SUPREME COURT OF THE UNITED STATES

No. 03–1234

MID-CON FREIGHT SYSTEMS, INC., ET AL., PETITIONERS *v.* MICHIGAN PUBLIC SERVICE COMMISSION ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MICHIGAN

[June 20, 2005]

JUSTICE KENNEDY, with whom THE CHIEF JUSTICE and JUSTICE O'CONNOR join, dissenting.

The Michigan Court of Appeals, in my view, erred in holding that Mich. Comp. Laws Ann. §478.2(2) (West 2002) (hereinafter MCL) is not a registration requirement. *Westlake Transp., Inc.* v. *Pub. Serv. Comm'n*, 255 Mich. App. 589, 603–605, 662 N. W. 2d 784, 795 (2003). Our Court, too, errs by concluding that the term "State registration requirement" in 49 U. S. C. §14504(b) includes only those State registration requirements that "concern the [same] subject matter" as the Single State Registration System (SSRS) established by §14504(c). *Ante*, at 6, 10–11. This respectful dissent explains my reasons for rejecting these two holdings.

I

Title 49 U. S. C. §14504(b) provides:

> "The requirement of a State that a motor carrier, providing [interstate transportation] in that State, must register with the State is not an unreasonable burden on transportation . . . when the State registration is completed under standards of the Secretary [of Transportation] under [§14504(c)]. When a State reg-

> istration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden."

The dispositive question in the instant case is whether MCL §478.2(2) is a "State registration requirement" within the meaning of the second sentence of 49 U. S. C. §14504(b). The Michigan Court of Appeals said the answer is no because MCL §478.2(2) is not a registration requirement at all. The Court also says the answer is no, but for a different reason. It concludes that, even though §478.2(2) is a registration requirement, the term "registration requirement" in 49 U. S. C. §14504(b) includes only the subset of registration requirements that concern the same subject matter as the SSRS. Neither the Court's reason, nor the different reason given by the Michigan Court of Appeals, is persuasive.

A

The Michigan Court of Appeals adopted a categorical rule: "If the purpose of a fee is to regulate an industry or service, it can be properly classified as a regulatory fee," not a registration fee. *Westlake Transp.*, *supra*, at 605, 662 N. W. 2d, at 795. Proceeding to apply the rule so announced, the Court of Appeals held that the $100 fee imposed by MCL §478.2(2) on Michigan-plated interstate carriers is a regulatory fee rather than a registration fee because the fee "is imposed for the administration of the [Michigan Motor Carrier Act], particularly covering costs of enforcing safety regulations." 255 Mich. App., at 604, 662 N. W. 2d, at 795.

The majority affirms the judgment below, but "for other reasons." *Ante*, at 5. The Court's reluctance to adopt the Michigan Court of Appeals' rationale is understandable. MCL §478.2(2) and related state rules and regulations require a motor carrier that wants to operate Michigan-plated vehicles in interstate commerce in Michigan to fill

out a form providing detailed identifying information for each vehicle and to pay a $100-per-vehicle fee. In return, the State provides the carrier with decals that it must place on its trucks. See *ante*, at 3–4. If this is not a "State registration requirement" in the general and ordinary sense of the term, it is hard to conceive of what is.

The Court of Appeals' holding would allow the State to convert any registration fee into a regulatory fee simply by declaring a regulatory purpose or spending some portion of the money collected on regulation or administration. The logic of this approach excludes from the coverage of 49 U. S. C. §14504(b) almost all state requirements, including those dealing with similar subject matter as the SSRS. The purpose of SSRS requirements, after all, is to regulate the interstate motor carrier industry; and the fees collected are used to administer the system. The Court's disapproval of the Michigan Court of Appeals' reasoning is implicit in the Court's decision to affirm on a different ground. *Ante*, at 5. Yet the Court's affirmance of the Court of Appeals' decision, coupled with the Court's failure to make its apparent disagreement with the reasoning explicit, will result in the Michigan Court of Appeals' broad rule surviving to work additional mischief in future cases, a most undesirable result in this area, where fees and regulatory requirements are so pervasive.

