the disagreement between the plurality and concurring Justices in *Raymond* as a split on the proper scope of judicial inquiry in the balancing process. 683 F.2d at 792-93. *See* Raymond Motor Transp., Inc. v. Rice, 434 U.S. 429 (1978). Most recently, on the "openly divided" *Kassel* Court, the plurality followed the balancing approach, but the concurring and dissenting Justices, five in all, seemed to reject the balancing rule. 683 F.2d at 793-94. *See* Kassel v. Consolidated Freightways Corp., 450 U.S. 662 (1981).

72. 683 F.2d at 793-94. For a further discussion of the dichotomy existing within the Burger Court in light of *Kassel*, see notes 54-65 and accompanying text *supra*.

articulated by Justice Rehnquist in his *Kassel* dissent.[73] The majority decided to follow this "highly deferential" standard of review in determining the constitutionality of Pennsylvania's mandatory inspection statute for several reasons.[74] First, the court contended that, in aligning the Justices in *Kassel*, five of the Justices appear to have rejected the "balancing" approach in the area of state safety regulation.[75] Second, the court opined that the more deferential standard is preferable "because issues of highway safety have always been considered of a 'peculiarly local nature.' "[76] Lastly, the Third Circuit expressed its reluctance "to superimpose judicial values over legislative values" where safety is the concern of the legislation in question.[77]

After adopting this "highly deferential" standard of review, the court proceeded to determine whether the "strong presumption of validity"[78] accorded Pennsylvania's mandatory inspection statute had been overcome by a showing that the safety benefits sought to be derived therefrom were merely illusory.[79] Upon review of the evidence presented, the Third Circuit concluded that the presumption had not been overcome and also that the record provided ample support for the safety justification of the Pennsylvania inspection statute.[80] The majority noted that the Commonwealth only had to show that the legislature had a reasonable basis to believe that inspection of motor carrier vehicles was likely to uncover mechanical defects and that such defects contributed to accidents.[81] In this case, the court con-

73. 683 F.2d at 795. The majority felt that, since it was not confident that the standard selected would not be outcome determinative, it was incumbent upon the Third Circuit to expressly select an appropriate standard. *Id.* at 794-95. For a further discussion of the highly deferential standard of review as developed by Justice Rehnquist in his *Kassel* dissent, see notes 64-65 and accompanying text *supra*.

74. 683 F.2d at 795.

75. *Id.* For a further discussion of the division of the Justices in the *Kassel* opinion, see notes 54-65 and accompanying text *supra*.

76. 683 F.2d at 795 (citing Bibb v. Navajo Freight Lines, 359 U.S. at 523). The court noted that "[i]f the rational basis standard is considered adequate in equal protection cases . . . a similarly deferential standard should suffice as the standard for evaluating nondiscriminatory state commercial regulations in the field of highway safety." 683 F.2d at 795.

77. *Id.* The *American Trucking* court asserted its belief that "the halls of the state legislature are a more appropriate forum for resolution of [challenges of state highway safety regulations] than are the walls of a judge's chambers." *Id.* In addition the court noted that "[a]s long as the statute does not on its face or in fact discriminate against out-of-state interests or in favor of in-state interests, there is ample protection from such legislation in the democratic process itself." *Id.*

78. *Id. See generally* Bibb v. Navajo Freight Lines, 359 U.S. at 524 (recognizing that state safety measures carry a strong presumption of validity when challenged in federal courts).

79. 683 F.2d at 795.

80. *Id.* at 799. The court determined that it was not the burden of the state "to prove that uninspected motor carrier vehicles are, by definition, unsafe" nor was it the function of the court to decide whether the evidence was such as to convince the court that an inspection requirement was warranted. *Id.* The court would not rule on the wisdom of the legislative decision once it found evidence supporting the legislature's choice. *Id.*

81. *Id.* The majority asserted that "[i]t is difficult to conclude that Pennsylvania

cluded that the Commonwealth had presented sufficient evidence to support its claim that the inspections had some safety benefits.[82]

In a vigorous dissent, Judge Adams recognized that the judicial role in "dormant" commerce clause cases should be a limited one, but found that the "balancing" approach was the proper standard of review to be applied when a federal court examines the validity of state highway safety regulations.[83] Judge Adams recognized that "situations may arise where enormous burdens are placed on interstate commerce by nondiscriminatory, non-illusory state safety statutes," and stated that a weighing of interests was required to prevent a minor or marginal safety objective from imposing a significant burden on national commerce.[84] In this case Judge Adams felt that a weighing of the asserted safety purpose against the degree of interference on interstate commerce, in the form of a cost-benefit analysis,[85] would

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has not met that minimal requirement, particularly when it is balanced against a burden on interstate commerce stemming merely from an inspection requirement rather than total exclusion, as in the case of oversized vehicles. *Id.* The court noted this fact, as well as the absence of any discriminatory provisions, in distinguishing the Pennsylvania statute from those invalidated by the Supreme Court in *Bibb*, *Raymond*, and *Kassel*. *Id.* *See* notes 44-65 and accompanying text *supra*.

