No. 01-270

In the Supreme Court of the United States

YELLOW FREIGHT SYSTEM, INC.,

Petitioner,

v.

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF TREASURY AND ITS STATE TREASURER, MICHIGAN DEPARTMENT OF COMMERCE AND ITS DIRECTOR, AND MICHIGAN PUBLIC SERVICE COMMISSION AND ITS COMMISSIONERS, JOHN G. STRAND, RONALD E. RUSSELL, AND JOHN L. O'DONNELL,

Respondents.

On Petition for a Writ of Certiorari to the Michigan Supreme Court

BRIEF FOR THE AMERICAN TRUCKING ASSOCIATIONS, INC., SCHNEIDER NATIONAL, INC., AND ABF FREIGHT SYSTEM, INC. AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICI CURIAE* [1]

The American Trucking Associations, Inc. ("ATA") is a trade association of motor carriers, state trucking associations, and national trucking conferences, created to promote and protect the interests of the trucking industry. ATA's membership includes more than 2,300 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, ATA represents over 30,000 companies and every type and class of motor carrier operation in the United States. ATA regularly advocates the trucking industry's common interests before this Court and other courts. ATA has a strong interest in the question presented in this case, and it actively participated in the administrative rule-making process before the Interstate Commerce Commission ("ICC"). See Pet. App. 46a (ICC's statement that ATA "submitted extensive comments voicing motor carrier concerns").

Schneider National, Inc., and ABF Freight System, Inc. are interstate motor carriers of general commodities operating in interstate commerce in Michigan. Schneider National is the parent company of five subsidiary carriers that pay the Michigan SSRS fee implicated in this case. Between them, Schneider National and ABF Freight System have been forced to pay hundreds of thousands of dollars every year as a result of Michigan's interpretation of the statute at issue. Like

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[1] The parties have consented to the filing of this brief; the written consents have been lodged with the Clerk of the Court. Pursuant to Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, and that no person or entity other than *amici* made any monetary contribution to the preparation or submission of this brief.

Yellow Freight, Schneider National has been forced to bring an action in Michigan state court to recover registration fees that Michigan has imposed over the contrary determination of the ICC. See *Schneider Nat'l Carriers, Inc.* v. *Michigan*, No. 208346 (Mich. Ct. App. May 14, 1999) (unpublished).

INTRODUCTION AND SUMMARY OF ARGUMENT

When Congress passed the Intermodal Surface Transportation Efficiency Act ("ISTEA") in 1991, it specifically directed the Interstate Commerce Commission ("ICC") to prescribe amendments to the existing standards concerning state registration of motor carriers operating in interstate commerce. See 49 U.S.C. 11506(c)(1) (Pet. App. 99a). One of the substantive provisions Congress ordered the ICC to enforce was a restriction on the imposition by any State of a registration fee higher than the fee the State had "collected or charged" as of November 15, 1991. See 49 U.S.C. 11506(c)(2)(B)(iv)(III) (Pet. App. 101a).

Following an extensive period of notice and comment, the ICC issued regulations and other interpretations of the statute. See *Single State Insurance Regulation*, 9 ICC 2d 610 (1993) (Pet. App. 43a-96a). One of these interpretations concerned the effect of reciprocity agreements between States. Agreeing with comments submitted by *amicus* ATA and other motor carrier interests, the ICC determined that States are not permitted to circumvent the congressional freeze on registration fees by rescinding or otherwise altering reciprocity agreements that had been in effect as of November 15, 1991. See Pet. App. 52a-54a. The ICC understood that this result was "required by § 11506(c)(2)(B)(iv)" and was also supported by its practical experience in regulating interstate commerce. Pet. App. 54a.

Several States challenged the ICC's conclusions regarding reciprocity agreements, but a unanimous panel of the D.C. Circuit sustained the ICC's interpretation of the statute. See

National Ass'n of Reg. Util. Comm'rs v. *ICC*, 41 F.3d 721 (D.C. Cir. 1994) ("*NARUC*"). The D.C. Circuit concluded that "the Commission was correct" in basing its interpretation on "the plain language of the statute." *Id.* at 729.

