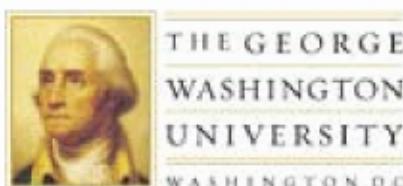


# The Burger Court Opinion Writing Database

*Raymond Motor Transportation, Inc. v.  
Rice*

434 U.S. 429 (1978)

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

November 14, 1977

Re: No. ~~76-558~~ - Raymond Motor Transportation v. Rice  
No. 76-709 - Bergland v. Economou

Dear Bill:

My notes on Raymond, 76-558, show Powell, Marshall, White, Stewart, you and myself reversing. Accordingly, I made the assignment. I do not see any problem.

On Economou, 76-709, I do not agree with your analysis. I voted to reverse and remand rejecting the Second Circuit's view that Scheuer overruled Barr.

There is no clear majority for any single position. Powell, Blackmun, Marshall and White voted to reverse in part and affirm in part, which I suggest implies a remand. You alone were straight reversal on my record.

I am prepared to remand, which implies reversal in part and affirmance in part.

There is definitely no majority for any single position here.

To clarify I can modify the assignment to Bill Rehnquist as for a memo and let nature take its course. I will ask Bill to so treat the assignment, but I stand on that.

Regards,

WJ B

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

February 15, 1978

Re: 76-558 - Raymond Motor Transportation v. Rice

Dear Lewis:

I join but I will ask Harry to show me as joining in his concurring opinion as well.

Bill Rehnquist's comment that I voted to reverse is not quite right. I "passed" on the "first round" and then voted, with some reluctance, to reverse and assigned the case to Lewis for opinion.

Regards,



Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

November 14, 1977

RE: No. 76-558 - Raymond Motor Transportation v. Rice  
No. 76-709 - Bergland v. Economow

Dear Chief:

I wonder if my notes are accurate in the above cases. My notes in No. 76-558 show Potter, Byron, Thurgood, Lewis and I to reverse, Harry to vacate, you and Bill to affirm and John out. If that's accurate I suppose it fell to me to assign it and I would be happy to concur in your judgment that it should be assigned to Lewis.

My notes in No. 76-709 show Byron, Harry, Lewis and John to reverse in part and affirm in part; you, Potter and Bill Rehnquist to reverse outright; and Thurgood and I to affirm outright. Wouldn't Bill have difficulty writing for the Court if my record is correct?

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

January 18, 1978

RE: No. 76-558 Raymond Motor Transportation v. Rice

Dear Lewis:

I agree.

Sincerely,

*Bill*

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

February 13, 1978

RE: No. 76-558 Raymond Motor Transportation, Inc. v. Rice

Dear Harry:

I would appreciate your joining me in your concurrence  
in the above.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

January 16, 1978

No. 76-558

Re: Raymond Motor Transportation, Inc. v. Rice

Dear Lewis,

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

Sincerely yours,

P.S.  
1/

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 19, 1978

Re: 76-558 Raymond Motor Trans-  
portation, Inc., et al  
v.  
Zel S. Rice, et al

Dear Lewis,

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

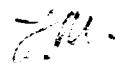
February 13, 1978

No. 76-558, Raymond Motor Transportation v. Rice

Dear Lewis:

Please join me.

Sincerely,



T. M.

Mr. Justice Powell

cc: The Conference

January 24, 1978

Re: No. 76-558 - Raymond Motor Transportation v. Rice

Dear Bill:

It is possible (barely) that what I am writing in this case might afford a little comfort against the concern expressed in your letter of January 23 to Lewis.

Sincerely,

4AB

Mr. Justice Rehnquist

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 24, 1978

Re: No. 76-558 - Raymond Motor Transportation v. Rice

Dear Lewis:

I am writing separately in this matter but, in so doing, am joining your opinion. My material is going to the print shop today and should be around before too long.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 1/25/78

1st DRAFT

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

## SUPREME COURT OF THE UNITED STATES

No. 76-558

Raymond Motor Transportation, Inc., et al., Appellants,  
v.  
Zel S. Rice et al. On Appeal from the United States District Court for the Western District of Wisconsin.

[February —, 1978]

MR. JUSTICE BLACKMUN, concurring.

I join the opinion of the Court, but I add these comments to emphasize the narrow scope of today's decision.

