Recent Decision

Raymond Motor Transportation, Inc. v. Rice: Death Knell For the Reasonableness Test in Interstate Commerce

I. INTRODUCTION

Since the United States Supreme Court's landmark decision of *Gibbons v. Ogden* in 1824,[1] debate has persisted as to the states' right to legislate in interstate commerce. *Gibbons* and the balancing test developed by Justice Stone's dissent in *Di Santo v. Pennsylvania*[2] provide guidelines to determine when state legislation is permissible. In *Raymond Motor Transportation, Inc. v. Rice*,[3] (hereinafter *Raymond*), the Supreme Court of the United States discussed once again the states' right to legislate in interstate commerce. The holding of the case indicates that a mere speculative contribution to state and local interests, highway safety, will not outweigh a substantial burden on interstate commerce. This note will examine the history of cases concerning the test to be applied in determining the proper level and the allowable extent of state government legislation in interstate commerce.

II. THE CASE

Appellants are common carriers of general commodities by motor vehicle. Raymond Motor Transportation, Inc. (hereinafter RMT), provides service in eastern North Dakota, Minnesota, northern Illinois, and northwestern Indiana. Its primary interstate route is between Chicago and Minneapolis. Consolidated Freightways Corporation of Delaware (Consolidated) operates nationwide, including routes between Chicago, Detroit and points east, and Minneapolis and points west to Seattle. RMT and Consolidated use two different kinds of trucks: a 55-foot semitrailer truck (one trailer), and a 65-foot twin trailer truck (two trailers).

Michigan, Illinois, Minnesota, and states west of Minnesota to Washington allow 65-foot doubles to be operated on their highways and inter-

1. 22 U.S. (9 Wheat.) 1 (1824).
2. 273 U.S. 34, 44 (1927).
3. 434 U.S. 429 (1978).

states. Wisconsin law generally does not allow operation of trucks longer than 55 feet upon its highways within the state.[4] Exceptions to this prohibition include vehicles transporting milk or involved in interplant operations.

RMT and Consolidated applied for annual permits to operate 65-foot twin trailers on Interstate Highways 90 and 94, and short stretches of four-lane divided highways in Milwaukee and Madison. The permits were denied since appellants' operations were not covered by the administrative regulations that specify when trailer-train permits are allowed.[5] Declaratory and injunctive relief were sought in Federal District Court for the Western District of Wisconsin on the grounds that the administrative regulations burden and discriminate against interstate commerce in violation of the Commerce Clause.[6] A three-judge district court was convened pursuant to 28 U.S.C. § 2281.[7]

The state's Amended Answer sets forth highway safety as its sole justification for denying the permits.[8] At trial the appellants presented substantial evidence supporting their allegations that the 65-foot twin trailers are as safe as, if not safer than, the 55-foot semis.

The evidence tended to prove that the twin trailer is safer in terms of accidents, injuries, and fatalities per 100,000 miles; has greater mobility upon city streets when the trailers are detached; and provides greater maneuverability because the rear wheels can follow the path of the front wheels better than a semi, therefore requiring less distance for turning purposes. Furthermore, the twin trailer has a better braking system in that

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4. WIS. STAT. § 348.07(1) (1975), sets a 55-foot limit on the overall length of a vehicle pulling one trailer. Any person obtaining a single trailer unit exceeding 55 feet in length must obtain a permit from the state Highway Commission. Section 348.08(1) provides that no vehicle pulling more than one other vehicle shall be operated on a highway without a permit.

The Highway Commission has authority to issue various annual permits for vehicles that do not conform to the state statute, and to adopt reasonable rules deemed necessary for safety of travel including specifications of routes to be used by permitees persuant to WIS. STAT. § 348.25(3).

Trailer train permits may be issued for combinations of two or more vehicles which do not exceed 100 feet in total length. *Id.* § 348.27(6). Furthermore oversize vehicles with interplant, and plant to state line operations may receive annual permits pursuant to Section 348.27(4).

Administrative regulations restrict trailer train permits under Section 348.27(6) to vehicles transporting refuse or waste or operation without load of vehicles in transit from manufacturer to dealer to purchaser or dealer, or for the purpose of repair. WIS. ADMIN. CODE § Hy 30.14(3)(a) authorizes issuance of permits for operation of three vehicles used for transporting milk from production points to the point of first processing.

5. *Id.*

6. U.S. CONST. art. I, § 8, cl. 3.

7. 28 U.S.C. § 2281 (1948), provided that an interlocutory or permanent injunction restraining the enforcement, operation or execution of a state statute on grounds of unconstitutionality should not be granted unless the application has been heard and determined by a three-judge district court. This section was repealed by Pub. L. 94-381, 90 Stat. 1119 and is not applicable to any action commenced on or before August 12, 1976.

