

# The Burger Court Opinion Writing Database

## *Michelin Tire Corp. v. Wages*

423 U.S. 276 (1976)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

December 3, 1975

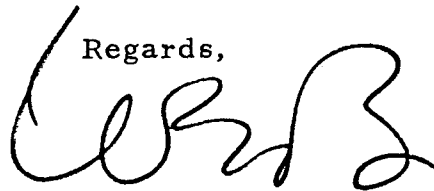
Re: 74-1396 - Michelin Tire Corp. v. Wages

Dear Bill:

I have not come to rest but your suggestion intrigues me. If you get any (more) encouragement I would like to see your full dress treatment of Low. Maybe it's time Low was laid low! Things have changed since John Marshall's time.

In short you have one potential vote to go the whole route. If you have no others perhaps it would help if I were to pose the problem while concurring.

Regards,



Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

January 8, 1976

Re: 74-1396 - Michelin Tire Corp. v. Wages

Dear Bill:

I join your opinion dated January 5, 1976.

Regards,

W.B.

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

MEMORANDUM TO THE CONFERENCE

RE: No. 74-1396 Michelin Tire Corporation v. Wages

The attached proposed opinion is written to reflect what I understand was the conference vote, namely, to affirm the holding of the Georgia Supreme Court that the tires had lost their status as imports by reason of the sorting, segregating by size and style and co-mingling of the tires with other shipments.

I must say that our decisions dealing with the question when imports have lost their status as such are often irreconcilable. It gets to be almost nothing but a color matching task. May v. Orleans and Gulf Fisheries Co. v. MacInerney strike me as closest to our fact situation and this is why the opinion relies primarily upon them.

You will note, however, that the opinion at pages 10 - 12 discusses the question whether a nondiscriminatory ad valorem property tax is a "impost or duty" prohibited by the Import and Export Clause. Marshall never said it was in Brown v. Maryland, and Taney in the License Cases said it was not. Research by some distinguished scholars has lead them unanimously to conclude that Taney was right and that the ad valorem tax is not an "impost or duty." But one decision of this Court a century ago, Low v. Austin, written by Mr. Justice Field, held squarely without any analysis or discussion, that it was an "impost or duty."

For myself, I'd be willing to grapple with the question in this case and overrule Low v. Austin. It is true that the respondent

WJB

~~I will give a vote to overrule Low v. Austin and should the  
affirmance - otherwise I will give a dissent opinion~~  
JHB

- 2 -

tax assessors have not asserted this ground for affirmance for the Georgia Supreme Court. I don't see any reason however for a re-argument asking the parties to address that specific question since there is a very voluminous amicus brief from California that fully canvasses all the authorities.

I agree that overruling Low will have far-reaching consequences particularly in this day when such an enormous quantity of goods marketed in this country is imported from Japan and West Germany. In its amicus brief Los Angeles County said it would make a difference of \$15,000,000 annually to that county alone.

Unless there are four or more of the Brethren who feel as I do, I'll say no more about it.

W.J.B.Jr.

Mr. Chief Justice  
 Mr. Justice Douglas  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Brennan  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Rehnquist

11/21/75

Recirculated:

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 74-1396

Michelin Tire Corporation, Petitioner, v. W. L. Wages, Tax Com- missioner, et al.	}	On Writ of Certiorari to the Supreme Court of Georgia.
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[December —, 1975]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Respondents, the Tax Commissioner and Tax Assessors of Gwinnett County, Ga., assessed ad valorem taxes against tires and tubes imported by petitioner from France and Nova Scotia and added to the inventory at one of its wholesale distribution warehouses which was located in the County. The business conducted at the warehouse was that of filling orders for tires and tubes from petitioner's 250-300 franchised dealers selling the tires and tubes at retail in six southeastern States. Petitioner brought this action for declaratory and injunctive relief in the Superior Court of Gwinnett County, alleging that with the exception of certain passenger tubes that had been removed from the original shipping cartons,<sup>1</sup> the ad valorem taxes assessed against its merchandise inventory of imported tires and tubes were

<sup>1</sup> Petitioner's complaint conceded the taxability of certain passenger tubes that had been removed from the original shipping cartons. These had a value of \$633.92 on the assessment date January 1, 1972, and of \$664.22 on the assessment date January 1, 1973. The tax for 1972 on the tubes was \$8.03 and for 1973 was \$8.73.

