Nos. 03-1230 and 03-1234

In The
Supreme Court of the United States

AMERICAN TRUCKING ASSOCIATIONS, INC.
AND USF HOLLAND, INC.,

Petitioners,

v.

MICHIGAN PUBLIC SERVICE COMMISSION, *et al.*,

Respondents.

MID-CON FREIGHT SYSTEMS, INC., *et al.*,

Petitioners,

v.

MICHIGAN PUBLIC SERVICE COMMISSION, *et al.*,

Respondents.

On Writ Of Certiorari To The Michigan Court Of Appeals

BRIEF FOR PETITIONERS MID-CON FREIGHT SYSTEMS, INC., *et al.* No. 03-1234

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QUESTION PRESENTED

For nearly forty years, Congress has imposed express limitations on State registration of interstate motor carriers and their vehicles. In 1991, Congress directed the Interstate Commerce Commission ("ICC") to implement a new uniform program called the Single State Registration System ("SSRS") under which each interstate motor carrier registers annually with just one State, and each State may only charge a per-truck fee "equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U.S.C. § 14504(c)(2)(B)(iv)(III). Congress also found that "[t]he charging or collection of any fee under this section that is not in accordance with th[is] fee system . . . shall be deemed to be a burden on interstate commerce." 49 U.S.C. § 14504(c)(2)(C).

Michigan is a member of the SSRS and requires all interstate carriers to register annually with the Michigan Public Service Commission ("PSC") before operating on Michigan highways. However, if an interstate carrier uses trucks with license plates purchased from the Michigan Secretary of State, the PSC waives the normal $10 fee and substitutes in its stead a $100 decal fee for each truck registered each year. Notwithstanding the $10 fee cap of 49 U.S.C. § 14504(c)(2)(B)(iv)(III), the Michigan Court of Appeals upheld Michigan's $100 fee based on the notion that so-called "regulatory fees" are not preempted by the SSRS.

Against that backdrop, this Court has posed the following question: Whether the $100 fee upon vehicles operating solely in interstate commerce is preempted by 49 U.S.C. § 14504.

RULE 24.1(b) STATEMENT

Parties to the proceedings below were as follows: (a) As plaintiffs, Mid-Con Freight Systems, Inc.; Lafond Express, Inc. f/k/a Elex, Inc.;[1] Westlake Transportation, Inc.; Gerig's Trucking & Leasing, Inc.; Bestway Express, Inc.; Van Der Kooi Carriers, Inc.; Prism, Inc.; El Toro, Inc.; Myriah, Inc.; Troy Cab, Inc.; Deeco Services, Inc. d/b/a Deeco Transportation; Frank Tiberio d/b/a Fairfield Towing; Dale Constine & Sons, Inc.; Calcut Sales & Services, Inc. d/b/a Calcut Trucking Company; Ambassador Transportation, Inc.; Hawkins Steel Cartage, Inc.; JLH Transfer, Inc.; H&H Enterprises, Inc. d/b/a S&M Cartage; Central Transport, Inc.; Bancroft Trucking Co.; U.S. Truck Co., Inc.; West End Cartage, Inc.; Central Cartage Co.; CTX, Inc.; Mohawk Motor of Michigan, Inc.; Economy Transport, Inc.; McKinlay Transport, Inc. Ltd.; Mason & Dixon Lines, Inc.; Universal Am-Can, Ltd.; Romeo Expeditors, Inc.; Tom Thumb Services, Inc. d/b/a Rei; O-Jay Transport Company; J. Law Enterprises, Inc.; and Alliance of O-Jay Transport, Inc.; (b) as intervening plaintiffs, American Trucking Associations, Inc. and TNT Holland Motor Express, Inc.; and (c) as defendants, the Michigan Public Service Commission; the Michigan Department of Treasury; the Michigan Department of Commerce; the State of Michigan; the Commissioners and Chairman of the Michigan Public Service Commission; the Treasurer of the State of Michigan; and the Director of the Michigan Department of Commerce.

[1] Prior to changing its corporate name, Lafond Express, Inc. appeared as "Elex, Inc." in the proceedings below.

RULE 29.6 STATEMENT

Petitioners, Mid-Con Freight Systems, Inc. and Lafond Express, Inc., have no parent companies and are not owned in any respect by any publicly-held entity.

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The opinion of the Michigan Court of Appeals (J.A. 68-102) is reported as *Westlake Transportation, Inc. v. Michigan Public Service Comm'n*, 255 Mich.App. 589, 662 N.W.2d 784 (2003). The trial court rulings and the judgment of the Michigan Supreme Court denying leave to appeal are all unreported and are set forth in the Appendix to the Petition for Writ of Certiorari ("Pet. App.") at 36-75.

JURISDICTION

The Michigan Court of Appeals decision was entered on March 11, 2003. The judgment of the Michigan Supreme Court denying Petitioners' timely application for leave to appeal was entered December 3, 2003. A petition for certiorari was filed February 26, 2004 and granted on January 14, 2005. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Supremacy and Commerce Clauses of the United States Constitution, Art. VI, cl. 2 and Art. I, § 8, cl. 3, provide in relevant part as follows:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

* * *

> The Congress shall have Power . . . [t]o regulate Commerce . . . among the several States. . . .

The pertinent statutory provisions are reproduced at Pet. App. 76-88. The statute involved is 49 U.S.C. § 14504 ("Section 14504").

STATEMENT OF THE CASE

The decision below undermines the federal regulatory plan of the SSRS and slights Congress's plenary authority to regulate interstate commerce. In designing the SSRS, Congress expressly limited the per-truck fees State regulatory commissions may levy against interstate motor carriers and declared fees in excess of $10 per truck to be a burden upon interstate commerce. Nevertheless, the court below held that Michigan's PSC may exceed the federal fee cap by tenfold and evade preemption by calling its levy a "regulatory fee." That decision cannot be squared with the plain language of Section 14504 and is irreconcilable with Congress's preemptive purpose. The Michigan Court of Appeals ruling, therefore, should be reversed.