B

1

Although the Court appears to agree that MCL §478.2(2) imposes a state registration requirement on interstate motor carriers, it holds, nonetheless, that the provision is not pre-empted by 49 U. S. C. §14504(b). This, according to the Court, is because the phrase "State registration requirement" in §14504(b) refers not to state registration requirements generally, but only to those state registration requirements that concern the same subject

matter as the SSRS: registration of a federal permit, proof of insurance, and designation of an agent for service of process. *Ante*, at 10–11. Section 14504(b) simply cannot bear the narrowing construction the Court seeks to impose upon it.

The first sentence of §14504(b) authorizes States to impose registration requirements on interstate motor carriers if the registration "is completed under standards of the Secretary under [§14504(c)]," *i.e.*, under the SSRS. The second sentence of §14504(b) pre-empts "a State registration requirement" that imposes "obligations in excess" of the SSRS. There ought to be no question that MCL §478.2(2) is a state registration requirement. The Court seems to agree, at least when the phrase "State registration requirement" is used in its ordinary and general sense. It should also be apparent that the obligations imposed by §478.2(2) are in excess of those authorized by the standards of the Secretary under 49 U. S. C. §14504(c). The plain text of §14504(b), then, would appear to pre-empt MCL §478.2(2), at least when §478.2(2) is considered in isolation.

The Court, however, departs from the text of the statute. Title 49 U. S. C. §14504(b), by its terms, saves from pre-emption only one class of state registration requirements imposed on interstate motor carriers: those completed under standards of the Secretary under §14504(c), *i.e.*, those that are authorized under the SSRS. To this subset the Court adds a second class of state registration requirements saved from pre-emption: those that concern subject matters not covered under §14504(c). The problem, of course, is that the statute simply does not provide for the exemption the Court invents. There is no basis in the statutory text or structure for adding this limitation, and the Court cannot carry its heavy burden to show why the language Congress used in §14504(b) should not be given its ordinary meaning.

The Court makes only one textual argument for the limitation it superimposes on §14504(b)'s second sentence. The second sentence, the Court reasons, refers to the same set of state registration requirements discussed in the first sentence. It must follow, the Court says, that because the first sentence of §14504(b) refers to SSRS registration, the phrase "State registration requirement" in the second sentence refers only to state registration requirements that concern the same subject matter as the SSRS. *Ante*, at 6–7.

The Court's premise is faulty. The two terms in the first sentence—"requirement of a State that [an interstate motor carrier] must register" and "registration requirement"—are not, when taken by themselves, limited to state registration requirements concerning the same "subject matter" as the SSRS. These terms, like the term "State registration requirement" in the second sentence of §14504(b), refer generally to any state requirement that an interstate motor carrier register with the State. No narrower reading is necessary to make perfect sense of each of §14504(b)'s two sentences and of how they operate together. The first sentence of §14504(b) declares that the subset of state registration requirements consisting of those requirements authorized under the SSRS—*i.e.*, requirements "completed under standards of the Secretary under [§14504(c)]"—are not pre-empted. The second sentence of §14504(b) says that all other state registration requirements for interstate motor carriers are pre-empted. It is difficult to understand the Court's mighty struggle to resist this simple, direct reading of the statutory language.

The Court also observes that there is no language elsewhere in the statute or in the implementing regulations suggesting that "State registration requirement" in §14504(b) refers to all types of state registration requirements imposed on interstate motor carriers, and the Court

asserts that even the United States concedes that certain registration obligations in traditional areas of state regulation are beyond the statute's pre-emptive reach. *Ante*, at 8. The first claim is irrelevant and the second is wrong. Section 14504(b) itself makes clear its pre-emptive scope, and confirmation by other statutory provisions or administrative regulations is unnecessary. And, while the United States did say that §14504(b) was not "intended to pre-empt state laws and fees in traditional areas of state regulation," the reason the United States believes this is so is because §14054(b) does not pre-empt general registration requirements that do not apply specifically to interstate motor carriers. Brief as *Amicus Curiae* 19–20.

