

STEVENS, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 01–270

YELLOW TRANSPORTATION, INC., PETITIONER *v.*
MICHIGAN ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
MICHIGAN

[November 5, 2002]

JUSTICE STEVENS, concurring in the judgment.

In my opinion there is no ambiguity in the relevant provisions of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). In that Act, Congress delegated to the Interstate Commerce Commission (ICC) the power to prescribe “standards” and “amendments to standards” that would create a “Single State Registration System.” 49 U. S. C. §11506 (1994 ed.). As a part of that delegation, the ISTEA gave the ICC broad authority to establish a “fee system” that would comply with three conditions, the third of which contained two requirements.¹ The fee for each participating State (1) may not exceed \$10 per vehicle and (2) must be equal to the fee that the State “collected or charged as of November 15,

¹“(B) RECEIPTS; FEE SYSTEM.—Such amended standards—

“(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) 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) (1994 ed.).

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1991.” §11506(c)(2)(B)(iv)(III).

Because Michigan had both collected and charged a \$10 fee in 1991—and continued to do so thereafter—the Michigan Public Service Commission did not violate either of those statutory requirements when it changed its method of determining reciprocity with respect to individual carriers.² Indeed, the essential features of Michigan’s fee system for 1992 were the same as they were in 1991: The amount of the fee that the “State collected or charged” was \$10 per vehicle both before and after November 15, 1991; that fee was assessed on exactly the same kinds of vehicles both before and after that date; the State had reciprocal arrangements, providing for either a discount or a waiver of the fee with the same States in 1992 that it did in 1991.

Michigan did, however, violate an additional requirement imposed by the ICC when the State modified its method of determining the home State of out-of-state vehicles. That agency-imposed requirement effectively precluded a State from making a systemic change that would significantly increase its revenues. I think it clear that the statutory delegation of power to the ICC to “establish a fee system” was broad enough to include the power to impose additional requirements to ensure that a State would not impose a “burden on interstate commerce.” See §§11506(c)(2)(B)(iv), (c)(2)(C). The rulemaking proceeding confirmed the ICC’s power to require the States to preserve pre-existing reciprocity agreements to avoid a scenario in which “some States would realize

²As explained by the majority, *ante*, at 5, Michigan changed its policy from determining reciprocity with respect to an individual vehicle based on where that vehicle was registered and had obtained a license plate to determining reciprocity based on where the trucking company that owned the individual vehicle maintained its principal place of business.

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windfalls.” *Single State Insurance Registration*, 9 I. C. C. 2d 610, 618 (1993) (responding to comment alleging, among other things, that if reciprocity agreements were discontinued, “State revenues could increase from \$50 million to \$200 million”); see *ante*, at 3–4. Although Michigan did not abandon any reciprocity agreement, I think it equally clear that the ICC could prohibit a change in the method of implementing those agreements that would significantly increase a State’s revenues, and therefore threaten to burden commerce.³

Thus, I concur in the Court’s judgment because the statute authorized the ICC to decide that the States’ pre-existing reciprocity agreements should, in effect, be “frozen.” I do not, however, believe that the statute mandated that result. Nor do I believe that the additional constraint imposed by the ICC should be upheld as a permissible construction of subsection (c)(2)(B)(iv)(III). Rather, in my opinion, it was a permissible exercise of the broad authority vested in the ICC to “establish a fee system” that would not create “a burden on interstate commerce.” See §§11506(c)(2)(B)(iv), (c)(2)(C). It is on this basis that I concur in the judgment of the Court.

³Not every change in how reciprocity is determined would lead to an increase in a State’s revenues. Indeed, it may be that a State’s revenues would decrease after making such a change. I am satisfied, however, that the potential for an increase in these circumstances is a sufficient threat to burden commerce within the meaning of the statute.