A. Federal Regulatory Background

As discussed in *Yellow Transportation, Inc. v. Michigan*, 537 U.S. 36 (2002), the 1991 enactment of the Intermodal Surface Transportation Efficiency Act ("ISTEA")[2] amended longstanding federal law to create a new system known as the SSRS under which State regulatory agencies

[2] Pub. L. No. 102-240, 105 Stat. 1914 (1991).

are permitted to register interstate motor carriers operating within their borders. As it concerns the fees that may be charged in connection with such limited State regulation of interstate trucking, however, the SSRS is little different from its statutory predecessor. Controlling federal law has long preempted per-vehicle fees in excess of $10.

In 1965, Congress first directed the ICC to implement standards under which States could require motor carriers to prove the lawfulness of their interstate operations. Congress's purpose was to protect legitimate carriers from the "not only illegal but also manifestly unfair" competition of unauthorized truckers and to establish "uniformity of registration" because "registration requirements differ[ed] widely among the States" and could "impose undue burdens on carriers." H.R. Rep. No. 89-253 (1965), *reprinted in* 1965 U.S.C.C.A.N. 2923, 2924-2925, 2929. The proposed Congressional registration standards permitted the States to (1) require evidence of the carriers' ICC operating authority; (2) compel the filing of proof of insurance; (3) demand the designation of service of process agents; and (4) register and identify motor vehicles operating under the carriers' authority. *Id*. at 2928. It was contemplated that the new standards would go into effect five years after their promulgation, and, "thereafter, State requirements in excess of those promulgated would constitute an undue burden on interstate commerce." *Id*. *See also* 49 U.S.C. § 302(b) (1970 ed.). By the time of the 1978 recodification of the Interstate Commerce Act, Congress had plainly stated the preemptive effect of the standards as follows:

> When a State registration requirement imposes obligations in excess of the standards, the part in

> excess is an unreasonable burden [on interstate transportation].

49 U.S.C. § 11506(b) (1988 ed.).[3]

The standards the ICC implemented, in accordance with Congress's directive, permitted State regulatory commissions to register and identify interstate motor carrier vehicles for a fee assessed on a per-vehicle basis. As proof of registration and identification, each State participating in the program issued what were known as "bingo stamps" for each vehicle, and the stamps were placed on vehicle-specific "bingo cards." *See Yellow Transportation*, 537 U.S. at 39; *National Ass'n of Regulatory Utility Comm'rs v. Interstate Commerce Comm'n*, 41 F.3d 721, 724 (D.C. Cir. 1994). During all years relevant to this case, the applicable ICC regulation always imposed a fee cap of $10 for each vehicle registered and each identification stamp issued. *See* 49 C.F.R. § 1023.33 (1991). Indeed, an historical review of the regulation from 1982 forward reveals that it remained unchanged until 1992 when the ICC began rulemaking proceedings to implement the SSRS.

In 1991, when Congress enacted the ISTEA, it also made broad changes to national transportation funding and regulation. Among the changes made was standardization of the International Registration Plan ("IRP"), a previously voluntary program by which an interstate

[3] Prior to the 1978 recodification, the statement read "[t]o the extent that any State requirements for registration of motor carrier certificates or permits issued by the Commission impose obligations which are in excess of the standards or amendments thereto promulgated under this paragraph, such excessive requirements shall, on the effective date of such standards, constitute an undue burden on interstate commerce." 49 U.S.C. § 302(b) (1970 ed.).

carrier purchases license plates for its vehicles from a single "base" State that collects, distributes, and apportions the other States' plating fees based on the carrier's mileage traveled in each State.[4] The ISTEA also dismantled the "bingo card" system and directed the ICC to streamline State registration of interstate carriers through implementation of the SSRS.

Like the "bingo card" system, the SSRS permits the registration of interstate operating authority, the filing of proof of insurance, and the designation of local agents. Under the SSRS, however, each interstate motor carrier is now required to register annually with only a "base" State – usually the State in which the carrier's principal place of business is located.[5] The "base" State then collects and distributes fees for all other States participating in the program through which the carrier operates. Further, the SSRS eliminated the "bingo stamp" system of registering and identifying vehicles and "capped the per-vehicle registration fee that participating States could charge interstate motor carriers." *Yellow Transportation*, 537 U.S. at 40.

Specifically, in Section 14504(c)(2)(B)(iii), Congress banned the use of truck decals and "any other means of

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[4] H.R. Rep. No. 102-171(I) (1991), *reprinted in* 1991 U.S.C.C.A.N. 1526, 1576. Under the ISTEA, all States were given until September 30, 1996 to come into compliance with the IRP plating program. H.R. Conf. Rep. No. 102-404 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1679, 1823. Pursuant to 49 U.S.C. § 31704, a State that is not a participant in the IRP may not "establish, maintain, or enforce a commercial motor vehicle registration law that limits the operation of a commercial motor vehicle that is not registered under the laws of the State" if the vehicle is IRP plated in another state.

[5] 49 C.F.R. § 367.3.

registering or identifying specific vehicles operated by the carrier."[6] Congress then adopted the ICC's $10 per-vehicle fee cap by specifying that the SSRS fee system

> *shall . . . result[ ] in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991. . . .*

49 U.S.C. § 14504(c)(2)(B)(iv)(III) (emphasis supplied). Finally, Congress also declared that "[t]he charging or collection of *any* fee under this section that is not in accordance with the fee system established [herein] shall be deemed to be a burden on interstate commerce." 49 U.S.C. § 14504(c)(2)(C) (emphasis supplied).[7]

B. Michigan's Fee Structure

Michigan is a longstanding participant in the SSRS and the predecessor "bingo card" program. The Michigan Motor Carrier Act, which is administered by the PSC, prohibits all for-hire motor carriers from engaging in the

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[6] Congress's action was originally codified at 49 U.S.C. § 11506 (1994 ed.), but was recodified in nearly identical form at 49 U.S.C. § 14504 effective January 1, 1996.