3

Perhaps sensing the weakness of its textual argument, the Court turns to statutory history. The Court is correct to say that, before the enactment of §14504(b) and the SSRS, federal law did not pre-empt state filings or fees other than those concerning federal permit and insurance requirements. *Ante*, at 8–9. Pre-SSRS federal regulations, furthermore, specified that the federal statute did not affect the power of States to collect other fees from interstate motor carriers or to require decals indicating payment of these fees. *Ibid.* This is beside the point, however. The extent of pre-emption before enactment of §14504(b) tells us little about §14504(b)'s pre-emptive effect. Similarly, the fact that pre-SSRS federal regulations preserved other state registration requirements is of minimal significance when, as the Court admits, the new regulations contain no such provisions. *Ante*, at 9. If anything, the failure to repromulgate regulations saving other state registration fees from pre-emption suggests that the federal agency charged with implementing the SSRS did think that §14504(b) expanded the scope of federal pre-emption.

The Court's meaning is therefore obscure when it declares that Congress "did not indicate (in the text, structure, or divinable purpose of the new provision) that the pre-emptive scope of the new scheme would be any broader than that of the old." *Ibid*. Congress did indicate an expansion of federal pre-emption in §14504(b)'s "text" and "structure"—it did so by replacing a narrow pre-emption clause with a broad pre-emption clause. Congress is not required to say, "We really mean it." Cf. *Koons Buick Pontiac GMC, Inc.* v. *Nigh*, 543 U. S. ___, ___ (2004) (slip op., at 4) (SCALIA, J., dissenting) ("I hardly think it 'scant indication' of intent to alter [the meaning of a statute] that Congress *amended the text of the statute*" (emphasis in original)).

Perhaps the Court means to suggest that what appears to be the plain meaning of §14504(b) is put in doubt by the fact that the predecessor statute's pre-emptive scope was much more limited. Comparison with predecessor statutes, however, is permissible only to resolve statutory ambiguity that exists independent of the comparison with the predecessor statute; comparison with predecessor statutes cannot be used to create ambiguity about the meaning of an otherwise clear statute. *Lamie* v. *United States Trustee,* 540 U. S. 526, 533–535 (2004); see also *Koons Buick Pontiac GMC, Inc.*, 543 U. S., at ___ (slip op., at 1–2) (KENNEDY, J., concurring); *id*., at ___ (slip op., at 1–2 (THOMAS, J., concurring in judgment); *id*., at ___ (slip op., at 4) (SCALIA, J., dissenting).

4

The Court's final reason for imposing its narrowing construction on §14504(b) is that the Court has found "nothing in the statute's basic purposes . . . that either requires a broader reading of the statutory term . . . ." *Ante*, at 10. In the Court's view the only purpose of §14504 is to make minor improvements in the efficiency of

the old bingo card system. *Ante*, at 8–9. The Court makes no convincing argument that §14504(b)'s purpose was so limited. The Court, furthermore, does not explain why the statute's basic purposes require the Court's artificially narrow reading of the facially broad statutory command. The most the Court is willing to say is that it "can find no indication," *ante*, at 10, that when Congress said "State registration requirement," it meant "State registration requirement." So it says Congress must have meant "State registration requirement concerning the same subject matter as the SSRS." The text of §14504(b), however, does not admit of the qualifications the Court adds to it. The Court's argument from statutory purpose has no basis.