82. *Id.*

83. *Id.* at 801 (Adams, J., dissenting). Judge Adams acknowledged the wisdom of limited judicial review in this area "not only because courts generally are ill-equipped to evaluate the wisdom of legislation intended to promote safety, but also because Congress always retains the ability, through the exercise of its plenary powers, to invalidate any state regulation that it deems to be an intrusion on the commercial interests of the nation." *Id.* However, Judge Adams maintained that the "sensitive" balancing proposed by the *Kassel* plurality was necessitated by "the long standing notion that the commerce clause exists, in part to 'prevent the States from erecting barriers to the free flow of interstate commerce.' " *Id.* at 803-04 (Adams, J., dissenting) (citation omitted).

84. *Id.* at 803 (Adams, J., dissenting). In countering those reasons articulated by the majority in adopting the highly deferential standard of review, Judge Adams noted first that, although five Justices have apparently questioned the legitimacy of the "balancing" approach, neither approach to commerce clause challenges has received majority recognition. *Id.* at 802. Next, Judge Adams opined that, although state highway safety regulation may be of a "peculiarly local nature," it does not necessarily follow that the statute in question should be reviewed under a deferential standard, similar to that standard followed in the examination of state commercial legislation, since the regulation in question affects the activities and interests of unrepresented outsiders in addition to those of its citizens. *Id.* Lastly, Judge Adams took exception to the majority's finding that questions of state highway safety regulation are better left to the legislature than to the judiciary, as he could not find that "absolute judicial reticence is appropriate when reviewing the actions of *state* legislatures, whose safety-related judgments, essentially attuned to local considerations, do not necessarily reflect an adequate comprehension or consideration of the burdens placed on interstate intercourse." *Id.* at 802-03 (Adams, J., dissenting) (emphasis in original). For a further discussion of the "balancing" approach as applied by the *Kassel* plurality, see notes 58-63 and accompanying text *supra*.

85. 683 F.2d at 804 (Adams, J., dissenting). Judge Adams opined that "the better judicial practice would take into account costs as well as benefits; it would balance local safety objectives against 'the national interest in keeping interstate commerce free from interferences which seriously impede it.' " *Id.* (quoting Bibb v. Navajo Freight Lines, 359 U.S. at 524) (citation omitted).

result in a finding that the mandatory inspection statute overwhelmingly burdens interstate commerce and thus could not survive constitutional scrutiny.[86]

Upon review of the *American Trucking* decision, it is submitted that, in order to achieve a desired result, the majority arbitrarily chose to follow the highly deferential standard of review, as the outcome obtained in this case was determined by the approach selected by the Court.[87] It is suggested that the only means by which the court could find section 4703(a)(2) to be a valid state highway safety measure was through the application of a highly deferential approach to the challenge of the regulation.[88]

Although the balancing approach did not receive majority support in *Kassel*, it is suggested that the highly deferential standard of review received even less support from the *Kassel* Court.[89] It is also contended that, although highway safety may be of a "peculiarly local nature," the courts ought to give consideration to the effects of a statute on interstate commerce.[90] In addition, although courts must approach state legislation delicately in order not to intrude on the legislative process, the courts cannot disregard the fact that state legislatures may not necessarily take into account the national interests affected by their legislation.[91]

It is submitted that, although unsupported by a majority in any recent commerce clause challenge to a state safety regulation, the "balancing" approach provides the better analytical approach to commerce clause jurisprudence.[92] In weighing the burdens imposed upon interstate commerce, such a

86. *Id.* at 804 (Adams, J., dissenting). Judge Adams noted that "[i]t is difficult to quarrel with the conclusions drawn by the district court . . . in this case," which included uncontradicted evidence that the inspection statute would disrupt operations, raise costs and delay service, factors considered significant by the *Raymond* Court. *Id.* at 805 (Adams, J., dissenting). Judge Adams stated that he "would hold that, under the balancing test, the undisputed burdens on interstate commerce resulting from Pennsylvania's inspection program outweigh what the district court found to be speculative and unsubstantiated promises of improved highway safety." *Id.* at 806 (Adams, J., dissenting).