In the decision below, the Michigan Supreme Court accorded absolutely no deference to the ICC's interpretation of the ISTEA, and it expressly disagreed with the D.C. Circuit's holding in *NARUC*. That decision warrants this Court's review, for several reasons. First, the Michigan Supreme Court's decision sharply conflicts with the D.C. Circuit on an important question of federal law. Second, the decision below is contrary to this Court's precedents concerning the deference that should have been afforded the ICC's reasoned interpretation of the statute Congress charged it to administer. Third, review is particularly appropriate here because the Michigan Supreme Court's decision upsets basic notions of federalism by allowing the State of Michigan to thumb its nose at the ICC and the federal appellate court specializing in administrative law by relitigating the issues involved in *NARUC* in its home forum. Finally, the Michigan Supreme Court's ruling — if allowed to stand — would permit the States to impose enormous burdens on interstate motor carriers and would unravel the balance Congress established for state regulation of interstate commerce under the ISTEA.

ARGUMENT

1. Supreme Court Rule 10(b) specifies that a writ of certiorari may be called for when "a state court of last resort has decided an important federal question in a way that conflicts with the decision of * * * a United States court of appeals." That circumstance is undeniably present here.

There can be no doubt that the Michigan Supreme Court's decision is in direct conflict with the prior decision of the D.C. Circuit; the court admitted the conflict and understood that it

was addressing exactly the same question resolved by the D.C. Circuit in *NARUC*. See Pet. App. 6a-7a. After noting the D.C. Circuit's analysis and conclusion, however, the Michigan Supreme Court dismissed the case entirely with the cavalier observation that it was "not bound to follow that decision." Pet. App. 7a. This Court has routinely granted certiorari under these conditions. See, *e.g.*, *United States* v. *Romani*, 523 U.S. 517, 521 (1998); *Hagen* v. *Utah*, 510 U.S. 399, 409 (1994); *Baldwin* v. *Alabama*, 472 U.S. 372, 374 (1985); *Edward Katzinger Co.* v. *Chicago Metallic Mfg. Co.*, 329 U.S. 394, 398 (1947).

Nor should there be any doubt that the acknowledged conflict involves an important issue of federal law. As the Michigan Supreme Court put it, the issue is the interpretation of a federal statute and the deference due a federal agency's construction of the statute." Pet. App. 8a. And the importance of this issue has been underscored by Congress itself. As described more fully below (at pages 11-12), both Congress and the ICC have determined that allowing states to evade the congressional freeze on registration fees would impose a serious burden on interstate commerce. Moreover, the failure of the Michigan Supreme Court to provide *any* deference to the federal agency charged by Congress with administering the ISTEA and the federal court charged by Congress with deciding most questions of federal administrative law implicates serious questions of federalism. See pages 5-9, *infra*. The fact that the Michigan Supreme Court essentially invalidated a duly promulgated regulation of a federal agency supplies a powerful reason for granting review; this Court has not hesitated to do so in similar circumstances. See, *e.g.*, *Board of Governors of the Fed. Reserve Sys.* v. *Dimension Fin. Corp.*, 474 U.S. 361 (1986); *Board of Governors of the Fed. Reserve Sys.* v. *Investment Co. Inst.*, 450 U.S. 46 (1981); *Batteron* v. *Francis*, 432 U.S. 416 (1977).

In sum, this case presents the exact scenario envisioned under Rule 10(b). Further review is therefore warranted.

2. The Michigan Supreme Court's lack of deference to the considered judgment of the ICC is striking, and it is impossible to reconcile with this Court's precedents. The court's refusal to accord the ICC's interpretation of the ISTEA the deference to which it was entitled provides another reason in favor of further review in this case.