The Court suggests that if Congress intended §14504(b) to have the broad pre-emptive effect required by the text, Congress would have more clearly indicated that intention *Ibid.* ("[W]e can find no indication that Congress sought" to pre-empt requirements not related to SSRS subject matter). It is not entirely clear what sort of additional indication of congressional purpose the Court is looking for. The text, as noted above, does provide an indication of Congress' intent. Perhaps the Court is troubled by the absence of statements in the legislative history endorsing §14504(b)'s expansion of federal pre-emption. The lack of confirmatory legislative history, however, is not a legitimate reason for imposing an artificial narrowing construction on broad but clear statutory text. "[I]t would be a strange canon of statutory construction that would require Congress to state in committee reports or elsewhere in its deliberations that which is obvious on the face of a statute." *Harrison* v. *PPG Industries, Inc.,* 446 U. S. 578, 592 (1980). See also *Morales* v. *Trans World Airlines, Inc.,* 504 U. S. 374, 385, n. 2 (1992) ("[L]egislative history need not confirm the details of changes in the law effected by statutory language before we will interpret that language accord-

ing to its natural meaning"); *Chisom* v. *Roemer,* 501 U. S. 380, 406 (1991) (SCALIA, J., dissenting) ("We are here to apply the statute, not legislative history, and certainly not the absence of legislative history").

II

A

In my submission, the phrase "State registration requirement" in §14504(b) cannot be read as limited to state registration requirements that concern one particular subject matter. It should be noted, however, that this phrase is ambiguous in a different respect. Section 14504(b) might be read, on the one hand, to exempt interstate motor carriers from any non-SSRS state registration requirement, including general requirements that apply to all motor carriers or to some other set of entities. On the other hand, §14504(b) might be read to pre-empt only those non-SSRS registration requirements that apply specifically to interstate motor carriers. That is, §14504(b) might come into play only if being an interstate motor carrier is a necessary or sufficient condition for imposition of a state registration requirement. The United States takes the latter view of the statute, Brief as *Amicus Curiae* 17–22, and I am of the same opinion.

Though the phrase "State registration requirement" in the second sentence of §14504(b) is not qualified, it is clear from context that this term refers to a "requirement of a State that a motor carrier providing [interstate transportation] must register with the State," the more specific term that appears in §14509(b)'s first sentence. It is grammatically possible to read the statutory command as exempting interstate motor carriers from all registration requirements other than the SSRS, but that reading would lead to absurd results. It would suggest, for example, that interstate motor carriers with a principal place of business in Michigan do not have to register their pres-

ence for purposes of state tax collection. In context, the more natural and sensible reading of the phrase "requirement of a State that a motor carrier providing [interstate transportation] must register with the State," includes only those registration requirements that are triggered specifically by the fact that the entity in question is an interstate motor carrier.

Because §14504(b) pre-empts state registration requirements that single out interstate carriers, but not general state registration requirements that apply to interstate carriers only incidentally, my analysis of §14504(b) does not necessarily mean the Court's ultimate conclusion in this case is incorrect. Respondents contend that MCL §478.2(2) applies only to trucks with Michigan license plates, and that §478.2(2) should be considered together with §478.2(1), which imposes a $100 fee on every truck doing intrastate business within Michigan. According to the respondents, then, 49 U. S. C. §14504(b) does not come into play because interstate carriers are not singled out; Michigan imposes the same $100 fee on all for-hire motor vehicles license-plated in Michigan. Brief for Respondents 44–45. The petitioners and the United States take issue with this argument. Reply Brief for Petitioners 10–14; Brief for United States as *Amicus Curiae* 24–29.

In my view it is not necessary to reach this question. The Michigan Court of Appeals resolved the case on the incorrect theory that a fee is not a registration fee if its purpose is to regulate the industry. Given its erroneous view of the statute, the proper course should be to vacate the Court of Appeals' decision and remand for further proceedings. Remanding the case would allow the Michigan courts to consider the competing arguments in light of the correct legal interpretation of 49 U. S. C. §14504(b). The respondents would, at that stage, be able to advance their arguments that MCL §478.2(2) is not pre-empted

when it is considered in conjunction with §478.2(1) or any other aspect of the statutory scheme that bears on whether Michigan imposes registration requirements specifically on interstate motor carriers beyond those authorized under the SSRS.