8. Appendix, Supreme Court of the United States No. 76-558, at 26 (Oct. 1976) [hereinafter cited as *Appendix*]. Raymond Motor Transportation, Inc., v. Rice, *supra* note 3.

each trailer has its own brakes, is less susceptible to jackknifing, and is more economical since fewer trips need to be made, making it less expensive than the more frequent but lighter loads of semis. The twin trailers also emit less spray and splash upon passing vehicles, and are easier to load and unload due to the shorter depth of the trailers.[9] Due to these advantages RMT and Consolidated would prefer to use twin trailers on their routes over Interstate Highways 90 and 94 in Wisconsin. (The State presented no evidence that the extra length of twin trailers make them less safe than the semis.)

Appellants also produced uncontradicted evidence that the regulations disrupt their operations, raise their costs, and slow their service. Both Consolidated and RMT found it faster and less expensive to operate the 65-foot twin trailers on their routes. For instance, when carrying interstate freight to or from Wisconsin, Consolidated's drivers must stop, detach the twin trailers, and pull them separately within Wisconsin to comply with its laws. As a result, Consolidated must maintain drivers to shuttle second trailers to and from the state line. It is estimated that this detaching of the doubles costs Consolidated $389,898 a year.[10] On routes through Wisconsin, the appellants used 55-foot singles as opposed to the 65-foot twins to avoid the use of the extra tractors and drivers.[11] On longer routes, for example Consolidated's Detroit and Chicago to Seattle routes, twin trailers were diverted through Nebraska and Missouri to avoid the Wisconsin ban.[12] Savings of time, distance, and money would be involved if RMT and Consolidated could use doubles in Wisconsin.

Wisconsin's regulations do allow vehicles over 55 feet in length to be operated on its highways which transfer refuse or milk, or which concern interplant operations within state lines.[13] These provisions supported appellants' claim that the administrative regulations were discriminatory in favor of local Wisconsin businesses.[14]

The three-judge court found that the burden imposed upon interstate commerce was outweighed by the benefits to the local populace.[15] The Court thought that appellants had not refuted Wisconsin's claim that refusal to issue permits for their 65-foot doubles was supported by highway safety, pointing out that, other things being equal, it takes *longer* for a motorist to pass a 65-foot trailer than a 55-foot trailer.[16] The Court also considered

9. *See Id.*
10. *Id.* at 294. This estimate was for the year ending June 30, 1975.
11. *Id.* The estimated cost of this adjustment of operations was $81,440 annually.
12. *Id.* at 297. This estimated cost burden of adjustment was $1,334,876 annually.
13. *See* WIS. STAT., *supra* note 4.
14. *Id.*
15. 417 F. Supp. 1352, 1358 (W.D. Wis. 1976) (per curiam).
16. *Id.* at 1359. It seems odd this should be any consideration at all since appellants' applica-

the expense imposed to be of no material consequence.[17] Jurisdiction was noted in 430 U.S. 914 (1977). The Supreme Court reversed.[18] This holding has severe implications for transportation, since sixteen other states restrict the use of 65-foot twin trailers.[19]

III. The Arguments

The controversy which gave rise to *Raymond* is that ever-present conflict between local and federal governing bodies—federalism. On the one hand, the appellants contended that the burden imposed upon interstate commerce by Wisconsin's regulations was clearly excessive in relation to the putative local benefits, and that the regulations did not contribute to local highway safety. On the other hand Wisconsin relied on states' rights to support its regulations.

The State's first premise was that the regulation of highways is a matter of local concern, since they are built, owned, and maintained by the state.[20] Second, the State argued that matters of size and weight limitations, as well as safety, are subjects to be determined by the legislatures and not by the judiciary.[21] Finally, the State argued that the appropriate test to be applied is whether the statute bears a reasonable relationship to highway safety. For this last argument the State relied on *South Carolina State Highway Department v. Barnwell Bros., Inc.*, where the Court stated that the scope of its inquiry stopped after determining whether the state legislature in adopting regulations has acted within its province, and whether the means of regulation are *reasonably* adopted in view of the end sought.[22]

The appellants attacked appellee's argument of states' rights by compiling massive evidence that the 65-foot twin trailers are as safe as, or safer

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tions concerned traffic over interstate and four lane highways only. *See* text after footnote 4, *supra*.

17. *Id.* at 1361. In Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520 (1959), the Supreme Court held cost to be a relevant factor in determining the burden on interstate commerce.