This Court established the now-familiar rules of judicial deference to administrative pronouncements in *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-845 (1984). Under those rules, judicial deference to an administrative construction of a statute is at its zenith when — as here — Congress has directed an agency to promulgate rules or standards concerning a statute it has been charged to administer:

> If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.

Id. at 843-844.

Just last Term, this Court reaffirmed the *Chevron* framework, explaining that administrative rulings may encounter "a spectrum of judicial responses, from great respect at one end to near indifference at the other." *United States* v. *Mead Corp.*, 121 S. Ct. 2164, 2172 (2001) (citations omitted). After reiterating the extensive deference to be accorded an agency when Congress has explicitly entrusted interpretation of a statute to the agency (see *id*. at 2171), the Court pointed to another factor that will trigger extraordinary deference:

> It is fair to assume generally that Congress contemplates administrative action with the effect of law when it provides for a relatively formal administrative procedure tending to foster the fairness and deliberation that should underlie a pronouncement of such force.

Id. at 2172. Thus, under this Court's precedents, administrative interpretations of a statute are subject to maximal judicial deference when (1) Congress has explicitly entrusted interpretation of the statute to the agency, and (2) the agency has engaged in formal administrative procedures before arriving at its interpretation.

The ICC's interpretation of the ISTEA in this case satisfies both of those criteria. First, Congress specifically directed the ICC to prescribe standards under which motor carriers would be required to register annually with only one State and such single State registration would be deemed to satisfy the registration standards of all other States. See 49 U.S.C. 11506(c)(1) (Pet. App. 99a). It further specified that the ICC's standards "shall establish a fee system for the filing of proof of insurance [that] * * * will 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. 11506(c)(2)(B)(iv)(III) (Pet. App. 101a). Second, the ICC arrived at its interpretation of the ISTEA only following an extensive notice and comment period. See Pet. App. 83a-84a (listing commentors to the ICC's Notice of Proposed Rulemaking, including *amicus* ATA and other carrier organizations, 30 States and State organizations, seven insurers and insurer groups, two shipper groups, the U.S. Department of Transportation, and two consulting firms). Only after this formal notice and comment procedure did the ICC conclude that both "the letter of the law" and "the intent of the law" compel the conclusion that "participating States must consider

fees charged or collected under reciprocity agreements when determining the fees charged or collected as of November 15, 1991[.]" Pet. App. 53a, 54a.

In this case, however, the ICC's interpretation of the ISTEA was subject to even further administrative review. After certain States ignored the ICC's final ruling, *amicus* ATA was forced to bring a petition for a declaratory order before the ICC. See *American Trucking Associations — Petition for Declaratory Order — Single State Insurance Registration*, 9 ICC 2d 1184 (1993). In that proceeding, the ICC once again reviewed its determination, and it decided to "reaffirm" its "prior conclusion" that "[t]he language of the statute is clear": "it is inconsistent with the statute for a State to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system." *Id*. at 1194.

As a result of these factors, the ICC's interpretation of the ISTEA in this case must be afforded extraordinary judicial deference; it is subject to reversal by a reviewing court only if it is "arbitrary, capricious, or manifestly contrary to the statute." *Chevron*, 467 U.S. at 844; accord *Mead Corp.*, 121 S. Ct. at 2171.

In its decision below, the Michigan Supreme Court avowed adherence to the *Chevron* framework, stating that it would "apply the rules of construction set out by the federal judiciary." Pet. App. 8a (citing *Chevron*). The court began, appropriately enough, with its statutory analysis. It admitted that vehicle registration fees were "not 'charged or collected'" whenever Michigan waived the fee by entering into a reciprocity agreement with another State. Pet. App. 10a. But it nevertheless reasoned that "voluntary agreements to waive the fee that happen to benefit a particular carrier do not affect the *generic* per vehicle fee in place on November 15, 1991."

