Dormant Commerce Clause - The Basic Framework

City of Philadelphia v. New Jersey

Supreme Court of the United States, 1978.
437 U.S. 617.

Mr. Justice Stewart delivered the opinion of the Court.

A New Jersey law prohibits the importation of most "solid or liquid waste which originated or was collected outside the territorial limits of the State . . .." In this case we are required to decide whether this statutory prohibition violates the Commerce Clause of the United States Constitution.

I

The statutory provision in question is ch. 363 of 1973 N.J. Laws, which took effect in early 1974. In pertinent part it provides:

> No person shall bring into this State any solid or liquid waste which originated or was collected outside the territorial limits of the State, except garbage to be fed to swine in the State of New Jersey, until the commissioner [of the State Department of Environmental Protection] shall determine that such action can be permitted without endangering the public health, safety and welfare and has promulgated regulations permitting and regulating the treatment and disposal of such waste in this State.

As authorized by ch. 363, the Commissioner promulgated regulations permitting four categories of waste to enter the State.[1] Apart from these narrow exceptions, however, New Jersey closed its borders to all waste from other States.

Immediately affected by these developments were the operators of private landfills in New Jersey, and several cities in other States that had agreements with these operators for waste disposal. They brought suit against New Jersey and its Department of Environmental Protection in state court, attacking the statute and regulations on a number of state and federal grounds.... [The New Jersey Supreme Court upheld the statute and regulations.]

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[1] *Ed. note* - The exceptions were for garbage to be fed to swine in New Jersey; clean materials intended for recycling facilities; municipal solid waste "separated or processed into usable secondary materials"; and certain materials headed for registered solid waste disposal facilities.

II

Before it addressed the merits of the appellants' claim, the New Jersey Supreme Court questioned whether the interstate movement of those wastes banned by ch. 363 is "commerce" at all within the meaning of the Commerce Clause.... The state court found that ch. 363 as narrowed by the state regulations ... banned only "those wastes which can[not] be put to effective use," and therefore those wastes were not commerce at all, unless "the mere transportation and disposal of valueless waste between states constitutes interstate commerce within the meaning of the constitutional provision."

We think the state court misread our cases.... In saying that innately harmful articles "are not legitimate subjects of trade and commerce," [*Bowman v. Chicago & Northwestern R. Co.* (1888)] was stating its conclusion, not the starting point of its reasoning. All objects of interstate trade merit Commerce Clause protection; none is excluded by definition at the outset. In *Bowman* and similar cases, the Court held simply that because the articles' worth in interstate commerce was far outweighed by the dangers inhering in their very movement, States could prohibit their transportation across state lines. Hence, we reject the state court's suggestion that the banning of "valueless" out-of-state wastes by ch. 363 implicates no constitutional protection. Just as Congress has power to regulate the interstate movement of these wastes, States are not free from constitutional scrutiny when they restrict that movement.

III

A

Although the Constitution gives Congress the power to regulate commerce among the States, many subjects of potential federal regulation under that power inevitably escape congressional attention.... In the absence of federal legislation, these subjects are open to control by the States so long as they act within the restraints imposed by the Commerce Clause itself. The bounds of these restraints appear nowhere in the words of the Commerce Clause, but have emerged gradually in the decisions of this Court giving effect to its basic purpose.

That broad purpose was well expressed by Mr. Justice Jackson in his opinion for the Court in *H. P. Hood & Sons, Inc. v. Du Mond* (1949):

> This principle that our economic unit is the Nation, which alone has the gamut of powers necessary to control of the economy, including the vital power of erecting customs barriers against foreign competition, has as its corollary that the states are not separable economic units. As the Court said in *Baldwin v. Seelig*, "what is

> ultimate is the principle that one state in its dealings with another may not place itself in a position of economic isolation."

The opinions of the Court through the years have reflected an alertness to the evils of "economic isolation" and protectionism, while at the same time recognizing that incidental burdens on interstate commerce may be unavoidable when a State legislates to safeguard the health and safety of its people.

Thus, where simple economic protectionism is effected by state legislation, a virtually *per se* rule of invalidity has been erected. *See, e. g., H. P. Hood & Sons, Inc. v. Du Mond* [(ruling unconstitutional a state's refusal to approve a milk receiving depot on the grounds that the milk collected there would then be shipped out of state)]; *Toomer v. Witsell* (1948) [(striking down requirement that shrimp be unloaded, packed, and stamped at in-state port before being shipped out of state)]; *Baldwin v. G. A. F. Seelig, Inc.* (1935) [(striking down law prohibiting sale of out-of-state milk that had been purchased for less than the minimum price set for purchases within the state.]; *Buck v. Kuykendall* (1925) [(declaring unconstitutional Washington's refusal to permit an auto stage line between Portland and Seattle)]. The clearest example of such legislation is a law that overtly blocks the flow of interstate commerce at a State's borders. *Cf. Welton v. Missouri* (1875) [(striking down license requirement for "peddler[s]" selling goods manufactured out of state)].