To: The Chief Justice  
 Mr. Justice Douglas  
 Mr. Justice Stewart

*completely rewritten*

4th DRAFT

dated: 12/19/75

# SUPREME COURT OF THE UNITED STATES

No. 74-1396

Michelin Tire Corporation,  
 Petitioner,

v.

W. L. Wages, Tax Com-  
 missioner, et al.

On Writ of Certiorari to the  
 Supreme Court of Georgia.

[December —, 1975]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Respondents, the Tax Commissioner and Tax Assessors of Gwinnett County, Ga., assessed ad valorem property taxes against tires and tubes imported by petitioner from France and Nova Scotia that were included on the assessment dates in an inventory maintained at its wholesale distribution warehouse in the county. Petitioner brought this action for declaratory and injunctive relief in the Superior Court of Gwinnett County, alleging that with the exception of certain passenger tubes that had been removed from the original shipping cartons,<sup>1</sup> the ad valorem property taxes assessed against its inventory of imported tires and tubes were prohibited by Art. I, § 10, cl. 2, of the Constitution, which provides in pertinent part that "No State shall, without the consent of Congress, lay any Imposts or Duties on

<sup>1</sup> Petitioner's complaint conceded the taxability of certain passenger tubes that had been removed from the original shipping cartons. These had a value of \$633.92 on the assessment date January 1, 1972, and of \$664.22 on the assessment date January 1, 1973. The tax for 1972 on the tubes was \$8.03 and for 1973 was \$8.73.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 29, 1975

RE: No. 74-1396 Michelin Tire Corp. v. Wages

Dear Bill:

Thank you very much for the suggestion in the above.  
I think it is very well taken and I am more than happy  
to adopt it. I am making the change precisely in the  
wording you suggested.

Sincerely,

*Bill*  
7.

Mr. Justice Rehnquist





Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

November 25, 1975

74-1396 Michelin Tire Corporation v. Wages

Dear Bill,

I voted to reverse in this case upon the assumption that Low v. Austin would not be re-examined. My mind remains wholly open, however, to your tentative suggestion that the Court now consider overruling Low and holding that a non-discriminatory ad valorem property tax is not an "impost or duty" prohibited by the Import and Export Clause.

Sincerely yours,

P.S.  
✓

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

January 5, 1976

No. 74-1396, Michelin Tire Corp. v. Wages

Dear Bill,

I am glad to join your opinion for  
the Court in this case.

Sincerely yours,

P.S.  
/

Mr. Justice Brennan

Copies to the Conference

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 2, 1975

Re: No. 74-1396 - Michelin Tire Corp. v.  
W. L. Wages, Tax Commissioner

Dear Bill:

I join your opinion and would prefer not to overrule Low v. Austin without briefing and argument and a better feel for the ramifications of departing from that precedent.

Sincerely,

*Bry*

Mr. Justice Brennan

Copies to Conference

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 ✓ Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: 12-30-75

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-1396

Michelin Tire Corporation,	} On Writ of Certiorari to the Supreme Court of Georgia.
Petitioner,	
v.	
W. L. Wages, Tax Commissioner, et al.	

[January —, 1976]

MR. JUSTICE WHITE, concurring in the judgment.

Being of the view that the goods involved here had lost their character as imports and that subjecting them to ad valorem taxation was consistent with the Constitution as interpreted by prior cases, including *Low v. Austin*, 13 Wall. 29 (1871), I would affirm the judgment. There is little reason and no necessity to overrule *Low v. Austin*. None of the parties has challenged that case here, and the issue of its overruling has not been briefed or argued.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

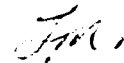
November 24, 1975

Re: No. 74-1396 -- Michelin Tire Corporation v. Wages

Dear Bill:

I will give a vote to overrule Low v. Austin and  
straighten this mess out. Otherwise I will join your  
present opinion.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 23, 1975

Re: No. 74-1396 -- Michelin Tire Corporation v.  
W. L. Wages

Dear Bill:

Please join me.

Sincerely,

*T.M.*  
T.M.

Mr. Justice Brennan

cc: The Conference

✓

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 3, 1975

Re: No. 74-1396 - Michelin Tire Corp. v. Wages

Dear Bill:

You have written a persuasive opinion.

As I read the "election returns," three (BRW, TM, WHR) have joined your opinion as presently written. It is perhaps to be anticipated that the Chief also will join, thereby giving you a court.