[7] In 1995, the ICC was abolished by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995). The Federal Highway Administration thereafter adopted the ICC regulations that implemented the SSRS. The regulations remain the same to this day, echoing Congress's determination that "[t]he charging or collection of *any* fee that is not in accordance with the fee system established above is deemed a burden on interstate commerce" and providing that, "[t]o the extent *any* state registration requirement imposes obligations in excess of those specified in this part, the requirement is an unreasonable burden on transportation. . . ." 49 C.F.R. § 367.4(g); (h) (emphasis supplied). The Federal Motor Carrier Safety Administration is now the agency with regulatory authority over the SSRS. 49 U.S.C. § 113(f)(1).

interstate transportation of property in Michigan "without first having registered with the [PSC] and paid the required registration and vehicle fees." Mich. Comp. Laws § 478.7(1). Consistent with the SSRS, Mich. Comp. Laws § 478.7(4) sets the statutory maximum fee levied for each registering interstate carrier at $10 per truck, per annum. Nevertheless, the interstate carriers Petitioners represent pay ten times that amount every year.

In practice, the PSC applies the $10 maximum fee of Mich. Comp. Laws § 478.7(4) only to interstate carriers using vehicles with license plates purchased outside Michigan. J.A. 24-25. If an interstate carrier happens to operate motor vehicles with license plates purchased from the Michigan Secretary of State, the PSC waives the federally-compliant $10 fee and substitutes in its stead a *$100* fee for each vehicle registered. J.A. 8; 24; 59. The $100 fee – referred to herein as the Interstate Decal Fee – is somewhat confusingly authorized by Mich. Comp. Laws § 478.2(2), which requires a $100 fee "for each vehicle operated by the motor carrier which is registered in this state and operating entirely in interstate commerce."[8]

[8] Michigan Comp. Laws § 478.2(2) is not a model of clarity in its ambiguous reference to "each vehicle . . . registered in this state" given that interstate motor carriers "register" vehicles by buying license plates and also "register" their operations under the SSRS. There is no dispute, however, that it is the interstate motor carrier using trucks with Michigan license plates that pays the $100 fee to the PSC. J.A. 8; 24; 59. In addition, the PSC has consistently represented that it waives the $10 fee when it charges carriers the $100 fee for Michigan-plated trucks. J.A. 59. *See also* J.A. 83 n.6 (citing *Schneider Nat'l Carriers, Inc. v. State*, 247 Mich.App. 716, 721, 637 N.W.2d 838, 840 (2001), *vacated on other grounds*, 468 Mich. 862, 659 N.W.2d 228 (2003)). According to a PSC representative, the "rationale" for the $100 fee is that "vehicles which are license plated in Michigan are based in Michigan, and

(Continued on following page)

Whether an interstate carrier pays $10 or $100 per truck, the PSC requires of all SSRS-registering carriers the same federally-authorized information (evidence of federal operating authority, proof of insurance, and name of service of process agent). J.A. 65-66. However, a footnote on the PSC's form for calculating the $10 SSRS payment directs Michigan-plated interstate carriers to complete an additional PSC form ("Equipment List Form P-344-T") for purposes of paying $100 per truck; registering each truck by make, model, and serial number; and obtaining an identifying decal for each. J.A. 67.[9] Likewise, if a carrier using Michigan-plated trucks registers under the SSRS with a participating State *other* than Michigan, the PSC *still* requires the carrier to file the Equipment List Form P-344-T together with its scheduling of vehicles and $100 per-truck fee payment in exchange for the identifying decal.[10]

Like all PSC fees imposed upon intrastate-operated motor carrier vehicles, both the $10 fee and the $100 Interstate Decal Fee are generally "placed to the credit of the [PSC]" and may be appropriated "to the [PSC] and the motor vehicle highway fund in such proportions as the legislature may determine," except that a designated portion of the $10 fee revenue must be deposited in the

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therefore have a greater utilization of the highways and services in Michigan than do vehicles plated in another state." J.A. 26.

[9] The Equipment List Form P-344-T may be viewed in the "motor carrier; all forms" section of the PSC's website address at <http://www.michigan.gov/mpsc> (viewed February 22, 2004).

[10] For example, if an interstate carrier registers under the SSRS in Ohio but uses leased motor vehicles that the lessor has plated in Michigan, the Ohio carrier must register the vehicles with the PSC and pay the $100 fee on each one.

Michigan Truck Safety Fund. Mich. Comp. Laws § 478.6; § 478.7(5). The PSC reports that all of its fee revenue for fiscal year 1993-94 was appropriated in varying amounts to various State commissions and departments, including the PSC itself, and generally used by those agencies for economic, insurance, and safety regulation of the Michigan trucking industry; safety education programs; and enforcement of the Michigan Motor Carrier and Motor Carrier Safety Acts. J.A. 12; 28.

C. Proceedings Below

Petitioners brought suit in the Michigan Court of Claims on behalf of all carriers subject to the Interstate Decal Fee and were certified as class representatives authorized to prosecute the action on behalf of similarly-situated class members.[11] Petitioners argued that the Interstate Decal Fee, to the extent it exceeds $10 per vehicle, is preempted by the SSRS. Pet. App. 38. In addition, because class members filed suit on January 3, 1995 and claimed refund rights under a three-year statute of limitations, Petitioners similarly maintained that Interstate Decal Fees exceeding $10 per vehicle were preempted by the federal "bingo card" program in effect before January 1, 1994. Pet. App. 68.