But where other legislative objectives are credibly advanced and there is no patent discrimination against interstate trade, the Court has adopted a much more flexible approach, the general contours of which were outlined in *Pike v. Bruce Church, Inc.* (1970):

> Where 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.... If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities....

The crucial inquiry, therefore, must be directed to determining whether ch. 363 is basically a protectionist measure, or whether it can fairly be viewed as a law directed to legitimate local concerns, with effects upon interstate commerce that are only incidental....

B

... The appellants strenuously contend that ch. 363, "while outwardly cloaked 'in the currently fashionable garb of environmental protection,' ... is actually no more than a legislative effort to suppress competition and stabilize the cost of solid waste disposal for New Jersey residents" ....

This dispute about ultimate legislative purpose need not be resolved, because its resolution would not be relevant to the constitutional issue to be decided in this case. Contrary to the evident assumption of the state court and the parties, the evil of protectionism can reside in legislative means as well as legislative ends. Thus, it does not matter whether the ultimate aim of ch. 363 is to reduce the waste disposal costs of New Jersey residents or to save remaining open lands from pollution, for we assume New Jersey has every right to protect its residents' pocketbooks as well as their environment. And it may be assumed as well that New Jersey may pursue those ends by slowing the flow of *all* waste into the State's remaining landfills, even though interstate commerce may incidentally be affected. But whatever New Jersey's ultimate purpose, it may not be accomplished by discriminating against articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently. Both on its face and in its plain effect, ch. 363 violates this principle of nondiscrimination.

The Court has consistently found parochial legislation of this kind to be constitutionally invalid, whether the ultimate aim of the legislation was to assure a steady supply of milk by erecting barriers to allegedly ruinous outside competition, *Baldwin v. G. A. F. Seelig, Inc.*, or to create jobs by keeping industry within the State, *Foster-Fountain Packing Co. v. Haydel* (1928); *Johnson v. Haydel* (1928); *Toomer v. Witsell*; or to preserve the State's financial resources from depletion by fencing out indigent immigrants, *Edwards v. California* (1941) [(striking down statute criminalizing the act of "bringing into the State any indigent person who is not a resident of the State")]. In each of these cases, a presumably legitimate goal was sought to be achieved by the illegitimate means of isolating the State from the national economy.

Also relevant here are the Court's decisions holding that a State may not accord its own inhabitants a preferred right of access over consumers in other States to natural resources located within its borders. *West, Attorney General of Oklahoma v. Kansas Natural Gas Co.* (1911); *Pennsylvania v. West Virginia* (1923). These cases stand for the basic principle that a "State is without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground that they are required to satisfy local demands or because

they are needed by the people of the State."[2] *Foster-Fountain Packing Co. v. Haydel.*

... It is true that in our previous cases the scarce natural resource was itself the article of commerce, whereas here the scarce resource and the article of commerce are distinct. But that difference is without consequence. In both instances, the State has overtly moved to slow or freeze the flow of commerce for protectionist reasons. It does not matter that the State has shut the article of commerce inside the State in one case and outside the State in the other. What is crucial is the attempt by one State to isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade.

The appellees argue that not all laws which facially discriminate against out-of-state commerce are forbidden protectionist regulations. In particular, they point to quarantine laws, which this Court has repeatedly upheld even though they appear to single out interstate commerce for special treatment. *See Baldwin v. G. A. F. Seelig, Inc.*; *Bowman v. Chicago & Northwestern R. Co.* (1888). In the appellees' view, ch. 363 is analogous to such health-protective measures, since it reduces the exposure of New Jersey residents to the allegedly harmful effects of landfill sites.

It is true that certain quarantine laws have not been considered forbidden protectionist measures, even though they were directed against out-of-state commerce. *See Asbell v. Kansas* (1908); *Reid v. Colorado* (1902); *Bowman v. Chicago & Northwestern R. Co.*. But those quarantine laws banned the importation of articles such as diseased livestock that required destruction as soon as possible because their very movement risked contagion and other evils. Those laws thus did not discriminate against interstate commerce as such, but simply prevented traffic in noxious articles, whatever their origin.

