

The Burger Court Opinion Writing Database

ICC v. American Trucking Associations, Inc.

467 U.S. 354 (1984)

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

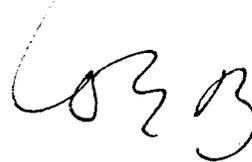
April 3, 1984

Re: 82-1643 - ICC v. American Trucking Association

Dear Thurgood:

I voted as I did in this case because we traditionally give great deference to an agency's interpretation of its enabling legislation. For me, §10762(e) as construed by the Commission, affords a basis for decision. If the Court does not follow that course, I cannot join and may dissent.

Regards,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 22, 1984

Personal

82-1643 ICC v. American Trucking Associations, Inc.

Dear Thurgood:

I am sorry to have taken so long on this case, but I had hoped that your changes might meet my concerns. In your second draft, I have problems at pages 1, 11, 13, 14, 16, 17. To make it easier to follow, I set out below the areas of my concern with suggested changes underlined. With these few changes, I could join.

1. Insert the words "and directly" after the word "closely" in the next to last sentence on page 1, and insert the word "limited" after the word "these" in the last sentence on that page. The two sentences would read as follows:

"Although rejection of effective tariffs is a form of remedial power not expressly delegated to the Commission, the remedy as proposed by the Commission in this case is closely and directly related to the Commission's express statutory powers and is designed to achieve objectives set for the Commission by Congress. Under these limited circumstances, we hold that the proposed remedy lies within the Commission's discretion."

2. Modify the second full sentence on page 11 and add a third so that the partial paragraph on page 11 would read as follows:

"In this case, the Commission argues that the retroactive rejection of rate-bureau tariffs is simply an adjunct to the Commission's §10762(e) rejection authority, and that to the extent that there is an elaboration on that authority, it is necessary to ensure compliance with rate-bureau agreements, as Congress has directed it to do. In these narrow circumstances, we agree."

3. Modify the third full sentence on page 13 so that it would read as follows:

"To lie within the Commission's discretionary power, the proposed remedy must satisfy two criteria: first, the power must further a specific statutory

mandate of the Commission, and second, the exercise of power must be directly and closely tied to that mandate."

4. Modify the first sentence in the first full paragraph on page 14 to read as follows:

"More difficult to answer is the question whether the Commission's conditional approval of motor-carrier tariffs is a means of policing rate-bureau agreements sufficiently direct and close to the Commission's statutory mandate to warrant approval."

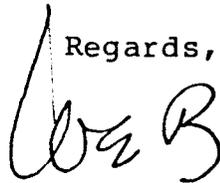
5. Change the first sentence on page 16 to read as follows:

"Nevertheless, we agree with the Commission that its new remedy is a justifiable adjunct to its express statutory mandate."

6. Change the first full sentence on page 17 to read as follows:

"For the foregoing reasons, we conclude that the Commission does not exceed its authority by nullifying effective motor-carrier tariffs submitted in substantial violation of rate-bureau agreements."

Regards,



P.S. I realize this is a large "mouthful"
& will understand if it will not "swallow".

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
THE CHIEF JUSTICE

May 30, 1984

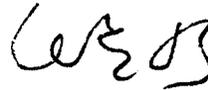
'84 MAY 30 P12:56

Re: 82-1643 - ICC v. American Trucking Ass'n, Inc.

Dear Thurgood:

My position required a lot of extra work for you to accommodate, particularly at this time of the year. I thank you for your special effort and I join.

Regards,



Justice Marshall

Copies to the Conference

ky

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 14, 1984
RECEIVED
SUPREME COURT
JUSTICE BRENNAN

'84 MAR 14 P2:26

No. 82-1643

Interstate Commerce Commission,
et al. v. American Trucking
Associations, Inc., et al.

Dear Thurgood,

Please join me.