The Court of Claims ruled that the Interstate Decal Fee was not preempted. It decided that the SSRS did not

[11] The lower court proceedings involved two consolidated cases that presented a combined challenge to both the Interstate Decal Fee and a separate $100 decal fee imposed by Michigan on intrastate-operated motor carrier vehicles. Pet. App. 37. The challenge to the intrastate fee was based upon a number of separate legal grounds, one of which is the subject of the grant of certiorari in No. 03-1230.

preempt the Interstate Decal Fee because the federal $10 per-vehicle fee cap applied to "participating states," but not the "registering state." Pet. App. 46. The Court of Claims also ruled against preemption under the predecessor "bingo card" program based on the same theory that the $10 fee cap imposed by the ICC did not apply to the "state of registration." Pet. App. 70.[12]

Petitioners appealed, and the Michigan Court of Appeals affirmed the Court of Claims ruling on separate grounds. Finding that the statutory language and accompanying federal regulations were clear, the Court of Appeals ruled that the "registration state is simply a participating state in which a motor carrier is registering." J.A. 82. Therefore, reasoned the Court of Appeals, "when the statute states that a participating state may not charge a fee in excess of $10, this includes the registration state." *Id*. The Court of Appeals thus rejected the rationale of the Court of Claims. Nevertheless, applying what it characterized as a "general presumption . . . against federal preemption," J.A. 73, the Court of Appeals determined that the Interstate Decal Fee is not and has never been preempted because it may be characterized as a "regulatory fee."

Addressing the SSRS first, the Court of Appeals ruled that, if the purpose of a fee is to "regulate an industry or service," it may be classified as a regulatory fee. J.A. 83. From there, the court decided that the Interstate Decal Fee could be classified as a regulatory fee "because it is a

[12] It has never been clear whether the court's use of the terms "registration state" and "state of registration" was a reference to registration under the SSRS and "bingo card" programs or to vehicle "registration" involving the purchase of license plates.

fee imposed for the administration of the [Michigan Motor Carrier Act], particularly covering costs of enforcing safety regulations." J.A. 83. It then concluded that, "[b]ecause the fee . . . is not a registration fee, it is not subject to preemption by 49 USC 11506." J.A. 83-84 (referring to 49 U.S.C. § 11506 (1994 ed.) before recodification at Section 14504). The court also ruled that the Interstate Decal Fee, as a "regulatory fee," was similarly "outside the scope of the federal law and was not preempted" under the "bingo card" program. J.A. 86. The Michigan Supreme Court denied further review after timely application by Petitioners. Pet. App. 75.

On January 14, 2005, following the filing of supportive comments by the United States, this Court granted Petitioners' petition for a writ of certiorari.

INTRODUCTION AND SUMMARY OF ARGUMENT

In *Yellow Transportation,* the Court confirmed that Congress's implementation of the SSRS "capped the per-vehicle registration fee that participating States could charge interstate motor carriers" to prove the lawfulness of their interstate operations. 537 U.S. at 40. The decision below, however, permits Michigan and other States to evade Congress's preemptive mandate by conveniently characterizing higher-than-authorized per-truck registration fees as "regulatory" in nature. That decision misinterprets the plain and unambiguous wording of Section 14504, reads a non-existent "regulatory fee" exception into the SSRS, and creates an indefinite and unmanageable loophole in the uniform system Congress designed for the

protection of interstate commerce. For those reasons, the decision below should be reversed.

A. The Michigan Court Of Appeals erroneously dismissed the plain meaning of Section 14504. The statute restricts State registration of interstate carriers to registration with a single base State, prohibits the collection of per-vehicle fees by any State other than the base State, bans vehicle-specific identification and registration, and preempts State assessment of any per-vehicle fee in excess of $10. Michigan's administration and assessment of the $100 per-vehicle Interstate Decal Fee, charged as it is for an interstate carrier's *registration* with the Michigan PSC, violates each of these requirements and most particularly the $10 fee cap of Section 14504(c)(2)(B)(iv)(III). The lower court's characterization of the Interstate Decal Fee as something other than a "registration" fee limited by Section 14504 poses a semantical distinction without a difference.

B. The Michigan court's attempt to read a "regulatory fee" exception into the SSRS is similarly misplaced. Even if the words of Section 14504 were less than clear, an examination of the statute's legislative history demonstrates Congress's intent to reduce interstate carrier costs through a uniform and more limited registration system. It is apparent, however, that Congress's preemptive rule would soon be subsumed by costly and diverse exceptions if States were permitted to circumvent the SSRS by merely labeling flat per-vehicle registration fees as "regulatory" in purpose. Michigan is free to use the federally-authorized $10 fee for any purpose it deems appropriate – and, indeed, uses its $10 and $100 fees for indistinguishable "regulatory" purposes – but the $100 fee's use does not justify its cost any more than its name. Congress's

finding that fees in excess of $10 are a burden on interstate commerce cannot be turned into implied authority for just such a burden merely because Section 14504 does not include the words "regulatory fee" in its directive.

C. Finally, the decision below creates a dangerous loophole in the uniform State registration program Congress designed. The lower court did not attempt to rest its case on any idea that the Interstate Decal Fee is somehow justified by the plating of an interstate truck in Michigan, but the simultaneous implementation of the SSRS and the mileage-based IRP defeats any such hypothesis. Congress's action evidences a dual purpose to both limit flat truck fees nationwide and require fair apportionment of all other vehicle fees imposed on interstate truckers. The Interstate Decal Fee and the Michigan Court of Appeals ruling upholding it, however, undermine Congress's goals. Accordingly, neither can withstand review.

ARGUMENT

A. The Michigan Court Of Appeals Erred In Failing To Enforce The Plain Meaning Of 49 U.S.C. § 14504

The first task in statutory interpretation – and often the only one – "is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). If the meaning of the statutory language is clear, the statute should be enforced straightforwardly according to its terms. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989). Put another way, when there is no ambiguity in the statute's

words, "'there is no room for construction'" and no real need for judicial translation applies. *United States v. Gonzales*, 520 U.S. 1, 8 (1997) (quoting *United States v. Wiltberger*, 18 U.S. 76, 96 (1820)). That rule is dispositive in this case because Congress's preemptive meaning is abundantly clear.