The New Jersey statute is not such a quarantine law. There has been no claim here that the very movement of waste into or through New Jersey endangers health, or that waste must be disposed of as soon and as close to its point of generation as possible. The harms caused by waste are said to arise after its disposal in landfill sites, and at that point, as New Jersey concedes, there is no basis to distinguish out-of-state waste from domestic waste. If one is inherently harmful,

[2] We express no opinion about New Jersey's power, consistent with the Commerce Clause, to restrict to state residents access to state-owned resources, compare *Douglas v. Seacoast Products, Inc.* (1977) with *Toomer v. Witsell* (1948), or New Jersey's power to spend state funds solely on behalf of state residents and businesses, compare *Hughes v. Alexandria Scrap Corp.* (1976) (Stevens, J., concurring) with *id.* (Brennan, J., dissenting)....

so is the other. Yet New Jersey has banned the former while leaving its landfill sites open to the latter....

Today, cities in Pennsylvania and New York find it expedient or necessary to send their waste into New Jersey for disposal, and New Jersey claims the right to close its borders to such traffic. Tomorrow, cities in New Jersey may find it expedient or necessary to send their waste into Pennsylvania or New York for disposal, and those States might then claim the right to close their borders. The Commerce Clause will protect New Jersey in the future, just as it protects her neighbors now, from efforts by one State to isolate itself in the stream of interstate commerce from a problem shared by all. The judgment is

Reversed.

Mr. Justice Rehnquist, with whom The Chief Justice joins, dissenting.

A growing problem in our Nation is the sanitary treatment and disposal of solid waste.... In ch. 363 of the 1973 N.J. Laws, the State of New Jersey legislatively recognized the unfortunate fact that landfills ... present extremely serious health and safety problems.... Landfills ... also ..., "needless to say, do not help New Jersey's aesthetic appearance nor New Jersey's noise or water or air pollution problems."

The health and safety hazards associated with landfills present appellees with a currently unsolvable dilemma. Other, hopefully safer, methods of disposing of solid wastes are still in the development stage and cannot presently be used. But appellees obviously cannot completely stop the tide of solid waste that its citizens will produce in the interim. For the moment, therefore, appellees must continue to use sanitary landfills to dispose of New Jersey's own solid waste despite the critical environmental problems thereby created.

The question presented in this case is whether New Jersey must also continue to receive and dispose of solid waste from neighboring States, even though these will inexorably increase the health problems discussed above. The Court answers this question in the affirmative. New Jersey must either prohibit *all* landfill operations, leaving itself to cast about for a presently nonexistent solution to the serious problem of disposing of the waste generated within its own borders, or it must accept waste from every portion of the United States, thereby multiplying the health and safety problems which would result if it dealt only with such wastes generated within the State. Because past precedents establish that the Commerce Clause does not present appellees with such a Hobson's choice, I dissent....

In my opinion, [the quarantine] cases are dispositive of the present one. Under them, New Jersey may require germ-infected rags or diseased meat to be disposed

of as best as possible within the State, but at the same time prohibit the *importation* of such items for disposal at the facilities that are set up within New Jersey for disposal of such material generated *within* the State.... I simply see no way to distinguish solid waste, on the record of this case, from germ-infected rags, diseased meat, and other noxious items.

The Court's effort to distinguish these prior cases is unconvincing. It first asserts that the quarantine laws which have previously been upheld "banned the importation of articles such as diseased livestock that required destruction as soon as possible because their very movement risked contagion and other evils." According to the Court, the New Jersey law is distinguishable from these other laws, and invalid, because the concern of New Jersey is not with the *movement* of solid waste but with the present inability to safely *dispose* of it once it reaches its destination. But I think it far from clear that the State's law has as limited a focus as the Court imputes to it: Solid waste which is a health hazard when it reaches its destination may in all likelihood be an equally great health hazard in transit....

Second, the Court implies that the challenged laws must be invalidated because New Jersey has left its landfills open to domestic waste. But, as the Court notes, this Court has repeatedly upheld quarantine laws "even though they appear to single out interstate commerce for special treatment." The fact that New Jersey has left its landfill sites open for domestic waste does not, of course, mean that solid waste is not innately harmful. Nor does it mean that New Jersey prohibits importation of solid waste for reasons other than the health and safety of its population. New Jersey must out of sheer necessity treat and dispose of its solid waste in some fashion, just as it must treat New Jersey cattle suffering from hoof-and-mouth disease. It does not follow that New Jersey must, under the Commerce Clause, accept solid waste or diseased cattle from outside its borders and thereby exacerbate its problems.