Sincerely,

Bren

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 24, 1984

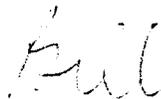
No. 82-1643

ICC v. American Trucking
Association

Dear Thurgood,

I'll leave entirely to your good judgment how many of the Chief's suggestions to adopt. I'll accept anything you decide upon.

Sincerely,



Justice Marshall

cc: Justice White
Justice Rehnquist

94 MAY 24 10 32 AM '84

702
2000

(2)

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 13, 1984

SUPRE
JUST

'84 MAR 13 A10:38

Re: 82-1643 -

ICC v. American Trucking Ass'ns, Inc.

Dear Thurgood,

I agree.

Sincerely,



Justice Marshall

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 23, 1984

Re: 82-1643 -

ICC v. American Trucking Association

Dear Thurgood,

I could put up with the Chief's suggestions 1, 2, 5 and 6. I have my doubts, however, about 3 and 4 which seem to state a general rule about the exercise of administrative discretion for which the Chief cites no authority. I shall leave the matter to you, however.

Sincerely yours,



Justice Marshall

cc: Justice Brennan
Justice Rehnquist

cpm

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: MAR 12 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1643

**INTERSTATE COMMERCE COMMISSION ET AL.,
PETITIONERS *v.* AMERICAN TRUCKING
ASSOCIATIONS, INC. ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT**

[March —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

This case presents a challenge to an effort by the Interstate Commerce Commission to create a new remedy to enforce motor-carrier rate-bureau agreements. The remedy at issue is the Commission's authority to reject effective tariffs that have been submitted in substantial violation of rate-bureau agreements. As we have recognized in the past, the Interstate Commerce Commission has considerable discretion to fashion remedies in furtherance of its statutory responsibilities. *Trans Alaska Pipeline Rate Cases*, 436 U. S. 631, 654 (1978). Although rejection of effective tariffs is a new form of remedial power for the Commission, we hold that the remedy lies within the Commission's inherent authority to take actions that are reasonably designed to achieve objectives set for the Commission by Congress.

I

Motor carrier rate bureaus are groups of motor carriers formed to negotiate collective rates. Since the Reed-Bulwinkle Act of 1948, motor carriers within the jurisdiction of the Interstate Commerce Commission ("Commission" or "ICC") have enjoyed immunity from the antitrust laws to enter into rate bureaus and to submit collective rates to the Commission. Ch. 491, 62 Stat. 472. To receive this immu-

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: APR 17 1984

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-1643 AND 82-1827

INTERSTATE COMMERCE COMMISSION, ET AL.,
PETITIONERS

82-1643

v.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,
PETITIONERS

82-1827

v.

INTERSTATE COMMERCE COMMISSION ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[April —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

This case presents a challenge to an effort by the Interstate Commerce Commission to create a new remedy to enforce motor-carrier rate-bureau agreements. The remedy at issue is the Commission's authority to reject effective tariffs that have been submitted in substantial violation of rate-bureau agreements. As we have recognized in the past, the Interstate Commerce Commission ("Commission" or "ICC") has discretion to fashion remedies in furtherance of its statutory responsibilities. *Trans Alaska Pipeline Rate Cases*, 436 U. S. 361, 654 (1978). Although rejection of effective tariffs is a form of remedial power not expressly delegated to the Commission, the remedy as proposed by the Commission in this case is closely related to the Commission's express statutory powers and is designed to achieve objectives set for the Commission by Congress. Under these circumstances, we hold that the proposed remedy lies within the Commission's discretion.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

PERSONAL

May 23, 1984

Re: No. 82-1643-ICC v. American Trucking Assoc.

Dear Bill, Byron and Bill:

Here is a letter from the Chief making quite a few suggested material additions to my proposed opinion. I would appreciate your suggestions as to what, if any, changes can be made.

Sincerely,

T.M.
T.M.

Justice Brennan
Justice White
Justice Rehnquist

pp. 1, 11, 13, 14, 16, 17
STYLISTIC CHANGES THROUGHOUT.