18. 434 U.S. 429 (1978).

19. *Appendix*, *supra* note 8, at 278. This information is as of November 1975. But, different facts as to the burden created could exist for many of these states, since most of the southeastern states have this limitation as opposed to one isolated state in the Northeast, as in *Raymond*.

20. Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 523-24 (1959); South Carolina State Highway Department v. Barnwell Brothers, Inc., 303 U.S. 177, 187 (1938); (quoting Southern Pacific v. Arizona, 325 U.S. 761, 783 (1945)).

21. Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 523 (1959); Southern Pacific v. Arizona, 325 U.S. 761, 783 (1945); Mauer v. Hamilton, 309 U.S. 598, 604-05 (1940); Sproles v. Binford, 286 U.S. 374, 388-89 (1932); Morris v. Duby, 274 U.S. 135, 143 (1927). (When the subject lies within the police power of the state, debatable questions as to reasonableness are not for the courts but for the legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome.)

22. 303 U.S. 177, 190 (1938).

than, the 55-foot semi. Furthermore, it was shown that operating costs were substantially increased, and that the regulations have the effect of slowing the movement of goods in interstate commerce.[23] Since the State failed to rebut the evidence compiled by the appellants, the Supreme Court held that there was no showing that the regulations actually do promote highway safety, and therefore the local interest substantially burdens interstate commerce.[24]

IV. Tests Used in Interstate Commerce Cases

Judicial attempts to define the dichotomy between federal and state power to regulate interstate commerce began with Chief Justice Marshall's opinion in *Gibbons v. Ogden*.[25] The great Chief Justice gave commerce a broad definition, and found that commerce included navigation and for-hire transportation of passengers. But Marshall's compromise between federal and state interests dodged the issue of whether federal commerce power is exclusive or concurrent.[26] In the *License Cases*, Marshall's successor, Roger Taney, advanced the view that the Commerce Clause left states free to regulate as they wished as long as their actions did not conflict with validly enacted federal legislation.[27]

The Supreme Court, in the years after *Gibbons v. Ogden* and the *License Cases*, developed numerous tests to distinguish permissible and impermissible impacts upon interstate commerce. *Cooley v. Board of Wardens*,[28] which concerned a money forfeiture for nonpiloted vessels, determined that matters requiring uniform regulation throughout the country were national in nature, and therefore were not subject to local legislation, whereas matters allowing for diversity of treatment were local in nature, though still part of interstate commerce. In that case, the state's power over commerce was concurrent, and could be exercised only when Congress had not yet acted. *Smith v. Alabama*,[29] which involved legislation requiring licensing of locomotive engineers, distinguished between direct and indirect effects on interstate commerce by state legislatures, and between regulations that are an exercise of the states' "police powers" and those that are "regulations of commerce."

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23. *Appendix*, *supra* notes 8, 11, and 12.
24. 434 U.S. 429 (1978).
25. 22 U.S. (9 Wheat.) 1 (1824).
26. *Id*; P. Benson, The Supreme Court and the Commerce Clause, 21 (1970). This skirting of the issue as to the exclusiveness of the Federal commerce power is discussed briefly by Frederick Ribble, Felix Frankfurter, and William Crosskey in Benson's book.
27. 46 U.S. 504, 573 (1847); L. Tribe, American Constitutional Law, 322 (1978) [hereinafter cited as American Constitutional Law].
28. 53 U.S. (12 How.) 299 (1852).
29. 124 U.S. 465, 482 (1888).

Justice Stone, writing in dissent in *Di Santo v. Pennsylvania*,[30] abandoned the mechanical direct-indirect and national-local tests. He developed the balancing test in which the court would carefully consider the pertinent facts of each case. Justice Stone voted to uphold a Pennsylvania statute requiring one engaged in the business of selling steamship tickets to obtain first a license from the Commissioner of Banking. He held that the purpose of the legislation was to further the states' police power in protecting its citizens from fraud and sharp practice, in particular those citizens of small means who might be unfamiliar with the English language and institutions. He went on to say that:

> The state regulations should be upheld not because they are nominally indirect, but because a consideration of all the facts and circumstances, such as the nature of the regulation, its function, the character of the business involved, and the actual effect on the flow of commerce, lead to the conclusion that the regulation concerns interests peculiarly local and does not infringe the national interest in maintaining the freedom of commerce across state lines.[31]

In *United States v. Darby*,[32] the balancing test became the majority rule. In determining that Congress could regulate directly the conditions of local production, Justice Stone cited *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819):

> The power of Congress over interstate commerce . . . extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power. . . .[33]