Ibid. (emphasis in original). Asserting that the "clear focus" of the statute is on this so-called "generic" fee — a term nowhere mentioned in the statute — the court concluded that the ICC had "added a concept not within the express language of the statute. It added consideration of voluntary agreements between the states to waive or reduce the fees imposed." *Id*. at 10a-11a.

Having divined that Congress's use of the term "fee * * * collected or charged" referred to so-called "generic" fees and could not conceivably have encompassed fees actually charged in accordance with the dozens of reciprocity agreements in existence at the time, the Michigan Supreme Court accorded the ICC's interpretation ***no deference at all*** on the ground that the court's interpretation was the ***only*** one that comported with the "plain meaning of the terms of the ISTEA." Pet. App. 9a. The Michigan Supreme Court was not shaken in its steadfast refusal to admit the possibility of statutory ambiguity by (1) the extensive notice and comment procedures followed by the ICC before arriving at its interpretation; (2) the fact that a unanimous panel of the D.C. Circuit had concluded in *NARUC* that the ICC's reading was the only interpretation consistent with "the plain meaning of the statute" (41 F.3d at 729);[2] (3) the conclusion by two dissenters on the Michigan Supreme Court that the ISTEA was — at a minimum — ambiguous (see Pet. App. 12a, 17a-18a); or (4) the conclusion of both lower courts

[2] The Michigan Supreme Court understood that "a state court is bound by the authoritative holdings of federal courts upon federal questions, including interpretations of federal statutes." Pet. App. 7a n.10. It made clear, however, that this Court was the only federal court to which it would actually accord any real consideration. See *ibid*. ("where there is no United States Supreme Court decision upon the interpretation in question, the lower federal courts' decisions, while entitled to respectful consideration, are not binding upon this Court"). On that basis, it felt comfortable disregarding the considered judgment of the unanimous D.C. Circuit panel.

in Michigan that the ISTEA was — at a minimum — ambiguous (see Pet. App. 28a, 42a).

The refusal by the Michigan Supreme Court to provide any deference whatsoever to the ICC's interpretation of the ISTEA under the circumstances of this case cannot be reconciled with this Court's precedents. Under *Chevron*, a court may not simply assume that any statutory interpretation with which it disagrees in any respect is "arbitrary, capricious, or manifestly contrary to the statute" (467 U.S. at 844). Yet that is precisely what happened here: the Michigan Supreme Court adopted a strained and idiosyncratic reading of the ISTEA in the face of an expert agency's contrary interpretation that enjoys the independent concurrence of a unanimous panel of D.C. Circuit judges and several Michigan state court judges. This conflict between the decision below and this Court's teachings on deference to administrative rulings provides another reason why review is warranted here.

3. The failure of the Michigan Supreme Court to accord the ICC's interpretation of the ISTEA the deference to which it was entitled is particularly pernicious under the facts of this case. The State of Michigan has had no fewer than six chances to challenge Congress's stated intent of freezing registration fees as of November 15, 1991. It is only the Michigan Supreme Court's utter refusal to show any deference or comity to either the ICC or the D.C. Circuit that has permitted Michigan to succeed on its sixth attempt.

Michigan first attempted to circumvent the rate-freezing provision of the ISTEA when it participated as a commentor in the initial notice and comment proceedings before the ICC. See Pet. App. 83a (listing Michigan Public Service Commission as a Commentor). Michigan's second attempt also took place before the ICC, during the proceeding initiated by ATA to obtain a declaratory order. During that proceeding, Michigan

was represented by an umbrella organization, the National Association of Regulatory Utility Commissioners. See 9 ICC 2d at 1197.

Having failed twice before the ICC, Michigan (again acting through NARUC) challenged the ICC's conclusions before the D.C. Circuit, the federal court charged by Congress with reviewing most issues of administrative law. As previously noted, a unanimous panel of the D.C. Circuit wholly endorsed the ICC's interpretation of the ISTEA, finding that "the plain language of the statute precludes [Michigan's] interpretation." *NARUC*, 41 F.3d at 729.