First, the Court's reliance on *Pike v. Bruce Church, Inc.*, 397 U. S. 137 (1970), does not signal, for me, a new approach to review of state highway safety regulations under the Commerce Clause. Wisconsin argues that the Court previously has refused to balance safety considerations against burdens on interstate commerce. Brief for Appellee 8. This contention misreads *Bibb v. Navajo Freight Lines*, 359 U. S. 520 (1959), which recognized the Court's responsibility to weigh the national interest in free flowing commerce against "slight or problematical" safety interests. *Id.*, at 524, quoting *Southern Pacific Co. v. Arizona*, 325 U. S. 761, 776 (1945).

Second, the reliance on *Pike* should not be read to equate the factual balance struck here with the balance established in *Pike* regarding the Arizona Fruit and Vegetable Standardization Act. Arizona prohibited interstate shipment of cantaloupes not "packed in regular compact arrangement in closed standard containers." 397 U. S., at 138, quoting Ariz. Rev. Stat. Ann. § 3-503C (Supp. 1969). Application of the prohibition to the appellee grower would have prevented it from processing its cantaloupes just across the state line in California, and would have required it to construct a packing facility in Arizona. The State attempted to justify this burden on interstate commerce solely by its interest "to

HAB

February 10, 1978

Re: No. 76-558 - Raymond Motor Transportation,  
Inc. v. Rice

Dear Bill:

Thank you for the suggestions contained in your letter of February 8. I am having my short concurrence rerun by the Printer. You will see that the new draft incorporates the second and third suggestions you make. The first suggestion makes me hesitate, for I do not wish to go so far as to concede that the mere assertion by the State of a safety justification is sufficient. Wisconsin did just that here, and we are rejecting it. In the hope that I shall meet your concern, I am changing the first sentence of the first full paragraph on page 2 to read:

"Neither the Pike opinion nor today's decision suggests that a similar balance would be struck when a State legitimately asserts the existence of a safety justification for a regulation."

Sincerely,

HAB

Mr. Justice Rehnquist

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

From: Mr. Justice Blackmun

Circulated: \_\_\_\_\_

Recirculated: 2/13/78

**3rd DRAFT**

## **SUPREME COURT OF THE UNITED STATES**

**No. 76-558**

Raymond Motor Transportation, Inc., et al., Appellants,  
 v.  
 Zel S. Rice et al.

On Appeal from the United States District Court for the Western District of Wisconsin.

[February —, 1978]

**MR. JUSTICE BLACKMUN**, concurring.

I join the opinion of the Court, but I add these comments to emphasize the narrow scope of today's decision.

First, the Court's reliance on *Pike v. Bruce Church, Inc.*, 397 U. S. 137 (1970), does not signal, for me, a new approach to review of state highway safety regulations under the Commerce Clause. Wisconsin argues that the Court previously has refused to balance safety considerations against burdens on interstate commerce. Brief for Appellee 8. This contention misreads *Bibb v. Navajo Freight Lines*, 359 U. S. 520 (1959), which recognized the Court's responsibility to weigh the national interest in free flowing commerce against "slight or problematical" safety interests. *Id.*, at 524, quoting *Southern Pacific Co. v. Arizona*, 325 U. S. 761, 776 (1945).

Second, the reliance on *Pike* should not be read to equate the factual balance struck here with the balance established in *Pike* regarding the Arizona Fruit and Vegetable Standardization Act. Arizona prohibited interstate shipment of cantaloupes not "packed in regular compact arrangement in closed standard containers." 397 U. S., at 138, quoting Ariz. Rev. Stat. Ann. § 3-503C (Supp. 1969). Application of the prohibition to the appellee grower would have prevented it from processing its cantaloupes just across the state line in California, and would have required it to construct a packing facility in Arizona. The State attempted to justify this burden on interstate commerce solely by its interest "to

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

From: Mr. Justice Powell

Circulated: 13 JAN 1978

Recirculated:

## 1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-558

Raymond Motor Transportation, Inc., et al., Appellants,  
v.  
Zel S. Rice et al. } On Appeal from the United States District Court for the Western District of Wisconsin.

[January —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

We consider on this appeal whether administrative regulations of the State of Wisconsin governing the length and configuration of trucks that may be operated within the State violate the Commerce Clause because they unconstitutionally burden or discriminate against interstate commerce. The three-judge District Court held that the regulations are not unconstitutional on either ground. Because we conclude that they unconstitutionally burden interstate commerce, we reverse.

I

Appellant Raymond Motor Transportation, Inc. (Raymond), a Minnesota corporation with its principal place of business in Minneapolis, is a common carrier of general commodities by motor vehicle. Operating pursuant to a certificate of public convenience and necessity granted by the Interstate Commerce Commission, see 49 U. S. C. §§ 306-308, Raymond provides service in eastern North Dakota, Minnesota, northern Illinois, and northwestern Indiana. Its primary interstate route is between Chicago and Minneapolis. It does not serve any points in Wisconsin.

Appellant Consolidated Freightways Corporation of Delaware (Consolidated), a Delaware corporation with its principal place of business in Menlo Park, Cal., also is a common carrier

Pp. 3, 6; footnotes renumbered

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

From: Mr. Justice Powell

Circulated: \_\_\_\_\_

2nd DRAFT

Recirculated: 15 FEB 1978

## SUPREME COURT OF THE UNITED STATES

No. 76-558

Raymond Motor Transportation, Inc., et al., Appellants,  
 v.  
 Zel S. Rice et al. } On Appeal from the United States District Court for the Western District of Wisconsin.

[February —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

We consider on this appeal whether administrative regulations of the State of Wisconsin governing the length and configuration of trucks that may be operated within the State violate the Commerce Clause because they unconstitutionally burden or discriminate against interstate commerce. The three-judge District Court held that the regulations are not unconstitutional on either ground. Because we conclude that they unconstitutionally burden interstate commerce, we reverse.

### I

Appellant Raymond Motor Transportation, Inc. (Raymond), a Minnesota corporation with its principal place of business in Minneapolis, is a common carrier of general commodities by motor vehicle. Operating pursuant to a certificate of public convenience and necessity granted by the Interstate Commerce Commission, see 49 U. S. C. §§ 306-308, Raymond provides service in eastern North Dakota, Minnesota, northern Illinois, and northwestern Indiana. Its primary interstate route is between Chicago and Minneapolis. It does not serve any points in Wisconsin.

Appellant Consolidated Freightways Corporation of Delaware (Consolidated), a Delaware corporation with its principal place of business in Menlo Park, Cal., also is a common carrier

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 23, 1978

Re: No. 76-558 - Raymond Motor Transportation v. Rice

Dear Lewis:

I think the Chief and I were the only ones in this case who voted to dissent; your opinion has persuaded me that if the basis for the statute is to be tried as a question of fact in the District Court, the District Court in this case was wrong and its judgment should be reversed. I am not quite yet ready, however, to give up what I thought had been established as a fairly strong presumption in Barnwell, in favor of state safety regulations at least where they pertain to state-owned roads rather than privately owned railroad trackage. If it turns out that I am alone in my view, I may give up with only a "graveyard" dissent.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 8, 1978

Re: No. 76-558 - Raymond Motor Transportation, et al.  
v. Rice

Dear Harry:

I spoke to you on the phone yesterday about a couple of changes which I would like to suggest in your concurrence, and which if you agreed to them would surely lead me to join you. I may conceivably join you anyway; I do not anticipate joining Lewis' opinion except as I do so by joining yours.

The three changes suggested below are all pointed in the same direction: As I read your concurrence, it takes the tack that basically the state's safety justification for its regulations was a phoney. You used the more charitable word "illusory", page 3. I voted the other way at Conference, but am willing to go along on this basis. The proposition to which I do not wish to lend encouragement is that there should be a trial, as of any other factual issue, in the District Court as to just how weighty and defensible the safety interests advanced by the state were. It seems to me that your reasons for distinguishing Pike v. Bruce Church, 397 U.S. 137, and your statement that "[t]he record therefore suggests that the State in practice does not believe that over size, double-trailor vehicles prevent a threat to highway safety", disposes of this case without the need for the balancing of a legitimate

state safety concern against a conceded burden on interstate commerce.

To this end, I suggest that the phrase "and proves" in the full paragraph beginning on page 2 be deleted; that the conclusion of the second full sentence of text on page 3 end with the language "it concludes that the safety interests have been shown not to exist as a matter of law"., and that the penultimate sentence in the opinion be changed to read "It was shown that neither the mud flaps nor the regulations contributed to highway safety".

The thrust of these perhaps minuscule changes would help me because I think they would make the presumption of safety legislation with respect to highways slightly stronger than your present draft does.

Sincerely,



Mr. Justice Blackmun

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 13, 1978

Re: No. 76-558 - Raynond Motor Transportation v. Rice

Dear Harry:

Please join me in your separate opinion in this case. By joining your opinion, I will of course also be joining Lewis' opinion for the Court.

Sincerely,

Mr. Justice Blackmun

Copies to the Conference