1. In Section 14504, Congress listed plain-spoken standards for State registration of interstate motor carriers, declaring that "[w]hen a State registration requirement imposes obligations in excess of the standards . . . the part in excess is an unreasonable burden [on interstate transportation]." 49 U.S.C. § 14504(b). One such standard is that an interstate motor carrier may be compelled to register with only one "base" State, and "such single State registration shall be deemed to satisfy the registration requirements of all other States." 49 U.S.C. §§ 14504(c)(1)(A); (C). Another standard is that only the "base" State may collect fees on behalf of itself and other participating States. 49 U.S.C. § 14504(c); (2)(A)(iii). Further, no State may require "decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by the carrier." 49 U.S.C. § 14504(c)(2)(B)(iii). And finally, the flat per-vehicle fee collected on behalf of any participating State is "not to exceed $10 per vehicle." 49 U.S.C. § 14504(c)(2)(B)(iv)(III).

Michigan's assessment of the Interstate Decal Fee on carriers engaged solely in interstate commerce fails to comply with each of these requirements. Even if an interstate carrier using Michigan-plated trucks registers under the SSRS with another State, it must still register its operations with and pay per-truck fees to the Michigan PSC, despite the mandate of Section 14504(c)(1)(C) that registration with a carrier's "base" SSRS State satisfies

"the registration requirements of *all* other States." (Emphasis supplied).[13] All Michigan-plated interstate carriers must also purchase a vehicle-identifying decal for each of their trucks even though Section 14504(c)(2)(B)(iii) bans such devices. Most importantly, the $100 fee Michigan-plated carriers pay is ten times the $10 permitted under the SSRS. The SSRS, however, draws no distinction between carriers using trucks plated in Michigan and carriers using trucks plated elsewhere. Rather, the SSRS requirements, including the $10 fee cap, apply without exception to *all* interstate motor carriers compelled to register their operations with *any* State regulatory commission under any State law. As a result, the $100 Interstate Decal Fee violates Section 14504 and is accordingly preempted.

2. The Michigan Court of Appeals imposed a strained construction upon Section 14504, ruling that Congress limited only the assessment of State "registration" fees, not those that may be labeled "regulatory" in nature. The court's narrow interpretation, however, is based upon an ill-conceived "presumption . . . against preemption" (J.A. 73). This Court has ruled that there exists no presumption against preemption when the matter at hand is "inherently federal in character" or when "the State regulates in an area where there has been a history of significant federal presence." *Buckman Co. v. Plaintiffs' Legal Committee*, 531

[13] Note that the "base state" requirements of the SSRS and the mileage-based IRP are different, such that a carrier may be SSRS-registered in one State while purchasing its license plates in another. Under 49 C.F.R. § 367.3, the "base" State for SSRS purposes is generally a carrier's *principal* place of business, whereas the "base" jurisdiction for IRP plating can be any State in which *a* place of business exists. International Registration Plan, Art. II, §§ 210, 218 (2003 rev.).

U.S. 341, 347-348 (2001); *United States v. Locke*, 529 U.S. 89, 108 (2000). This case presents just such a setting because the SSRS finds its roots in the Interstate Commerce Act, which is "among the most pervasive and comprehensive of federal regulatory schemes." *Chicago & North Western Transportation Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981).[14] Consequently, no presumption against preemption is at issue here, and the Michigan court's attempt to statutorily construct its way out of preemption conflicts with the cardinal rule that "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). *See also Engine Manufacturers Ass'n v. South Coast Air Quality Management District*, 124 S.Ct. 1756, 1763 (2004) (declining to invoke the "presumption against preemption" to determine the *scope* of federal preemption).

In short, it is "well settled that there can be no divided authority over interstate commerce, and that the acts of Congress on that subject are supreme and exclusive." *Missouri Pacific R.R. v. Stroud*, 267 U.S. 404, 408 (1925). And for almost forty years, Congressional action has evidenced a conspicuous exercise of that authority over State regulatory commission registration of interstate carriers and their motor vehicles moving in interstate commerce. Congress made plain its view early on that State registration requirements in excess of the ICC's

[14] "Since the turn of the [twentieth] century," this Court has "frequently invalidated attempts by the States to impose on common carriers obligations that are plainly inconsistent with the plenary authority of the Interstate Commerce Commission or with Congressional policy as reflected in the [Interstate Commerce] Act." *Id*.

standards were "an unreasonable burden on [interstate transportation]," 49 U.S.C. § 11506(b) (1988 ed.), and the resulting ICC regulations imposing the $10 fee cap under the "bingo card" program were thereby afforded no less preemptive effect than the federal statute under which they were promulgated. *See Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982). Congress then confirmed the preemptive scope of its action in 1991 with the adoption of the ICC's $10 per-vehicle fee cap, the directive that "single State registration shall be deemed to satisfy the registration requirements of *all* other States," and the statutory mandate that "[t]he charging or collection of *any* fee under this section that is not in accordance with th[is] fee system . . . shall be deemed to be a burden on interstate commerce." 49 U.S.C. §§ 14504(c)(1)(C); (c)(2)(C) (emphasis supplied). There can be no question, therefore, of Congress's meaning.

Surely the Michigan Court of Appeals' restrictive construction of Section 14504 is a classic example of elevating form over substance. The Interstate Decal Fee is just as much a "registration" fee preempted by the SSRS as is the $10 fee Michigan charges carriers that purchase their license plates elsewhere. Under Michigan law, *every* interstate carrier, regardless of the State in which it plates its vehicles, is prohibited from engaging in the interstate transportation of property in Michigan "without first having *registered* with the [PSC] and paid the required *registration* and vehicle fees." Mich. Comp. Laws § 478.7(1) (emphasis supplied). Michigan-plated carriers – just like carriers that purchase their license plates in other States – must file proof of federal operating authority, submit evidence of insurance, and name their agent for service of process purposes when they register with Michigan under

the SSRS. The singular difference between the two carriers is that a footnote on Michigan's SSRS form directs the Michigan-plated carrier to pay $100 instead of $10 per vehicle and to complete another form for the prohibited purpose of identifying its trucks by make, model, and serial number to obtain a decal for each. In substance, Michigan-plated carriers "register" with the PSC for the price of $100 per truck, whether Michigan calls the assessed fee a "registration" fee or not.