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: _____

Recirculated: MAY 29 1984

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-1643 AND 82-1827

INTERSTATE COMMERCE COMMISSION, ET AL.,
PETITIONERS

82-1643

v.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,
PETITIONERS

82-1827

v.

INTERSTATE COMMERCE COMMISSION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[April —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

This case presents a challenge to an effort by the Interstate Commerce Commission to create a new remedy to enforce motor-carrier rate-bureau agreements. The remedy at issue is the Commission's authority to reject effective tariffs that have been submitted in substantial violation of rate-bureau agreements. As we have recognized in the past, the Interstate Commerce Commission ("Commission" or "ICC") has discretion to fashion remedies in furtherance of its statutory responsibilities. *Trans Alaska Pipeline Rate Cases*, 436 U. S. 361, 654 (1978). Although rejection of effective tariffs is a form of remedial power not expressly delegated to the Commission, the remedy as proposed by the Commission in this case is closely and directly related to the Commission's express statutory powers and is designed to achieve objectives set for the Commission by Congress. Under these limited circumstances, we hold that the proposed remedy lies within the Commission's discretion.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

P.1

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

Circulated: _____

Recirculated: MAY 31 1984

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1643

INTERSTATE COMMERCE COMMISSION, ET AL.,
PETITIONERS *v.* AMERICAN TRUCKING
ASSOCIATIONS, INC., ET AL.

omission L

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[June —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

This case presents a challenge to an effort by the Interstate Commerce Commission to create a new remedy to enforce motor-carrier rate-bureau agreements. The remedy at issue is the Commission's authority to reject effective tariffs that have been submitted in substantial violation of rate-bureau agreements. As we have recognized in the past, the Interstate Commerce Commission ("Commission" or "ICC") has discretion to fashion remedies in furtherance of its statutory responsibilities. *Trans Alaska Pipeline Rate Cases*, 436 U. S. 361, 654 (1978). Although rejection of effective tariffs is a form of remedial power not expressly delegated to the Commission, the remedy as proposed by the Commission in this case is closely and directly related to the Commission's express statutory powers and is designed to achieve objectives set for the Commission by Congress. Under these limited circumstances, we hold that the proposed remedy lies within the Commission's discretion.

I

Motor carrier rate bureaus are groups of motor carriers formed to negotiate collective rates. Since the Reed-Bulwinkle Act of 1948, motor carriers within the jurisdiction of the Commission have enjoyed immunity from the antitrust

Reproduced from the Collections of the Manuscript Division, Library of Congress

HAC

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 6, 1984

MEMORANDUM TO THE CONFERENCE

Re: Cases held for ICC v. ATA, Inc., No. 82-1643

Three cases were held for ICC v. ATA:

Aberdeen & Rockfish Railroad Co. v. United States, No. 82-707, and National Motor Freight Traffic Association, Inc., v. United States, No. 82-804: When carriers propose new tariffs to the ICC, the carriers are required to place a symbol next to each tariff indicating whether the tariff has increased, decreased, or remained the same. The symbols are designed to give notice to affected parties, who may wish to challenge the changes. Prior to 1979, the ICC staff reviewed every tariff filing for symbolization errors before the tariff went into effect. If errors were discovered, the tariff was rejected before it went into effect. After 1979, budgetary cutback made it impossible for the Commission to continue to review the symbolization of every proposed tariff. In 1980, the ICC issued an order announcing its new policy for dealing with tariff symbolization. Under this ICC order, missymbolized tariff increases would be invalid, even after an increase has gone into effect. Petitioners in these two cases separately challenged the ICC order as beyond the Commission's authority. After consolidating the cases, the Fifth Circuit upheld the ICC order as a valid exercise of Commission power under 49 U.S.C. §10762(e). The Circuit reasoned that §10762(e) authorizes the Commission to reject a tariff that has gone into effect if the tariff was not filed in the prescribed format.