The Supreme Court of New Jersey expressly found that ch. 363 was passed "to preserve the health of New Jersey residents by keeping their exposure to solid waste and landfill areas to a minimum." The Court points to absolutely no evidence that would contradict this finding by the New Jersey Supreme Court. Because I find no basis for distinguishing the laws under challenge here from our past cases upholding state laws that prohibit the importation of items that could endanger the population of the State, I dissent.

Kassel v. Consolidated Freightways Corp.

Supreme Court of the United States, 1981.
450 U.S. 662.

Justice Powell announced the judgment of the Court and delivered an opinion, in which Justice White, Justice Blackmun, and Justice Stevens joined.

The question is whether an Iowa statute that prohibits the use of certain large trucks within the State unconstitutionally burdens interstate commerce.

I

Appellee Consolidated Freightways Corporation of Delaware (Consolidated) is one of the largest common carriers in the country. It offers service in 48 States under a certificate of public convenience and necessity issued by the Interstate Commerce Commission. Among other routes, Consolidated carries commodities through Iowa on Interstate 80, the principal east-west route linking New York, Chicago, and the west coast, and on Interstate 35, a major north-south route.

Consolidated mainly uses two kinds of trucks. One consists of a three-axle tractor pulling a 40-foot two-axle trailer. This unit, commonly called a single, or "semi," is 55 feet in length overall. Such trucks have long been used on the Nation's highways. Consolidated also uses a two-axle tractor pulling a single-axle trailer which, in turn, pulls a single-axle dolly and a second single-axle trailer. This combination, known as a double, or twin, is 65 feet long overall. Many trucking companies, including Consolidated, increasingly prefer to use doubles to ship certain kinds of commodities. Doubles have larger capacities, and the trailers can be detached and routed separately if necessary. Consolidated would like to use 65-foot doubles on many of its trips through Iowa.

The State of Iowa, however, by statute restricts the length of vehicles that may use its highways. Unlike all other States in the West and Midwest, Iowa generally prohibits the use of 65-foot doubles within its borders. Instead, most truck combinations are restricted to 55 feet in length. Doubles ... are permitted to be as long as 60 feet. . [The statute provided exemptions, some of which are discussed below.][3]

[3] The parochial restrictions [allowing movement of oversized mobile homes so long as they were going from a point within Iowa or delivered for an Iowa resident] were enacted after Governor Ray vetoed a bill that would have permitted the interstate shipment of all mobile homes through Iowa. Governor Ray commented, in his veto message: "This bill ... would make Iowa a bridge state as these oversized units are moved into Iowa after being

Consolidated filed this suit in the District Court averring that Iowa's statutory scheme unconstitutionally burdens interstate commerce. Iowa defended the law as a reasonable safety measure enacted pursuant to its police power. The State asserted that 65-foot doubles are more dangerous than 55-foot singles and, in any event, that the law promotes safety and reduces road wear within the State by diverting much truck traffic to other States.[4]

[After a 14-day trial, the District Court found that the "evidence clearly establishes that the twin is as safe as the semi." It therefore concluded that the state law impermissibly burdened interstate commerce. The Court of Appeals for the Eighth Circuit affirmed.]

II

... The [Commerce] Clause permits Congress to legislate when it perceives that the national welfare is not furthered by the independent actions of the States. It is now well established, also, that the Clause itself is "a limitation upon state power even without congressional implementation." *Hunt v. Washington Apple Advertising Comm'n* (1977). The Clause requires that some aspects of trade generally must remain free from interference by the States. When a State ventures excessively into the regulation of these aspects of commerce, it "trespasses upon national interests," *Great A & P Tea Co. v. Cottrell* (1976), and the courts will hold the state regulation invalid under the Clause alone.

The Commerce Clause does not, of course, invalidate all state restrictions on commerce. It has long been recognized that, "in the absence of conflicting legislation by Congress, there is a residuum of power in the state to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce or even, to some extent, regulate it." *Southern Pacific Co. v. Arizona* (1945). The extent of permissible state regulation is not always easy to measure. It may be said with confidence, however, that a State's power to regulate commerce is never greater than in matters traditionally of local concern.

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manufactured in another state and sold in a third. None of this activity would be of particular economic benefit to Iowa."

[4] In this Court, Iowa places little or no emphasis on the constitutional validity of this second argument.

Washington Apple Advertising Comm'n. For example, regulations that touch upon safety—especially highway safety—are those that "the Court has been most reluctant to invalidate." *Raymond Motor Transportation, Inc. v. Rice* (1978).... Those who would challenge such bona fide safety regulations must overcome a "strong presumption of validity." *Bibb v. Navajo Freight Lines, Inc.* (1959).