3. Other courts have recognized the preemptive impact of Congress's registration standards notwithstanding the names ascribed to the fees in question. The first two reported cases arose in Montana and addressed ICC regulations that, at the time, permitted a $5 maximum fee for the registration and identification of interstate vehicles under the "bingo card" program. In the first decision, *State ex rel. Sammons Trucking, Inc. v. Boedecker*, 158 Mont. 397, 492 P.2d 919 (1972) struck down a $10 "license fee," *id.* at 398, 492 P.2d at 919, ruling that "Congress has preempted the field of state regulation and identification of interstate motor vehicles using Montana highways." *Id.* at 400, 492 P.2d at 920. Similarly, *State ex rel. Sammons Trucking, Inc. v. Bollinger*, 169 Mont. 88, 544 P.2d 1235 (1976) nullified the State's attempt to impose the reduced $5 license fee on both the motorized unit and the trailer in a tractor-trailer combination. The court again expressed no hesitation in finding that the ICC regulations were controlling and that State statutes imposing greater or conflicting requirements "constitute an undue burden on interstate commerce and must yield to federal authority." *Id.* at 92, 544 P.2d at 1236. In neither case did the court express any concern over the "license" fee's name.

The Illinois case of *Roadway Express, Inc. v. Treasurer*, 120 Ill.App.3d 133, 458 N.E.2d 66 (1983) is slightly different, but equally persuasive. The issue addressed in *Roadway* was whether Illinois law complied with pre-1982 ICC regulations that permitted a $5 per-vehicle fee, but also authorized States to charge additional "regulatory fees" in order to defray the costs of trucking regulation. The "franchise fee" charged by Illinois (the name of which played no role in the court's decision) was not used for such a specific "regulatory" purpose, and so refunds of all fees paid in excess of $5 per vehicle were ordered. Importantly, the court also observed that no additional "regulatory fee" would be permissible after 1981 because the ICC amended its regulation in 1982 to "set an absolute limit of $10 on identification stamp fees" for all future operations. *Id*. at 135, 455 N.E.2d at 69.[15]

The Michigan Court of Appeals summarily dismissed this precedent based upon its attempted regulatory/ registration fee distinction. J.A. 86-87 n.8. Again, however, the $100 Interstate Decal Fee is just as much a "registration fee" as the fees struck down in Montana and Illinois. Regardless of its nomenclature, the fee is collected in connection with a State regulatory commission's registration of interstate carriers and their interstate motor

[15] Although the Court has limited the question presented here to the SSRS portion of Petitioners' claim, the *Roadway* decision illustrates that the Interstate Decal Fee was no less preempted under the old "bingo card" program in effect for many years prior to the SSRS's implementation.

vehicles, which the Montana and Illinois courts rightly concluded is a subject plainly preempted by federal law.[16]

Even without the guidance of such precedent, however, the lower court could have resolved this case by application of two uncomplicated principles. First, statutory construction starts with the assumption that the ordinary meaning of Congress's words accurately express its purpose. *Engine Manufacturers Ass'n*, 124 S.Ct. at 1761 (2004). Second, when a federal statute unambiguously forbids State action on an industry affecting interstate commerce, courts need not look beyond the plain meaning of the statute to decide whether the challenged State action is preempted. *Aloha Airlines, Inc. v. Director of Taxation*, 464 U.S. 7, 12 (1983). Notwithstanding the lower court's characterization of the Interstate Decal Fee as something other than a "registration fee" preempted by Section 14504, just the opposite conclusion is self-evident.

[16] The Michigan Court of Appeals' reliance on *Franks & Son, Inc. v. State*, 136 Wash.2d 737, 966 P.2d 1232 (1998), *cert. denied*, 526 U.S. 1066 (1999) is just as misplaced as its attempt to distinguish the Montana and Illinois decisions. In addressing an issue not raised in the later petition for certiorari, the *Franks & Son* court made the same "form over substance" mistake in ruling that a Washington regulatory fee exceeding the $10 "bingo card" fee was not preempted. But in citing *Franks & Son* the court below overlooked the fact that the Washington legislature had repealed its additional regulatory fee upon implementation of the SSRS because "[t]he Congressional decision that each state could not register all carriers doing business in that state made it administratively difficult to impose any further regulatory fee. . . ." *Id.* at 745, 966 P.2d at 1236. Therefore, whatever its relevance to an evaluation of the "bingo card" program (and despite the Washington court's convenient reference to "administrative difficulty"), the *Franks & Son* ruling has no significance to the broad preemptive directive of Section 14504(c)(1)(C) that registration with a single base State under the SSRS "shall be deemed to satisfy the registration requirements of all other States."

Interstate carriers operating Michigan-plated trucks pay the Interstate Decal Fee because they are required to be "*registered* with" and pay "the required *registration* and vehicle fees" to the PSC for the privilege of operating interstate across Michigan's borders. Mich. Comp. Laws § 478.7(1) (emphasis supplied).[17] The $100 Interstate Decal Fee charged for that privilege is preempted, and the Michigan court erred in concluding otherwise.

B. The SSRS Has No "Regulatory Fee" Exception

Bypassing the express directive of the SSRS legislation, the Michigan Court of Appeals upheld the Interstate Decal Fee by finding it to be a so-called "regulatory fee" falling outside the preemptive scope of Section 14504. Even if the statute required some "interpretation" of Congress's meaning, the Court of Appeals' reasoning is flawed. No construction of the SSRS leaves room for a "regulatory fee" exception, because neither the label attached to the Interstate Decal Fee nor the use to which its revenue is put makes any legal difference to the preemption question presented.

1. In the first instance, the Michigan Court of Appeals disregarded Congress's conspicuous intent. Nothing in Congress's mandate authorizes State regulatory commissions to charge a per-vehicle fee in excess of $10, and nothing in the SSRS regulations or in the legislative history of the ISTEA suggests that anything more than

[17] Indeed, the PSC's Equipment List Form P-344-T calls for payment of "registration fees" and the "registration" of vehicles that must be identified by make, model, and serial number. *See* <http://www.michigan.gov/mpsc> (motor carrier; all forms) (viewed February 22, 2004).