The Fifth Circuit's analysis is inconsistent with this Court's decision in ICC v. ATA, Inc. We held in that case that §10762(e) does not give the Commission general authority to nullify effective tariffs. Although section 10762(e) cannot support the Commission's action, it is possible that the nullification of missymbolized tariffs nevertheless is a legitimate exercise of the Commission's discretionary authority. In ICC v. ATA, the Court found that the Commission had discretionary authority to nullify effective tariffs submitted in substantial violation of rate-bureau agreements. This ruling was based on the facts that the ICC has a statutory mandate to supervise rate-bureau agreements and that the nullification of tariffs submitted in

file

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 16, 1984

Re: No. 82-1643 - ICC v. American Trucking Associations, Inc.

Dear Sandra:

You, Lewis, John, and I are in the dissent in this case. It is early for me to do this, but I wondered whether you would be willing to undertake the dissent. It seemed to me that you had the issues very well in mind.

Sincerely,



Justice O'Connor

cc: Justice Powell
Justice Stevens

Reproduced from the Collections of the Manuscript Division, Library of Congress

HAB

January 19, 1984

Re: No. 82-1643, ICC v. American Trucking Associations, Inc.

Dear Sandra:

Your note of this morning prompts me to be perfectly candid. I have the assignment power for the dissent in this case and in due course I propose to exercise it. I doubt that you are any more burdened with respect to majorities and dissents than any of the rest of us.

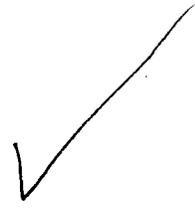
Sincerely,

HAB

Justice O'Connor

Reproduced from the Collections of the Manuscript Division, Library of Congress

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



CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 27, 1984

Re: No. 82-1643 - ICC v. American Trucking Associations, Inc.

Dear Lewis and John:

Sandra has indicated that she will take on the dissent in this case. I therefore am making that assignment a definite one.

Sincerely,

A handwritten signature, likely "Harry", is written in cursive below the word "Sincerely,".

Justice Powell
Justice Stevens

cc: Justice O'Connor

HAB

March 29, 1984

Re: No. 82-1643 - ICC v. American Trucking Associations, Inc.

Dear Sandra:

I feel your proposed dissent is most effective. I have no suggestions and shall join it when it is circulated.

I appreciate your taking on the work of this dissent.

Sincerely,

HAB

Justice O'Connor

19

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 30, 1984

Re: No. 82-1643) ICC v. American Trucking Associations, Inc.
No. 82-1827) American Trucking Associations, Inc. v. ICC

Dear Sandra:

Please join me in your dissent for these two cases.

Sincerely,



Justice O'Connor

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 30, 1984

Re: No. 82-1643, ICC v. American Trucking Associations, Inc.

Dear Thurgood and Sandra:

This is perhaps a trivial inquiry. In your respective circulating opinions, now ready for announcement, the heading is double. It also includes No. 82-1827, American Trucking Associations, Inc. v. ICC.

My records distinctly show that certiorari was granted in No. 82-1643 on June 20, 1983, but that No. 82-1827 was a hold for No. 82-1643. The appendix and briefs filed bear only the one number.

Should the opinions not be a single header rather than a double header, or does it make no difference?

Sincerely,

H.A.B.

Justice Marshall
Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

FILE
SUPREME COURT
JUSTICE LEWIS F. POWELL, JR.

March 13, 1984

'84 MAR 13 P3:26

82-1643 ICC v. American Trucking

Dear Thurgood:

As I was in dissent at Conference, I will await further writing.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

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

RECEIVED
SUPREME COURT OF THE U.S.
JUSTICE LEWIS F. POWELL, JR.

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

'84 MAR 33 A9:43

March 30, 1984

82-1643 ICC v. American Trucking
82-1827 American Trucking v. ICC

Dear Sandra:

Please join me in your dissent.

Sincerely,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference



CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

March 12, 1984

SUPREME COURT OF THE UNITED STATES
JUSTICE WILLIAM H. REHNQUIST

Re: No. 82-1643 ICC v. American Trucking Associations, Inc.