After taking this third strike, Michigan moved the proceedings to its home stadium. Ignoring the considered judgment of the ICC and the D.C. Circuit, Michigan violated the registration-fee-freezing provision of the ISTEA and forced the petitioner in this case to initiate a proceeding in Michigan state court. But Michigan was unsuccessful in its fourth and fifth attempts as well — the Michigan Court of Claims and the Michigan Court of Appeals both understood that deference was due to the federal agency charged by Congress with administering the ISTEA. See Pet. App. 28a, 42a.

This procedural history makes clear that it is only by taking six bites at the apple that Michigan was able to circumvent the fee-freezing provision in the ISTEA. It is equally clear that Michigan was able to achieve that result only when the Michigan Supreme Court refused to accord any respect to the interpretation of the ISTEA by the agency Congress had charged with its administration or the interpretation by the court Congress had created to specialize in administrative law issues.

By allowing Michigan to prevail on its sixth bite at the apple, the decision below fosters disrespect for the federal bodies Congress has designated to resolve administrative law issues within the federal system, and it encourages States to

circumvent federal decisions by litigating in their home courts. For that reason as well, review is warranted here.

4. Finally, the Michigan Supreme Court's decision in this case has had far more than a theoretical adverse impact. It has already placed a substantial burden on interstate commerce, and the logic of the decision threatens to wreak havoc on the interstate registration system.

Congress had a good reason for imposing the registration-fee-freezing provision in the ISTEA. The provision reflected the balance of interstate motor carrier and state interests as Congress modified the prior "bingo card" system to provide greater administrative convenience while at the same time protecting against a diminution in state revenues. Congress understood, however, that allowing States to *increase* revenues over prior levels would result in a burden on interstate commerce. The ISTEA contains a declaration to that exact effect. See 49 U.S.C. 11506(c)(2)(C) (Pet. App. 101a); see also Pet. App. 53a-54a (ICC's determination that Congress's intent was "that the flow of revenue for the States be maintained while the burden of the system for carriers be reduced").

The agency charged with administering the ISTEA also understood the practical problems that would be posed by States circumventing the fee-freezing provision. Thus, the ICC — after receiving extensive comments on this precise issue through the established administrative notice and comment procedures — concluded that, were States permitted to rescind reciprocity agreements, "per vehicle fees for many carriers could increase greatly, and some States would realize windfalls." Pet. App. 54a. While it is understandable that the Michigan Supreme Court might want Michigan to realize a windfall at the expense of interstate motor carriers, that factor cannot trump the expert judgment of the agency charged with administering the ISTEA that allowing States to rescind

reciprocity agreements would burden interstate commerce in a manner that Congress intended to prohibit.

Michigan has now avoided the effects of the ISTEA fee-freezing provision for several years. As a result of the decision below, *amici* Schneider National and ABF Freight System have been forced to pay in excess of $400,000 over the last three years alone. Those are the costs imposed on only two companies as a result of one state making a modification to its reciprocity agreements.

But there is every reason to believe that the actual and potential harm engendered by the decision below will be orders of magnitude more severe than the burden borne by the *amici* here. The effect of the Michigan Supreme Court's decision has already been felt by numerous other carriers. Moreover, under the logic of the decision below, every State would be entitled to rescind every one of its reciprocity agreements, and then defend that decision in its home forum in order to circumvent the fee-freezing provisions of the ISTEA. Citing one of the comments during the rule-making proceeding, the ICC predicted a worst-case scenario in which States permitted to eliminate their reciprocity agreements could ***quadruple*** the annual financial burden on interstate motor carriers from $50 million to $200 million. See Pet. App. 53a. In the aggregate, these effects of the decision below will place a crushing burden on interstate commerce — a result that Congress expressly forbade. See 49 U.S.C. 11506(c)(2)(C) (Pet. App. 101a). For this reason as well, this Court's review is warranted.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted.

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