On the other hand, three (WJB, TM, WHR) have indicated a willingness to overrule Low v. Austin, and Lewis and Potter have indicated interest in seeing how that approach would "write." I do not know exactly where this leaves us.

I am tempted to join your opinion, but my difficulty in doing so lies in the fact that I am not yet fully persuaded that what was done here served to have these shipments lose their status as imports. Put another way, it is hard for me not "to reconsider Low v. Austin and its progeny," to use the phrasing on page 12 of your opinion. If Low were overruled, my difficulties would disappear.

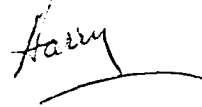
I would be willing to join an opinion that overrules Low. Your opinion does not do that. If it remains as it is, the alternatives left to me, therefore, are (1) either to concur separately, contending that, despite the Court's disavowal, the facts of this case and the Court's ruling make it clear that Low is overruled sub silentio, or (2) to dissent on the theory that so long as the Court refuses to overrule Low, that case controls this one.



- 2 -

The state of the law here is reminiscent of the difficulties that beset us in connection with United Airlines v. Mahin, 410 U.S. 623 (1973); there, too, the past cases were not all reconcilable.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Mr. Justice Brennan

cc: The Conference

December 22, 1975

Re: No. 74-1396 - Michelin Tire Corp. v. Wages

Dear Bill:

In a separate letter I am joining your revised circulation. The following are minor suggestions for your consideration:

1. I suppose we have reached the point where, for a while, we should add that Mr. Justice Stevens took no part.

2. The last line of the opinion states that the "holding" of the Supreme Court of Georgia is affirmed. Should this not be "judgment"? It seems to me that we are definitely not affirming the holding of the Georgia court.

3. On page 6, last full paragraph, 9th line, is the phrase "imposing excessive taxes." This may be correct historically, but I wonder whether the word "excessive" might not be better omitted. I do not wish to leave any implication that a non-excessive tax might be all right.

Sincerely,

HAB

Mr. Justice Brennan

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 22, 1975

Re: No. 74-1396 - Michelin Tire Corp. v. Wages

Dear Bill:

I am glad to join your revised circulation of December 19. I think this will clean away some of the cobwebs in this area.

Sincerely,

*Harry*

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 24, 1975

No. 74-1396 Michelin Tire Corp. v.  
Wages

Dear Bill:

I think there is a good deal to be said, certainly in theory, for the view that a nondiscriminatory ad valorem property tax is not an "impost or duty" prohibited by the Import and Export Clause.

I would therefore be interested - sympathetically - in an attempt to clarify the law by adopting that view, even though this required overruling Low v. Austin. Of course, I would like to see how this "writes".

Sincerely,

*Lewis*

Mr. Justice Brennan

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 22, 1975

No. 74-1396 Michelin Tire Corp. v.  
Wages

Dear Bill

Please join me.

Sincerely,

*Lewis*

Mr. Justice Brennan

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 24, 1975

Re: No. 74-1396 - Michelin Tire Corp. v. Wages

Dear Bill:

While I could easily join your opinion as written, I am inclined to think that this might be a logical case in which to overrule Low v. Austin.

Sincerely,

*WR*

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 24, 1975

Re: No. 74-1396 - Michelin Tire Corp. v. Wages

Dear Bill:

I shall no doubt join your impressively scholarly opinion whether or not you agree with the minor suggestion contained in the following paragraph.

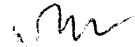
You say on page 25, in the first sentence, that "Petitioner's warehouse in this case was not merely a temporary storage depot for goods in the process of inland shipment." It certainly is clear from the earlier parts of your opinion that goods which were actually in transit would be protected by the negative implications of the Commerce Clause. Perhaps I am finicky in thinking that the above quoted sentence might indicate that even though the goods were not in transit, they might nonetheless be immune under the Import-Export Clause from a nondiscriminatory tax imposed on goods in a "temporary storage depot". I think it would be more consistent with the rest of your opinion to suggest no answer to that question. Could that sentence be changed to read in substance as follows:

"Petitioner's tires in this case were no longer in transit. They were stored in a distribution warehouse from which  
. . ."

- 2 -

You have been into the matter much more deeply than I have, and I will abide your judgment one way or the other.

Sincerely,



Mr. Justice Brennan



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 5, 1976

Re: No. 74-1396 - Michelin Tire Corp. v. Wages

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to the Conference