

The Burger Court Opinion Writing Database

Southern Motor Carriers Rate Conference, Inc. v. United States

471 U.S. 48 (1985)

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



6

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

CHAMBERS OF
THE CHIEF JUSTICE

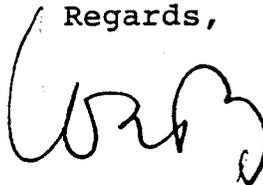
March 4, 1985

Re: No. 82-1922 - Southern Motor Carriers Rate
Conference v. United States

Dear Lewis,

I join.

Regards,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 15, 1985

No. 82-1922

Southern Motor Carriers
Rate Conference, Inc., et al.
v. United States

Dear Lewis,

I agree.

Sincerely,



Justice Powell

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 19, 1985

82-1922 - Southern Motor Carriers Rate
Conference, Inc. v. United States

Dear Lewis,

I await John's dissent.

Sincerely,

Byron

Justice Powell

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 19, 1985

82-1922 - Southern Motor Carriers Rate
Conference, Inc. v. United States

Dear John,

Please join me in your dissenting
opinion.

Sincerely yours,



Justice Stevens

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 19, 1985

Re: No. 82-1922-Southern Motor Carriers Rate
Conference v. United States

Dear Lewis:

Please join me.

Sincerely,



T.M.

Justice Powell

cc: The Conference

W

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 22, 1985

Re: No. 82-1922, Southern Motor Carriers Rate Conference
v. United States

Dear Lewis:

Please join me.

Sincerely,

H.A.B.

Justice Powell

cc: The Conference

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02/13

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

From: Justice Powell

Circulated: FEB 13 1985

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1922

SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC., ET AL. v. UNITED STATES

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

[February —, 1985]

JUSTICE POWELL delivered the opinion of the Court.

Southern Motor Carriers Rate Conference, Inc. (SMCRC) and North Carolina Motor Carriers Association, Inc. (NCMCA), petitioners, are "rate bureaus" composed of motor common carriers operating in four southeastern States. The rate bureaus, on behalf of their members, submit joint rate proposals to the public service commissions in each State for approval or rejection. This collective ratemaking is authorized, but not compelled, by the States in which the rate bureaus operate. The United States, contending that collective ratemaking violates the federal antitrust laws, filed this action to enjoin the rate bureaus' alleged anticompetitive practices. We here consider whether the petitioners' collective ratemaking activities, though not compelled by the States, are entitled to Sherman Act immunity under the "state action" doctrine of *Parker v. Brown*, 317 U. S. 341 (1943).

I

A

In North Carolina, Georgia, Tennessee, and Mississippi, public service commissions set motor common carriers' rates for the intrastate transportation of general commodities.¹

¹ North Carolina Gen. Stat. § 62-130(a) (1982); Ga. Code Ann. § 46-7-18 (Supp. 1984); Miss. Code Ann. § 77-7-217 (1972); Tenn. Code Ann. § 65-15-

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Pgs. 6, + 7
new footnotes 18 and 21
Stylistic changes throughout

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

From: Justice Powell

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1922

SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC., ET AL. *v.* UNITED STATES

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

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03/22

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

From: Justice Powell

Stylistic Changes Throughout

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1922

SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC., ET AL. v. UNITED STATES

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

[March 27, 1985]

JUSTICE POWELL delivered the opinion of the Court.

Southern Motor Carriers Rate Conference, Inc. (SMCRC) and North Carolina Motor Carriers Association, Inc. (NCMCA), petitioners, are "rate bureaus" composed of motor common carriers operating in four southeastern States. The rate bureaus, on behalf of their members, submit joint rate proposals to the Public Service Commissions in each State for approval or rejection. This collective ratemaking is authorized, but not compelled, by the States in which the rate bureaus operate. The United States, contending that collective ratemaking violates the federal antitrust laws, filed this action to enjoin the rate bureaus' alleged anticompetitive practices. We here consider whether the petitioners' collective ratemaking activities, though not compelled by the States, are entitled to Sherman Act immunity under the "state action" doctrine of *Parker v. Brown*, 317 U. S. 341 (1943).

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 19, 1985

Re: No. 82-1922 Southern Motor Carriers Rate Conference v.
United States

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 15, 1985

Re: 82-1922 - Southern Motor Carriers
v. United States

Dear Lewis:

Since I believe your opinion makes a substantial change in the state action immunity doctrine, I will be writing in dissent.

Respectfully,

Justice Powell

Copies to the Conference

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

From: **Justice Stevens**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1922

SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC., ET AL., PETITIONERS *v.*
UNITED STATES

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

[March —, 1985]

JUSTICE STEVENS, dissenting.

The term “price-fixing” generally refers to a process by which competitors agree upon the prices that will prevail in the market for the goods or services they offer. Such behavior is not essential to every public program for regulating industry. In this case, for example, four southern States have established programs for evaluating the reasonableness of rates that motor carriers propose to charge for intrastate transport, but the States do not require price-fixing by motor carriers. They merely tolerate it.

Reasoning deductively from a dictum in *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U. S. 97, 105 (1980), the Court holds that Congress did not intend to prohibit price-fixing by motor carrier rate bureaus—at least when such conduct is prompted, but not required, by a state public service commission. The result is inconsistent with the language¹ and policies of the Sherman Act, and this Court's precedent. The Sherman Act only would interfere with the regulatory process if the States compelled price-fixing that is unlawful under federal law. In that situation, the

¹“Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.” 15 U. S. C. § 1.

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

From: **Justice Stevens**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1922

SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC., ET AL., PETITIONERS *v.*
UNITED STATES

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

[March —, 1985]

JUSTICE STEVENS, with whom JUSTICE WHITE joins, dissenting.

The term "price-fixing" generally refers to a process by which competitors agree upon the prices that will prevail in the market for the goods or services they offer. Such behavior is not essential to every public program for regulating industry. In this case, for example, four southern States have established programs for evaluating the reasonableness of rates that motor carriers propose to charge for intrastate transport, but the States do not require price fixing by motor carriers. They merely tolerate it.

Reasoning deductively from a dictum in *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97, 105 (1980), the Court holds that Congress did not intend to prohibit price fixing by motor carrier rate bureaus—at least when such conduct is prompted, but not required, by a state public service commission. The result is inconsistent with the language¹ and policies of the Sherman Act, and this Court's precedent. The Sherman Act only would interfere with the regulatory process if the States compelled price fix-

¹"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." 15 U. S. C. § 1.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 15, 1985

82-1922 Southern Motor Carriers Rate Conference,
Inc., et al. v. U.S.

Dear Lewis,

Please join me.

Sincerely,

Sandra

Justice Powell

Copies to the Conference