The next issue addressed by Justice Stone was that the Tenth Amendment had no effect upon the powers delegated to the national government since the amendment is merely a declaration of a truism which states that all which is not delegated is reserved.[34] Finally, Stone stated that the plenary power of Congress over commerce requires the courts to defer to this legislative judgment.[35]

Another case applying the balancing test was *Bibb v. Navajo Freight Lines, Inc.*[36] The issue presented was: could one state prescribe standards for interstate carriers that would conflict with the standards of another state making it necessary for an interstate carrier to shift its cargo to differently designed vehicles once another state line is reached? The Court

30. 273 U.S. 34, 44 (1927).
31. *Id.*
32. 312 U.S. 100 (1941).
33. *Id.* at 118.
34. *Id.* at 114.
35. *Id.* at 115. The determination of this issue called for deference to the Federal Legislature, Congress, but not to the State Legislature. *See* Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945), where Justice Stone said that it is for the Supreme Court and not the State Legislature to determine the competing demands of state and national interests.
36. 359 U.S. 520 (1959).

noted that interchanging mudguards on trucks and trailers at the Illinois border and the necessity of welding might mean some trucks or trailers would have to be unloaded and loaded again. This regulation limiting the trucks and trailers to the particular states they could operate in, as a matter of design, was too serious a burden on interstate commerce. Therefore, *Raymond* and *Bibb* are factually distinguishable. In *Bibb* the burden extended to the necessity to weld or load and unload the trucks or trailers at the state border, whereas *Raymond* concerned the far lesser burden of separating the doubles or using semis on Wisconsin highways.[37]

In the more recent case of *Pike v. Bruce Church, Inc.*, the Court continued to apply the balancing test developed by Justice Stone. The case states:

> Although the criteria for determining the validity of state statutes affecting interstate commerce have been variously stated, the general rule that emerges can be phrased as follows:
>
> Where the state 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. *Huron Cement Co. v. Detroit*, 362 U.S. 440, 443. 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.[38]

In *Pike*, Arizona asserted that its statute requiring all canteloupes, with certain exceptions, grown in Arizona and offered for sale to be packaged and identified as originating in Arizona did not burden interstate commerce. The grower was shipping the canteloupes 31 miles to a California plant where the canteloupes were packaged pursuant to California requirements. To meet Arizona's requirement, it would cost the grower $200,000 to build a packaging plant. In striking down Arizona's interest of enhancing the reputation of producers within Arizona borders the Court indicated that it is virtually per se illegal for a statute to require business operations in the home state that are more efficiently performed elsewhere, even in the absence of a purpose to secure employment for the home state."[39]

Basically, *Pike* stated that the interest of enhancing local canteloupe growers' reputations is not a sufficient local interest that will be allowed to burden interstate commerce. Therefore, *Pike* is distinguished from *Raymond* since the interest is not one normally left to the states, such as Wisconsin's concern for safety in *Raymond*.

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37. "The state's failure to present any evidence to rebut appellant's showing in itself sets this case apart from *Barnwell Bros.*, *see* 303 U.S. 177, at 196, and even from *Bibb*, *see* 359 U.S. 520, at 525." 434 U.S. 429, 445 n.20.

38. 397 U.S. 137, 142 (1970).

39. *Id.* at 145.

Historically speaking, the rational relations test, standing alone, was inadequate. It would determine if the regulations were rationally related to a legitimate interest without determining the burden resulting on interstate commerce. The language of *Bibb*, which applied a principle similar to *Pike*, makes this clear:

> Unless we can conclude on the whole record that the total effect of the law as a safety measure in reducing accidents and casualties is so slight or problematical as not to *outweigh* the national interest in keeping interstate commerce free from interferences which seriously impede it . . . we must uphold the statute.[40]

Therefore, the main flaw in Wisconsin's argument is that the balancing test is the proper test to apply in determining the states' right to legislate in interstate commerce. Now the Court in *Raymond* makes it clear that the reasonableness test has no place in interstate commerce. The Court states: "There is language in *Barnwell Brothers* which, read in isolation from later decisions, would suggest that no showing of burden on interstate commerce is sufficient to invalidate local safety regulations in the absence of some element of discrimination against interstate commerce."[41] Query: Did the *Barnwell Brothers* case, central to appellees argument, actually apply a test of reasonableness? Upon a close reading it can be determined that the justices were engaging in a hard factual analysis while weighing competing demands.[42] That approach to interstate commerce is the balancing test. So even the *Barnwell Brothers* case supports the application of a balancing test, and not one of reasonableness.