B

The Court insists that to read "requirement that a motor carrier providing [interstate transportation] must register with the State" as including only those requirements that apply specifically to interstate motor carriers would be "wholly inconsistent with the statute's basic purposes, because it would leave a State free to implement a regulation in excess of specific SSRS limitations as long as it did not single out interstate carriers . . . ." *Ante*, at 7. The Court is correct that, under my interpretation, 49 U. S. C. §14504(b) would not pre-empt general, neutral requirements, even if they dealt with subject matter similar to that covered by the SSRS. The Court is wrong, however, to suggest this therefore means an SSRS could collect from interstate motor carriers a $500 fee for proof of insurance or require designation of multiple agents for service of process, as long as the requirement in question applied evenhandedly to all motor carriers. The Court errs because it fails to give adequate consideration to the restrictions imposed by §14504(c).

Section 14504(c)(2)(A) declares that "only a State acting in its capacity as a registration State under [the SSRS] may require a motor carrier registered by the Secretary under [the SSRS]" to file proof of federal registration and proof of insurance, to collect fees for filing proof of insurance, and to maintain a local agent for service of process. Section §14504(c)(2)(B) constrains the SSRS registration requirements and fees the SSRS registration State can impose on interstate motor carriers. These sections contain an ambiguity similar to that which affects §14504(b).

Context, however, suggests that the ambiguity should be resolved differently. The best interpretation of §14504(c), in my submission, is that no State participating in the SSRS other than an interstate motor carrier's designated SSRS registration State may impose requirements of the sort listed in §14504(c)(2)(A) on that carrier, even if the requirement is general and applies to all motor carriers. The SSRS registration State, furthermore, may only impose on registered interstate motor carriers requirements related to those listed in §§14504(c)(2)(A)(i)–(iv) if the State conforms to the restrictions in §14504(c)(2)(B).

Taken together, the general pre-emption provision in §14504(b) and the specific limitations on SSRS registration States in §14504(c) establish a rational regulatory scheme. Whether or not a State participates in the SSRS, it cannot impose a registration requirement that singles out interstate motor carriers unless that requirement is authorized under the SSRS. States that participate in the SSRS may impose general, neutral registration requirements that happen to affect interstate motor carriers unless those requirements are inconsistent with the specific mandates of the SSRS related to proof of insurance, proof of federal permit, fees, and service of process. Non-SSRS States may impose any general, neutral registration requirement, even if they require interstate motor carriers, among others, to file proof of insurance or maintain a local agent for service of process.

The Court's interpretation leads to a less sensible scheme. According to the Court, that statute permits States to impose on interstate carriers any number of onerous requirements so long as these requirements are not explicitly linked to the subjects covered by the SSRS. The Court's interpretation, furthermore, means that those States which are excluded from the SSRS under §14504(c)(2)(D) may not apply general state registration requirements to interstate motor carriers if the require-

ments concern proof of insurance or registration of an agent for service of process. Under the Court's interpretation, the statute does not pre-empt state regulations that single out interstate carriers for special burdens well beyond what the SSRS allows, but it does prevent non-SSRS States from applying a number of modest, even-handed registration requirements to interstate carriers, even though the SSRS is not available to these States. That implausible result is not demanded by the statute's basic purposes.

* * *

Instead of heeding what Congress actually said, the Court relies on flawed textual analysis and dubious inferences from legislative silence to impose the Court's view of what it thinks Congress probably wanted to say. In my view, this is a mistake. Other arguments, not considered by the Michigan Court of Appeals or by our Court, might support the ultimate outcome in this case. These arguments, however, ought to be addressed on remand.