$10 per vehicle is authorized. *See* 49 C.F.R. § 367.4. To the contrary, Congress expressed concern over industry estimates that the "bingo card" program was costing carriers "up to $250 million per year," and it thus sought "to benefit the interstate carriers by eliminating unnecessary compliance burdens" in the hope that consumers too would profit from resulting cost savings. H.R. Conf. Rep. No. 102-404 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1679, 1817. In other words, it was Congress's goal to establish "a fee system . . . that . . . minimizes the costs of complying with the registration system," which conflicts directly with any notion that States are free to increase carrier costs by tacking on additional fee expense over and above the $10 per-vehicle fee cap. 49 U.S.C. § 14504(c)(2)(B)(iv)(II).

The Court of Appeals also mistakenly decided that "regulatory fees" are not preempted because they are not expressly prohibited. J.A. 85 n.7. Even if Section 14504 were not clear, State law yields under the Supremacy Clause if it "stands as an obstacle" to full implementation of the federal law, *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941), or otherwise frustrates accomplishment of a federal objective. *Geier v. American Honda Motor Co.*, 529 U.S. 861, 873 (2000). In this regard, the Michigan court missed the obvious point that, if States could circumvent the SSRS by calling any flat, per-truck assessment a "regulatory fee," the uniform plan Congress designed would become so riddled with exceptions as to lose all force and effect. Preemption analysis, therefore, must rest upon something far more substantial than the label Michigan assigns to its fee. *See Oklahoma Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114, 127-28 (1993) (State may not avoid preemption by changing the name of its tax); *Central Machinery Co. v. Arizona State Tax Comm'n*, 448 U.S. 160,

164 n.3 (1980) (transaction privilege tax was preempted by Indian trader statutes "regardless of the label" placed upon it). *See also City of Detroit v. Murray Corp.*, 355 U.S. 489, 492 (1958) (in determining constitutionality of a tax, "we must look through form and behind labels to substance").

In any event, the Court of Appeals applies a backwards analysis in searching for the words "regulatory fee" in Section 14504. Congress took specific action in the statute to declare that flat vehicle fees in excess of $10 are a burden on interstate commerce. The backdrop of that action is this Court's dormant Commerce Clause jurisprudence, which acknowledges that flat unapportioned truck fees are unreasonably burdensome to interstate carriers. *American Trucking Ass'ns v. Scheiner*, 483 U.S. 266 (1987). And while Congress certainly has the power to authorize State-imposed burdens on interstate trade, legislative intent to do so may not be merely inferred. *Hillside Dairy, Inc. v. Lyons*, 539 U.S. 59, 66 (2003). To the contrary, Congress must "manifest its unambiguous intent" and demonstrate a meaning that is "unmistakably clear" before a federal statute will be read to remove State regulation from the reach of the dormant Commerce Clause. *Wyoming v. Oklahoma*, 502 U.S. 437, 458 (1992); *South-Central Timber Development, Inc. v. Wunnicke*, 467 U.S. 82, 91 (1984). In short, Section 14504 cannot be read to impliedly authorize "regulatory fees" simply because Congress failed to use the phrase "regulatory fee" in its preemptive directive.

2. The commonsense conclusion is that the Michigan court's regulatory fee theory poses a distinction with only one real difference – a difference of $90. As we have shown, the $100 Interstate Decal Fee is just as much a

"registration fee" as the $10 fee authorized under the SSRS because Michigan Comp. Laws § 478.7(1) requires all interstate carriers to be "*registered*" with the PSC and the Interstate Decal Fee is assessed in exchange for an identification device – a decal that is affixed to a vehicle the interstate carrier must *register* with the PSC by make, model, and serial number. By the same token, the $10 SSRS fee is no less a "regulatory fee" than the $100 Interstate Decal Fee because both are unquestionably put to *some* "regulatory" purpose. Each is "placed to the credit of the [PSC]" under Mich. Comp. Laws § 478.6, and, after a designated portion of the $10 SSRS fee is deposited in the Michigan Truck Safety Fund pursuant to Mich. Comp. Laws § 478.7(5) (where it is put to "regulatory" use), both fees are then combined with all other PSC fee revenue and appropriated to the same "regulatory" agencies for the same "regulatory" purposes. J.A. 12; 28. The prohibited Interstate Decal Fee, therefore, serves no more regulatory purpose than the $10 fee States are permitted, but restricted to, under the SSRS.[18]

[18] In this regard, the Court of Appeals' citation to 49 C.F.R. § 1023.105 (1991) (J.A. 84) actually proves Petitioners' point. By urging States to use the $10 per-vehicle fee "for the purpose of defraying the cost of regulation," the regulation illustrates that $10 was to be the States' "regulatory fee" charge. In contrast, the Court of Appeals' citation to 49 C.F.R. § 1023.104 (1991) (J.A. 84) cannot support its decision. That regulation, which stated that the ICC's standards should not be construed "to affect the collection or method of collection of taxes or fees by a State from motor carriers for the operation of vehicles within the borders of such State," was not adopted with the 1993 amendments creating the SSRS regulations and is not current law. In addition, the regulation can only be "squared" with the ICC's longstanding $10 fee cap if it is interpreted as authorizing something *other than* per-vehicle identification fees specific to interstate motor carriers, such

(Continued on following page)

Accordingly, the "regulatory fee" theory is a too-convenient, unconvincing defense against the Interstate Decal Fee's preemption. When State regulatory commissions like the PSC require interstate carriers to register their operations, the $10 SSRS fee is the *only* per-vehicle "regulatory fee" authorized by Congress's preemptive act. The Michigan Court of Appeals decision to the contrary is plainly incorrect.

C. The Interstate Decal Fee Has No Place In The Uniform Federal Plan Congress Envisioned

The decision below fails to give appropriate deference to Congress's powers and creates a proverbial loophole through which States may escape time-honored federal authority and cause real harm to interstate motor carrier operations. That loophole cannot withstand reasoned scrutiny.