87. *See* 683 F.2d at 794-95. The *American Trucking* majority recognized that in selecting a standard there was a probability that it would be determining the outcome of the case. *See id.*

88. *See id.* The majority, however, noted that the Pennsylvania inspection statute might survive the "balancing" test but determined that it need not decide that issue. *Id.* at 799.

89. *See id.* at 801 & n.1, 802 (Adams, J., dissenting); Kassel v. Consolidated Freightways Corp., 450 U.S. 662, 687 (1981) (Rehnquist, J., dissenting). Judge Adams also notes the recent support for the "balancing" approach in Pike v. Bruce Church, Inc., 397 U.S. 137 (1970), in which seven Justices joined in applying the "balancing" test to a state "health and safety" category. 683 F.2d at 801 n.1 (Adams, J., dissenting).

90. *See* 683 F.2d at 803 (Adams, J., dissenting).

91. *See id.* at 802-03 (Adams, J., dissenting). For a further discussion of Judge Adams' disagreement with the majority's reasoning, see notes 83-86 and accompanying text *supra*.

92. *See id.* at 803 (Adams, J., dissenting). *See generally* notes 83-86 and accompanying text *supra*.

lost time and profits, against the safety interests of the state, the "balancing" approach enables the federal courts to reconcile legitimate state safety objectives with "the national interest in keeping interstate commerce free from interferences which seriously impede it."[93]

The most immediate impact of the American Trucking decision is that, as a result of the Third Circuit's adoption of a highly deferential standard of review and validation of Pennsylvania's mandatory inspection statute, Pennsylvania becomes "the only state in the nation to restrict access to its highways to those trucks that have received a state sponsored safety inspection."[94] Consequently, an enormous burden is placed upon a great number of out-of-state carriers, not required to undergo inspection in any other state, once the statute becomes effective.[95] With the Supreme Court's refusal to grant *certiorari* in the *American Trucking* case,[96] it is submitted that other jurisdictions may attempt to create similarly burdening legislation under the guise of state safety regulation.[97]

It is also submitted that, in the absence of a definitive answer by the Supreme Court as to the proper standard of review to be followed in commerce clause challenges of state safety regulations, other federal courts will remain free to decide for themselves which standard, if either, provides the better means of analysis.[98] It is suggested that the highly deferential standard of review followed by the Third Circuit may prevail in other circuits as the Supreme Court's denial of *certiorari* may be treated as a signal of the validity of the deferential approach.[99]

In conclusion, it is submitted that, although "the commerce clause is . . . a grant of authority to Congress, not to the courts,"[100] the courts must

93. Bibb v. Navajo Freight Lines, 359 U.S. at 524. *See* 683 F.2d at 804 (Adams, J., dissenting). For a further discussion of the cost-benefit balancing analysis proposed by Judge Adams in his dissent, see note 85 *supra*.

94. 683 F.2d at 807 (Adams, J., dissenting).

95. *See id.* at 804 (citing American Trucking Associations, Inc. v. Larson, 515 F. Supp. 1327, 1330 (M.D. Pa. 1981)). Judge Adams repeated the findings of the district court that "nearly one million out-of-state vehicles . . . would be affected" and that the costs of inspections and the delays created thereby imposed substantial burdens on the trucking industry. *Id.* at 804-05 (Adams, J., dissenting). *See generally* American Trucking Associations, Inc. v. Larson, 515 F. Supp. 1327, 1330, 1332-34 (M.D. Pa. 1981).

96. 103 S. Ct. 448 (1982).

97. *See* 683 F.2d at 803 (Adams, J., dissenting). Judge Adams asserts that regulations which clearly promote highway safety will pass muster under a deferential standard of commerce clause review, regardless of their unreasonableness or their negative impact upon interstate commerce. *Id.* at 803-04 (Adams, J., dissenting).

98. *See* 683 F.2d at 794. The *American Trucking* majority recognizes that, since the Supreme Court has failed to accept a common standard, it would be presumptous for the Third Circuit to attempt to reconcile the two approaches set out by the *Kassel* Court. *Id.*

99. 103 S. Ct. 448 (1982).

100. 450 U.S. at 690 (Rehnquist, J., dissenting).

act to dispel the confusion in this area as long as Congress remains silent.

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