WORTH NOTING

Raymond Motor Transportation held invalid Wisconsin regulations that prohibited driving on the state's highways in any truck that was longer than 55 feet or pulled more than one other vehicle. The decision left open the possibility, however, that it might be possible to present evidence sufficient to support similar limitations in future cases.

But the incantation of a purpose to promote the public health or safety does not insulate a state law from Commerce Clause attack. Regulations designed for that salutary purpose nevertheless may further the purpose so marginally, and interfere with commerce so substantially, as to be invalid under the Commerce Clause. In the Court's recent unanimous decision in *Raymond*, we declined to "accept the State's contention that the inquiry under the Commerce Clause is ended without a weighing of the asserted safety purpose against the degree of interference with interstate commerce." This "weighing" by a court requires—and indeed the constitutionality of the state regulation depends on—"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." *Id.*; *accord Pike v. Bruce Church, Inc* (1970)....

III

Applying these general principles, we conclude that the Iowa truck-length limitations unconstitutionally burden interstate commerce.

[T]he State failed to present any persuasive evidence that 65-foot doubles are less safe than 55-foot singles. Moreover, Iowa's law is now out of step with the laws of all other Midwestern and Western States. Iowa thus substantially burdens the interstate flow of goods by truck. In the absence of congressional action to set uniform standards,[5] some burdens associated with state safety regulations must be tolerated. But where, as here, the State's safety interest has been found to be

[5] The Senate last year passed a bill that would have pre-empted the field of truck lengths by setting a national limit of 65 feet. See S. 1390, 96th Cong., 2d Sess. (1980). The House took no action before adjournment.

illusory, and its regulations impair significantly the federal interest in efficient and safe interstate transportation, the state law cannot be harmonized with the Commerce Clause.[6]

A

Iowa made a ... serious effort to support the safety rationale of its law ... , but its effort was no[t] persuasive....

The trial focused on a comparison of the performance of the two kinds of trucks in various safety categories. The evidence showed, and the District Court found, that the 65-foot double was at least the equal of the 55-foot single in the ability to brake, turn, and maneuver. The double, because of its axle placement, produces less splash and spray in wet weather. And, because of its articulation in the middle, the double is less susceptible to dangerous "off-tracking,"[7] and to wind.

None of these findings is seriously disputed by Iowa. Indeed, the State points to only three ways in which the 55-foot single is even arguably superior: singles take less time to be passed and to clear intersections; they may back up for longer distances; and they are somewhat less likely to jackknife.

The first two of these characteristics are of limited relevance on modern interstate highways. As the District Court found, the negligible difference in the time required to pass, and to cross intersections, is insignificant on 4-lane divided highways because passing does not require crossing into oncoming traffic lanes, and interstates have few, if any, intersections. The concern over backing capability also is insignificant because it seldom is necessary to back up on an interstate.[8]

Statistical studies supported the view that 65-foot doubles are at least as safe overall as 55-foot singles and 60-foot doubles. One such study, which the District Court credited, reviewed Consolidated's comparative accident experience in 1978 with its own singles and doubles. Each kind of truck was driven 56 million miles on identical routes. The singles were involved in 100 accidents resulting in 27 injuries and one fatality. The 65-foot doubles were involved in 106 accidents resulting in 17 injuries and one fatality. Iowa's expert statistician admitted that this

[6] It is highly relevant that ... the state statute contains exemptions that weaken the deference traditionally accorded to a state safety regulation. See § IV, infra.

[7] "Off-tracking" refers to the extent to which the rear wheels of a truck deviate from the path of the front wheels while turning.

[8] Evidence at trial did show that doubles could back up far enough to move around an accident.

study provided "moderately strong evidence" that singles have a higher injury rate than doubles. Another study, prepared by the Iowa Department of Transportation at the request of the state legislature, concluded that "[s]ixty-five foot twin trailer combinations have *not* been shown by experiences in other states to be less safe than 60 foot twin trailer combinations *or* conventional tractor-semitrailers" (emphasis in original). Numerous insurance company executives, and transportation officials from the Federal Government and various States, testified that 65-foot doubles were at least as safe as 55-foot singles.

Iowa concedes that it can produce no study that establishes a statistically significant difference in safety between the 65-foot double and the kinds of vehicles the State permits. Nor, as the District Court noted, did Iowa present a single witness who testified that 65-foot doubles were more dangerous overall than the vehicles permitted under Iowa law.[9]

B

Consolidated, meanwhile, demonstrated that Iowa's law substantially burdens interstate commerce. Trucking companies that wish to continue to use 65-foot doubles must route them around Iowa or detach the trailers of the doubles and ship them through separately. Alternatively, trucking companies must use the smaller 55-foot singles or 60-foot doubles permitted under Iowa law. Each of these options engenders inefficiency and added expense....

In addition to increasing the costs of the trucking companies (and, indirectly, of the service to consumers), Iowa's law may aggravate, rather than ameliorate, the problem of highway accidents. Fifty-five foot singles carry less freight than 65-foot doubles. Either more small trucks must be used to carry the same quantity of goods through Iowa, or the same number of larger trucks must drive longer distances to bypass Iowa. In either case, as the District Court noted, the restriction requires more highway miles to be driven to transport the same quantity of goods. Other things being equal, accidents are proportional to distance traveled. Thus, if 65-foot doubles are as safe as 55-foot singles, Iowa's law tends to *increase* the number of accidents, and to shift the incidence of them from Iowa to other States.[10]

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[9] In suggesting that Iowa's law actually promotes safety, the dissenting opinion ignores the findings of the courts below and relies on largely discredited statistical evidence. The dissent implies that a statistical study identified doubles as more dangerous than singles. At trial, however, the author of that study—Iowa's own statistician—conceded that his calculations were statistically biased, and therefore "not very meaningful."

[10] The District Court, in denying a stay pending appeal, noted that Iowa's law causes "more accidents, more injuries, more fatalities and more fuel consumption." Appellant Kassel

IV

Perhaps recognizing the weakness of the evidence supporting its safety argument, and the substantial burden on commerce that its regulations create, Iowa urges the Court simply to "defer" to the safety judgment of the State. It argues that the length of trucks is generally, although perhaps imprecisely, related to safety. The task of drawing a line is one that Iowa contends should be left to its legislature.

The Court normally does accord "special deference" to state highway safety regulations. *Raymond*, supra. This traditional deference "derives in part from the assumption that where such regulations do not discriminate on their face against interstate commerce, their burden usually falls on local economic interests as well as other States' economic interests, thus insuring that a State's own political processes will serve as a check against unduly burdensome regulations." *Ibid*. Less deference to the legislative judgment is due, however, where the local regulation bears disproportionately on out-of-state residents and businesses. Such a disproportionate burden is apparent here. Iowa's scheme, although generally banning large doubles from the State, nevertheless has several exemptions that secure to Iowans many of the benefits of large trucks while shunting to neighboring States many of the costs associated with their use.

At the time of trial there were two particularly significant exemptions. First, singles hauling livestock or farm vehicles were permitted to be as long as 60 feet. As the Court of Appeals noted, this provision undoubtedly was helpful to local interests. Second cities abutting other States were permitted to enact local ordinances adopting the larger length limitation of the neighboring State. This exemption offered the benefits of longer trucks to individuals and businesses in important border cities[11] without burdening Iowa's highways with interstate through traffic.

The origin of the "border cities exemption" also suggests that Iowa's statute may not have been designed to ban dangerous trucks, but rather to discourage interstate truck traffic. In 1974, the legislature passed a bill that would have permitted 65-foot doubles in the State. Governor Ray vetoed the bill. He said:

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conceded as much at trial. Kassel explained, however, that most of these additional accidents occur in States other than Iowa because truck traffic is deflected around the State. He noted: "Our primary concern is the citizens of Iowa and our own highway system we operate in this state."

[11] Five of Iowa's ten largest cities—Davenport, Sioux City, Dubuque, Council Bluffs, and Clinton—are by their location entitled to use the "border cities exemption."

> [T]his bill ... would benefit only a few Iowa-based companies while providing a great advantage for out-of-state trucking firms and competitors at the expense of our Iowa citizens.[12]

After the veto, the "border cities exemption" was immediately enacted and signed by the Governor.

It is thus far from clear that Iowa was motivated primarily by a judgment that 65-foot doubles are less safe than 55-foot singles. Rather, Iowa seems to have hoped to limit the use of its highways by deflecting some through traffic. In the District Court and Court of Appeals, the State explicitly attempted to justify the law by its claimed interest in keeping trucks out of Iowa. The Court of Appeals correctly concluded that a State cannot constitutionally promote its own parochial interests by requiring safe vehicles to detour around it.

V

In sum, the statutory exemptions, their history, and the arguments Iowa has advanced in support of its law in this litigation, all suggest that the deference traditionally accorded a State's safety judgment is not warranted.... Because Iowa has imposed this burden without any significant countervailing safety interest,[13] its statute violates the Commerce Clause. The judgment of the Court of Appeals is affirmed.

It is so ordered.

Justice Brennan, with whom Justice Marshall joins, concurring in the judgment.

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II

My Brothers Powell and Rehnquist make the mistake of disregarding the intention of Iowa's lawmakers and assuming that resolution of the case must hinge

[12] Governor Ray further commented that "if we have thousands more trucks crossing our state, there will be millions of additional miles driven in Iowa and that does create a genuine concern for safety."

[13] As noted above, the District Court and the Court of Appeals held that the Iowa statutory scheme unconstitutionally burdened interstate commerce. The District Court, however, found that the statute did not discriminate against such commerce. Because the record fully supports the decision below with respect to the burden on interstate commerce, we need not consider whether the statute also operated to discriminate against that commerce. The latter theory was neither briefed nor argued in this Court.

upon the argument offered by Iowa's attorneys: that 65-foot doubles are more dangerous than shorter trucks. They then canvass the factual record and findings of the courts below and reach opposite conclusions as to whether the evidence adequately supports that empirical judgment.

[M]y Brothers Powell and Rehnquist have asked and answered the wrong question. For although Iowa's lawyers in this litigation have defended the truck-length regulation on the basis of the safety advantages of 55-foot singles and 60-foot doubles over 65-foot doubles, Iowa's actual rationale for maintaining the regulation had nothing to do with these purported differences. Rather, Iowa sought to discourage interstate truck traffic on Iowa's highways.[14] Thus, the safety advantages and disadvantages of the types and lengths of trucks involved in this case are irrelevant to the decision....

III

Though my Brother Powell recognizes that the State's actual purpose in maintaining the truck-length regulation was "to limit the use of its highways by deflecting some through traffic," he fails to recognize that this purpose, being *protectionist* in nature, is *impermissible* under the Commerce Clause. The Governor admitted that he blocked legislative efforts to raise the length of trucks because the change "would benefit only a few Iowa-based companies while providing a great advantage for out-of-state trucking firms and competitors at the expense of our Iowa citizens." Appellant Raymond Kassel, Director of the Iowa Department of Transportation, while admitting that the greater 65-foot length standard would be *safer* overall, defended the more restrictive regulations because of their benefits *within Iowa*:

> Q: Overall, there would be fewer miles of operation, fewer accidents and fewer fatalities?
>
> A: Yes, on the national scene.
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> Q: Does it not concern the Iowa Department of Transportation that banning 65-foot twins causes more accidents, more injuries and more fatalities?
>
> A: Do you mean outside of our state border?
>
> Q: Overall.
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> A: Our primary concern is the citizens of Iowa and our own highway

[14] In the District Court and the Court of Appeals, Iowa's attorneys forthrightly defended the regulation in part on the basis of the State's interest in discouraging interstate truck traffic through Iowa.

system we operate in this state.

Iowa may not shunt off its fair share of the burden of maintaining interstate truck routes, nor may it create increased hazards on the highways of neighboring States in order to decrease the hazards on Iowa highways. Such an attempt has all the hallmarks of the "simple ... protectionism" this Court has condemned in the economic area. *Philadelphia v. New Jersey* (1978). Just as a State's attempt to avoid interstate competition in economic goods may damage the prosperity of the Nation as a whole, so Iowa's attempt to deflect interstate truck traffic has been found to make the Nation's highways as a whole more hazardous. That attempt should therefore be subject to "a virtually *per se* rule of invalidity." *Ibid.*...

Justice Rehnquist, with whom The Chief Justice and Justice Stewart join, dissenting.

...

I

... Iowa's action in limiting the length of trucks which may travel on its highways is in no sense unusual. Every State in the Union regulates the length of vehicles permitted to use the public roads. Nor is Iowa a renegade in having length limits which operate to exclude the 65-foot doubles favored by Consolidated. These trucks are prohibited in other areas of the country as well, some 17 States and the District of Columbia, including all of New England and most of the Southeast. While pointing out that Consolidated carries commodities through Iowa on Interstate 80, "the principal east-west route linking New York, Chicago, and the west coast," the plurality neglects to note that both Pennsylvania and New Jersey, through which Interstate 80 runs before reaching New York, also ban 65-foot doubles. In short, the persistent effort in the plurality opinion to paint Iowa as an oddity standing alone to block commerce carried in 65-foot doubles is simply not supported by the facts....

III

Iowa defends its statute as a highway safety regulation. There can be no doubt that the challenged statute is a valid highway safety regulation and thus entitled to the strongest presumption of validity against Commerce Clause challenges.... There can also be no question that the particular limit chosen by Iowa—60 feet—is rationally related to Iowa's safety objective. Most truck limits are between 55 and 65 feet, and Iowa's choice is thus well within the widely accepted range.

Iowa adduced evidence supporting the relation between vehicle length and highway safety. The evidence indicated that longer vehicles take greater time to be

passed, thereby increasing the risks of accidents, particularly during the inclement weather not uncommon in Iowa. The 65-foot vehicle exposes a passing driver to visibility-impairing splash and spray during bad weather for a longer period than do the shorter trucks permitted in Iowa. Longer trucks are more likely to clog intersections, and although there are no intersections on the Interstate Highways, the order below went beyond the highways themselves and the concerns about greater length at intersections would arise "[a]t every trip origin, every trip destination, every intermediate stop for picking up trailers, reconfiguring loads, change of drivers, eating, refueling—every intermediate stop would generate this type of situation." The Chief of the Division of Patrol in the Iowa Department of Public Safety testified that longer vehicles pose greater problems at the scene of an accident. For example, trucks involved in accidents often must be unloaded at the scene, which would take longer the bigger the load.

In rebuttal of Consolidated's evidence on the relative safety of 65-foot doubles to trucks permitted on Iowa's highways, Iowa introduced evidence that doubles are more likely than singles to jackknife or upset. The District Court concluded that this was so and that singles are more stable than doubles....[15] In addition Iowa elicited evidence undermining the probative value of Consolidated's evidence. For example, Iowa established that the more experienced drivers tended to drive doubles, because they have seniority and driving doubles is a higher paying job than driving singles. Since the leading cause of accidents was driver error, Consolidated's evidence of the relative safety record of doubles may have been based in large part not on the relative safety of the vehicles themselves but on the experience of the drivers....

The District Court approached the case as if the question were whether Consolidated's 65-foot trucks were as safe as others permitted on Iowa highways, and the Court of Appeals as if its task were to determine if the District Court's factual findings in this regard were "clearly erroneous." The question, however, is whether the Iowa Legislature has acted rationally in regulating vehicle lengths and whether the safety benefits from this regulation are more than slight or problematical.....

The answering of the relevant question is not appreciably advanced by comparing trucks slightly over the length limit with those at the length limit. It is emphatically not our task to balance any incremental safety benefits from

[15] Although the District Court noted that doubles are more maneuverable, it certainly is reasonable for a legislature to conclude that stability is a more critical factor than maneuverability on the straight expanses of the Interstates.

prohibiting 65-foot doubles as opposed to 60-foot doubles against the burden on interstate commerce. Lines drawn for safety purposes will rarely pass muster if the question is whether a slight increment can be permitted without sacrificing safety. As Justice Holmes put it:

> When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.

Louisville Gas & Electric Co. v. Coleman (1938) (dissenting opinion).

... Any direct balancing of marginal safety benefits against burdens on commerce would make the burdens on commerce the sole significant factor, and make likely the odd result that similar state laws enacted for identical safety reasons might violate the Commerce Clause in one part of the country but not another. For example, Mississippi and Georgia prohibit trucks over 55 feet. Since doubles are not operated in the Southeast, the demonstrable burden on commerce may not be sufficient to strike down these laws, while Consolidated maintains that it is in this case, even though the doubles here are given an additional five feet....

Striking down Iowa's law because Consolidated has made a voluntary business decision to employ 65-foot doubles, a decision based on the actions of other state legislatures, would essentially be compelling Iowa to yield to the policy choices of neighboring States. Under our constitutional scheme, however, there is only one legislative body which can pre-empt the rational policy determination of the Iowa Legislature and that is Congress. Forcing Iowa to yield to the policy choices of neighboring States perverts the primary purpose of the Commerce Clause, that of vesting power to regulate interstate commerce in Congress, where all the States are represented.

Both the plurality and the concurrence attach great significance to the Governor's [1974] veto of a bill passed by the Iowa Legislature permitting 65-foot doubles. Whatever views one may have about the significance of legislative motives, it must be emphasized that the law which the Court strikes down today was not passed to achieve the protectionist goals the plurality and the concurrence ascribe to the Governor. Iowa's 60-foot length limit was established in 1963, at a

time when very few States permitted 65-foot doubles. Striking down legislation on the basis of asserted legislative motives is dubious enough, but the plurality and concurrence strike down the legislation involved in this case because of asserted impermissible motives for *not* enacting *other* legislation, motives which could not possibly have been present when the legislation under challenge here was considered and passed....

Perhaps, after all is said and done, the Court today neither says nor does very much at all. We know only that Iowa's law is invalid and that the jurisprudence of the "negative side" of the Commerce Clause remains hopelessly confused.