1. The Michigan "regulatory fee" approach, if adopted by other States, poses a significant threat to Congress's goal of reducing the regulatory burdens imposed upon interstate motor carriers. From the very beginning, Congress sought to afford interstate carriers "relief from [a] multiplicity of different State registration requirements" when it implemented the "bingo card" program in 1965. H.R. Rep. No. 89-253 (1965), *reprinted in* 1965 U.S.C.C.A.N. 2923, 2929. In so doing, Congress hoped to make registration requirements imposed by State regulatory commissions uniform. *Id*. Then, in 1991, the SSRS was designed as a more "streamlined administrative

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as the properly-apportioned income, fuel, property, and license plate taxes and fees that motor carriers otherwise pay.

process" so as to reduce inefficiencies, eliminate unnecessary compliance burdens, and lessen carriers' costs. H.R. Conf. Rep. No. 102-404 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1679, 1817. The decision below undermines each one of those goals by signaling every State to add to its $10 SSRS fee any "regulatory fee" amount it chooses, which would subject interstate carriers to a whole host of flat fees and vehicle registration requirements varying from State to State and would thus make compliance more burdensome, less efficient, and certainly more costly.

Moreover, because any fee can be put to *some* later regulatory use, the opinion below invites each of the 39 SSRS States to increase its $10 fee by any amount it can expediently call "regulatory" in purpose. Interstate truckers, no longer protected by the $10 fee cap, would then be at the mercy of State legislatures in need of revenue with every incentive to decide that $10 or even $100 per vehicle is not enough for their "regulatory" needs. And because the Michigan court's ruling does not in any way limit the "regulatory fee" justification to trucks plated within the State, other jurisdictions may more expansively apply their fees to all interstate vehicles operated by any SSRS-registering carrier. The decision below thus sends a message that, if $100 for Michigan-plated trucks is permissible in Michigan, then $500 or $1,000 for every truck crossing Ohio, Kansas, or any other SSRS State is perfectly acceptable too.

2. Lest there be some question, the Interstate Decal Fee cannot rest upon a hypothetical proposition (not even suggested by the Court of Appeals) that Michigan-plated vehicles somehow have a greater Michigan "presence" than vehicles plated elsewhere. In fact, the PSC's "rationale" for the fee – that Michigan-plated vehicles are "based"

in Michigan and make greater use of Michigan highways and services[19] – is neither premised on legislative finding nor grounded on any hard evidence. Interstate carriers plate their vehicles under the IRP, which authorizes "base-plating" in a single State that then collects, distributes, and apportions all other States' vehicle plating fees on a mileage basis. Michigan may be the base-plating State under the IRP merely because a motor carrier accrues mileage in Michigan and has a place of business there with a telephone line and an employee to make operational records available,[20] none of which demands a great "regulatory presence" or even requires that vehicles be actually "based" within the State's borders. Thus, large Michigan-headquartered carriers with significant Michigan operations can side-step the Interstate Decal Fee entirely by plating vehicles at one of their many out-of-state terminals, while small carriers with limited fleets and only a single terminal in Michigan must still pay $100 per truck whatever their level of "presence" on Michigan's highways and roads.

Regardless, any attempt to justify the Interstate Decal Fee on grounds related to a vehicle's use of the highways brings us full circle to the dormant Commerce Clause. As this Court explained in *Scheiner*, flat per-vehicle fees and taxes, by definition, "do not even purport to approximate fairly the cost or value of the use of [the] roads" and impose an undue burden on interstate commerce because their measure "'bears no relationship to the taxpayers' presence or activities in a State. . . .'" 483 U.S. at 290-91

[19] J.A. 26.

[20] International Registration Plan, Art. II, §§ 210, 218 (2003 rev.).

(quoting *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 629 (1981)). It is an ironic twist, therefore, that Michigan applies the Interstate Decal Fee only to interstate vehicles IRP-plated in Michigan *and* attempts to justify the flat fee as somehow "presence"-based when the mileage-apportioned fees of the IRP were specifically contrasted with the flat per-vehicle taxes at issue in *Scheiner* and identified as Commerce Clause-compliant. *Id*. at 271-73; 282-83.

A second irony is that the IRP arises out of the same federal legislation that implemented the SSRS. Like the SSRS, the IRP was also adopted by the ISTEA in 1991[21] as part of a uniform, national plan to benefit interstate carriers. Just as it was concerned about creating uniformity and reducing costs in implementing the SSRS, Congress similarly standardized the IRP after heeding the House Public Works and Transportation Committee's advice that "[c]ompetition in the world marketplace dictates the elimination of unnecessary costs and the maximizing of efficiency." H.R. Rep. No. 102-171(I) (1991), *reprinted in* 1991 U.S.C.C.A.N. 1526, 1575. The key ingredient to the IRP, of course, is the apportionment of plating fees based upon the number of miles the carrier travels in each State, which not only passes constitutional muster, but also "reduces the motor carrier's overall operating costs."[22] It is not likely, therefore, that Congress could have intended to afford States free reign to increase the cost of either SSRS registration *or* IRP plating through

[21] H.R. Conf. Rep. No. 102-404 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1679, 1823.

[22] H.R. Rep. No. 102-171(I) (1991), *reprinted in* 1991 U.S.C.C.A.N. 1526, 1576.

the tacking on of a myriad of flat, unapportioned "regulatory fees" that frustrate the very purpose of Congress's action.

In sum, the lower court decision in this case should be overturned because it invites inconsistent, burdensome, and costly State regulation of interstate carriers and interferes with the uniform federal regulatory plan Congress has long envisioned. Enforcement of Congress's plan leads to the inescapable conclusion that Michigan's $100 Interstate Decal Fee upon vehicles operated solely in interstate commerce violates Section 14504 and is thus preempted under the Supremacy Clause of the U.S. Constitution. Any other result would render ineffective Congress's finding that flat per-vehicle registration fees imposed by State regulatory commissions burden interstate commerce and are forbidden by federal law unless limited to $10.

CONCLUSION

For the foregoing reasons, the decision of the Michigan Court of Appeals should be reversed.

Respectfully submitted,

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