Dear Thurgood:

Please join me.

Sincerely,

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 24, 1984

Re: No. 82-1643 ICC v. American Trucking Association

Dear Thurgood:

I think the Chief's proposed changes are largely a matter of adverbs and adjectives, and I would have no difficulty if you accepted any or all of them. I leave the matter to you.

Sincerely,



Justice Marshall

cc: Justice Brennan
Justice White

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

84 MAY 24 1984

RECEIVED

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

RECEIVED
SUPREME COURT
JUSTICE JOHN PAUL STEVENS

'84 MAR 13 P2:26 March 13, 1984

Re: 82-1643 - ICC v. American Trucking Assn.

Dear Thurgood:

Although I agree with your explanation of why §10762(e) does not provide the Commission with the rejection power that it claims, I am not convinced by your discussion of the Commission's inherent power and therefore will wait for Sandra's writing in dissent.

Respectfully,



Justice Marshall

Copies to the Conference

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

RECEIVED
SUPREME COURT
JUSTICE STEVENS

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

'84 MAR 33 A9:43

March 30, 1984

Re: 82-1643 - ICC v. American Trucking
Assns.; 82-1827 - American Trucking
Assns. v. ICC

Dear Sandra:

Please join me.

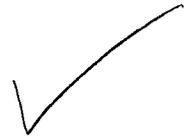
Respectfully,



Justice O'Connor

Copies to the Conference

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



CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 19, 1984

No. 82-1643 ICC v. American Trucking
Associations, Inc.

Dear Harry,

I would prefer to wait until the assignments are made before deciding whether to take on another dissent, if that is all right as far as you are concerned.

Sincerely,

Justice Blackmun

cc: Justice Powell
Justice Stevens

Sully - Note is will

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

*write
dissent*
✓

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 23, 1984

No. 82-1643 ICC v. American Trucking
Associations, Inc.

Dear Harry,

If your assignment offer is still open for the dissent in this case I would be happy to try to draft one.

Sincerely,

Sandra

Justice Blackmun

cc: Justice Powell
Justice Stevens

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 13, 1984 SUPREME
JUSTICE

'84 MAR 13 P1:04

No. 82-1643 ICC v. American Trucking Assoc.

Dear Thurgood,

In due course, I will be circulating a
dissent in this case.

Sincerely,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 27, 1984

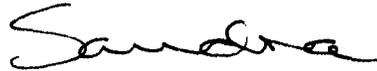
No. 82-1643 ICC v. American Trucking
Association

Dear Harry,

Attached is a draft of a proposed dissent in
the American Trucking Association case.

I thought I would see if you had any suggestions
or changes before general circulation. I am open to
any of your suggestions.

Sincerely,



Justice Blackmun

Attachment

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: _____

3/30/84

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-1643 AND 82-1827

INTERSTATE COMMERCE COMMISSION, ET AL.,
PETITIONERS

82-1643

v.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,
PETITIONERS

82-1827

v.

INTERSTATE COMMERCE COMMISSION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[April —, 1984]

JUSTICE O'CONNOR, dissenting.

This case presents the question whether the Interstate Commerce Commission (Commission) may nullify a motor carrier tariff at any time after it has become effective. Such nullification renders the carrier liable to shippers for the amount by which the rejected rate exceeds the last rate the carrier has lawfully filed. The Court quite correctly reasons that §10762(e) of the Interstate Commerce Act (Act), 49 U. S. C. §10762(e), does not authorize the Commission to reject effective tariffs. See *ante*, at 7-10. Reading §10762(e) to authorize such action would indeed give the Commission an "unbridled discretion" that Congress did not intend it to have. See *ante*, at 9. However, after having correctly rejected §10762(e) as a basis for the proposed rejection power, the Court then mysteriously concludes that the power is within the Commission's "inherent authority" to ensure that shippers adhere strictly to their approved rate bureau agreements. I frankly do not understand how this alternative "in-

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

PR 1

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-1643 AND 82-1827

INTERSTATE COMMERCE COMMISSION, ET AL.,
PETITIONERS

82-1643

v.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,
PETITIONERS

82-1827

v.