It is argued that by applying a balancing test to determine the burden on interstate commerce, the state's right to control local matters is being usurped by the federal government. In response, it should be noted that the purpose behind the Commerce Clause is to insure the free flow of goods which form the very basis of our industralized society. Therefore, the Commerce Clause is invoked to maintain uniformity of laws to further the free flow of goods and the increased development of our technological society. Furthermore, the Commerce Clause is invoked to overcome a spurious claim of local interest to uphold this national interest of increased economic, industrial, technological, etc., development.[43]

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40. 359 U.S. 520, 524 (1959).

41. 434 U.S. 429, 443 (1978).

42. P. BENSON, THE SUPREME COURT AND THE COMMERCE CLAUSE, 240 (1970) [hereinafter cited as P. BENSON]. In *Barnwell* the test of reasonableness was expounded, but it can be seen that the analysis centered upon finding facts to be weighed against each other to determine the national or local nature of the South Carolina legislation.

43. *Appendix*, *supra* note 8. The evidence compiled in *Raymond* suggests Wisconsin's highway safety interest was indeed spurious. Furthermore, in *Bibb*, Illinois sought to force truckers to adopt a mudguard of questionable value which is different from that required by any other state. In *Pike*, Arizona sought to protect the prestige of local canteloupe growers at a $200,000 expense to the shipper who was shipping and packaging his goods in California just 31 miles away. P. BEN-

Those scholars asserting a states' rights argument in an effort to limit this federal power are deeply concerned with the possibility that the Commerce Clause will be invoked to further a spurious federal interest. And indeed, since the federal interest must prevail when it is determined that it outweighs the local interest, what safeguards are there to protect the states from an abuse of federal power through the Commerce Clause? For one, the Commerce Clause is limited by the Bill of Rights.[44] Any exercise of federal power conflicting with the Constitution must yield. The Commerce Clause is also limited by internal political constraints. In the field of conflicting interests, the legislative process can operate only by compromise of various political groups to secure passage of a particular piece of legislation.[45] In this manner, the values interest groups are willing to compromise, and those values they are not willing to compromise, will determine if legislation will pass that might usurp State Power. The government structure defined by the Constitution also checks the abuse of federal power.[46] Here the fact that the federal legislators are state citizens as well as federal gives the states formal representation in Congress. This formal state representation coupled with the interstitial nature of federal law making, checks the Commerce Clause from federal abuse.[47]

V. SUMMARY

Other views besides the balancing test have existed within the Supreme Court, in particular those of Justice Black[48] and those of Justice Jackson.[49] But through the years, the balancing test and its hard factual analysis has been preferred.[50] In *Raymond*, the Court decided that the Commerce Clause allows the courts to look beyond the statement of legitimate local interest raised by the state by weighing such interest against the burden imposed on interstate commerce. Since the facts in *Raymond*

SON, *supra* note 40, at 355-56, "The fact which emerges most forcefully from a study of the record is the persistent, ingenious, and always selfish attempts by the several states to cut up, restrict, and generally impair the normal operations of interstate commerce in favor of some purely local economic gain."

44. 312 U.S. 100, 116 (1941).

45. *See, e.g.*, Choper, *The Supreme Court and the Political Branches: Democratic Theory and Practice*, 122 U. PA. L. REV. 810 (1974).

46. *See*, Wechsler, *The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government*, 54 COLUM. L. REV. 543, 547-52 (1954).

47. *But see* AMERICAN CONSTITUTIONAL LAW, *supra* note 27, at 242.

48. *See* P. BENSON, *supra* note 42, at 246-49 (for a succinct discussion of Justice Black's position on a state power in interstate commerce).

49. *See id.* at 249-54 (for a succinct discussion of Justice Jackson's position on state power in interstate commerce).

50. Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520 (1959), Pike v. Bruce Church, Inc., 397 U.S. 137 (1970), and Raymond Motor Transportation Inc., v. Rice, 434 U.S. 429 (1978) are some examples of the latest trend in applying the balancing test.

show that the regulations did not contribute to legitimate local interests, the burden as to costs and time outweighed the local concern.

The Court has made it apparent that the reasonableness test has no place in determining when the states can legislate in interstate commerce. Furthermore, a hard factual analysis weighing the competing burden on interstate commerce against the putative local concern will be undertaken. Therefore, to legislate in interstate commerce, the states must present some evidence to rebut the cost and convenience burdens on interstate commerce and/or present evidence, as in *Barnwell Brothers*, showing a legitimate local concern for safety.[51] Such evidence might have changed the *Raymond* result.

Neal Dunning

51. *Supra* note 37.