INTERSTATE COMMERCE COMMISSION ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[April —, 1984]

JUSTICE O'CONNOR, with whom JUSTICE BLACKMUN, JUSTICE POWELL, and JUSTICE STEVENS join, dissenting.

This case presents the question whether the Interstate Commerce Commission (Commission) may nullify a motor carrier tariff at any time after it has become effective. Such nullification renders the carrier liable to shippers for the amount by which the rejected rate exceeds the last rate the carrier has lawfully filed. The Court quite correctly reasons that § 10762(e) of the Interstate Commerce Act (Act), 49 U. S. C. § 10762(e), does not authorize the Commission to reject effective tariffs. See *ante*, at 7-10. Reading § 10762(e) to authorize such action would indeed give the Commission an "unbridled discretion" that Congress did not intend it to have. See *ante*, at 9. However, after having correctly rejected § 10762(e) as a basis for the proposed rejection power, the Court then mysteriously concludes that the power is within the Commission's "inherent authority" to ensure that shippers adhere strictly to their approved rate bureau agree-

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

1, 2, 3, 4, 7

RECEIVED
SUPREME COURT U.S.
JUSTICE

'84 APR -9 A9:56

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: _____

4/9/84

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-1643 AND 82-1827

INTERSTATE COMMERCE COMMISSION ET AL.,
PETITIONERS

82-1643

v.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,
PETITIONERS

82-1827

v.

INTERSTATE COMMERCE COMMISSION ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[April —, 1984]

JUSTICE O'CONNOR, with whom JUSTICE BLACKMUN, JUSTICE POWELL, and JUSTICE STEVENS join, dissenting.

This case presents the question whether the Interstate Commerce Commission (Commission) may nullify a motor carrier tariff at any time after it has become effective. Such nullification renders the carrier liable to shippers for the amount by which the rejected rate exceeds the last rate the carrier has lawfully filed. The Court quite correctly reasons that §10762(e) of the Interstate Commerce Act (Act), 49 U. S. C. §10762(e), does not authorize the Commission to reject effective tariffs. See *ante*, at 7-10. Reading §10762(e) to authorize such action would indeed give the Commission an "unbridled discretion" that Congress did not intend it to have. See *ante*, at 9. However, after having correctly rejected §10762(e) as a basis for the proposed rejection power, the Court then mysteriously concludes that the power is within the Commission's "discretionary power" to ensure that shippers adhere strictly to their approved rate bureau

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

PP 4,7

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 MAY 30 12:55

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: MAY 30 1984

May 30, 1984

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-1643 AND 82-1827

INTERSTATE COMMERCE COMMISSION ET AL.,
PETITIONERS

82-1643

v.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,
PETITIONERS

82-1827

v.

INTERSTATE COMMERCE COMMISSION ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[June —, 1984]

JUSTICE O'CONNOR, with whom JUSTICE BLACKMUN, JUSTICE POWELL, and JUSTICE STEVENS join, dissenting.

This case presents the question whether the Interstate Commerce Commission (Commission) may nullify a motor carrier tariff at any time after it has become effective. Such nullification renders the carrier liable to shippers for the amount by which the rejected rate exceeds the last rate the carrier has lawfully filed. The Court quite correctly reasons that § 10762(e) of the Interstate Commerce Act (Act), 49 U. S. C. § 10762(e), does not authorize the Commission to reject effective tariffs. See *ante*, at 7-10. Reading § 10762(e) to authorize such action would indeed give the Commission an "unbridled discretion" that Congress did not intend it to have. See *ante*, at 9. However, after having correctly rejected § 10762(e) as a basis for the proposed rejection power, the Court then mysteriously concludes that the power is within the Commission's "discretionary power" to ensure that shippers adhere strictly to their approved rate bureau

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS