

# Supreme Court of the United States

OCTOBER TERM, 1969

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Supreme Court, U. S.  
JAN 21 1970

In the Matter of:

Docket No. 301

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LOREN J. PIKE, AS SUPERVISOR OF  
INSPECTION, ARIZONA FRUIT AND  
VEGETABLE STANDARDIZATION SERVICE,

Appellant

vs.

BRUCE CHURCH, INCORPO

Appellees  
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Place Washington, D. C.

Date January 13, 1970

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C O N T E N T S

1	<u>ORAL ARGUMENT OF:</u>	<u>P A G E</u>
2	Rex E. Lee, Esq., on behalf Appellant	2
3	Jacob Abramson, Esq., on behalf Appellee	18

7	<u>REBUTTAL ARGUMENT OF:</u>	<u>P A G E</u>
8	Rex E. Lee, Esq., on behalf Appellant	

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IN THE SUPREME COURT OF THE UNITED STATES

October  
 Term, 19<sup>69</sup>

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LOREN J. PIKE, AS SUPERVISOR OF :  
INSPECTION, ARIZONA FRUIT AND :  
VEGETABLE STANDARDIZATION SERVICE, :  
Appellant : No. 301  
vs. :  
BRUCE CHURCH, INC. :  
-----

Washington, D. C.  
January 13, 1970

The above-entitled matter came on for argument at  
11:10 a.m.

BEFORE:

- WARREN BURGER, Chief Justice
- HUGO L. BLACK, Associate Justice
- WILLIAM O. DOUGLAS, Associate Justice
- JOHN M. HARLAN, Associate Justice
- WILLIAM J. BRENNAN, JR., Associate Justice
- POTTER STEWART, Associate Justice
- BYRON R. WHITE, Associate Justice
- THURGOOD MARSHALL, Associate Justice

APPEARANCES:

- PEX E. LEE  
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Phoenix, Arizona 85003
  
- JACOB ABRAMSON  
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Salinas, California 93901





1 which I believe definitely warrants the attention of the  
2 Court, because it answers specifically one of the propositions  
3 or one of the contentions raised by the Appellee in his brief.  
4 The citation of Turner vs. Maryland is contained in our brief.  
5 It is 107 U.S. 38. This particular quote appears at page 57.  
6 In that case, this Court ruled as follows:

7           "The state may direct that a certain product  
8           while it remains in the bosom of the country and  
9           before it has become an article of foreign commerce  
10          or of commerce between the states shall be encased  
11          in such a package as appears best fitted to secure  
12          the safety of the package and to identify its  
13          contents as the growth of the state."

14          So that as early as 1883 this Court in a unanimous  
15          decision declared that it lay within the police powers of the  
16          state to require that the produce of that state prior to the  
17          time that it leaves the state be encased in a certain type of  
18          package, and that that package identify the produce as the  
19          product of the state. Involved in that particular case was a  
20          standard container known as a hogshead for Maryland tobacco,  
21          and the statute required that the hogshead identify the  
22          tobacco contained therein as Maryland tobacco.

23          The Arizona Fruit and Vegetable Standardization Act  
24          rests upon considerations similar to those which were approved  
25          by this Court in Turner vs. Maryland. The record in this case

1 contains a discussion of the conditions which led up to the  
2 enactment of the Standardization Act, and they are as follows.  
3 Prior to 1929, when the Act was adopted, it was up to each  
4 individual shipper within the state to set his own standards  
5 both for the quality of the produce that he desired to ship,  
6 and the type of container that he desired to ship it in, if he  
7 shipped it in a container at all. Consequently the standards  
8 adopted by some shippers were very high, and the standards  
9 adopted by other shippers were not so high. It is abundantly  
10 borne out by this record that it is of prime importance to  
11 the success of the marketing of fruits and vegetables that  
12 the shipper maintain a good reputation for shipping quality  
13 fruit, but the record also bears out that it is not always  
14 possible to maintain that reputation separate and apart from  
15 the reputation of the district or the state within which he  
16 produces it and from which he ships his product, particularly  
17 where it is produced.

18           Conversely stated, if a state can acquire a good  
19 reputation for a certain type of produce, that reputation will  
20 inure to the benefit not only of the state as a whole, but  
21 also each individual grower and shipper within that state. It  
22 is not difficult to find example where states have been  
23 successful in creating such reputations, such as Washington  
24 apples, Florida oranges, Arizona grapefruit, and frankly we  
25 believe Arizona canteloupes.

1           This then was the problem toward which the Fruit and  
2 Vegetable Standardization Act was directed. It set minimum  
3 standards for a selected number of fruits and vegetables, now  
4 37, within the State of Arizona, and those standards had to be  
5 met by all shippers where the Act so provided. It also provided  
6 that they had to meet minimum standards not only of quality,  
7 but also of pack, and that it had to be packed in standard  
8 containers.

9           The provisions dealing with canteloupes as they appear  
10 in the statute today are illustrative in this regard. As set  
11 forth in the statute, and the statute's relevant provisions are  
12 cited at the outset of our brief, the canteloupes must be  
13 mature but not over-ripe. They have to be free from mold,  
14 decay, sponginess, wilting, insect damage, and a variety of  
15 quality defects. But perhaps the most interesting provisions  
16 of the statute from the standpoint of this case are those  
17 provisions which deal with the individual pack and the  
18 appearance of the canteloupes within that pack.

19           It has been stipulated by the parties that a prime  
20 purpose of the statute was to avoid deceptive packs or  
21 deceptive arrangements. Deceptive arrangement and deceptive  
22 pack are described similarly by the statute. They pertain to  
23 that situation wherein the higher quality fruit is placed  
24 toward the outside of the container, with the off quality fruit  
25 in the center of the container, or the lesser quality fruit in

1 the center so as to materially misrepresent the quality of  
2 the entire container. That particular provision, of course,  
3 can only be enforced if the container itself, after it has  
4 been packed, has been inspected, and there are other provisions  
5 as to which this is also true.

6 Q You have cited some prior cases, but what would  
7 you suppose the justification is for a state saying, "You may  
8 not ship in bulk out of this state"?

9 A The answer to that question, Mr. Justice, in  
10 that lies the entire justification of the Fruit and Vegetable  
11 Standardization Act.

12 Q I know, but what if the fellow you say that to  
13 says, "Well, look, I am going to ship in bulk out of the  
14 state. It is just a few miles across the line, and I am going  
15 to pack them over there and say that they are packed in  
16 California."

17 A There are a number of answers to that question.  
18 They are the following. In the first place, if they are  
19 packed in California, they will not be identified as Arizona  
20 produce.

21 Q So you are not going to be hurt if they are  
22 bad canteloupe.

23 A Yes, we are. There are three principal  
24 canteloupe producing states. They are Arizona, California and  
25 Texas. There is some value, or at least it certainly lies



1 within the state's prerogative to conclude that there is some  
2 value to being known as the No. 3 canteloupe producing state  
3 within the United States. If these canteloupes are not  
4 identified as Arizona produce --

5 Q They won't be counted in your total crop.

6 A They won't be counted, that is correct.

7 Moreover, these particular canteloupes, and this is in the  
8 record --

9 Q This has to be the sole basis for preventing  
10 bulk shipments where they are not going to be identified upon  
11 being packed as Arizona canteloupe.

12 A No, sir, I submit it is not. There are  
13 additional reasons. These particular canteloupes are as a  
14 matter of stipulation in the record the highest quality of  
15 any canteloupes that are produced within the State of Arizona,  
16 and therefore we feel that the state is entitled to have those  
17 canteloupes identified as Arizona canteloupes. This is the  
18 basic purpose of the statute.

19 Q So again you want them identified as Arizona  
20 canteloupes and added up so Arizona will get credit for these.  
21 Of course, if they are bad, you don't want credit for them,  
22 do you?

23 A Pursuant to that, let me proceed with the  
24 example that you gave of canteloupes which are shipped in bulk  
25 across the state line. They come from the field and are put

1 into a trailer. Everything goes into the trailer, good fruit,  
2 bad fruit. It is mixed all up.

3 Q By the way, do you have a regulation that says  
4 how far you may transport canteloupe from where they are  
5 picked up to the packing plant?

6 A No, sir.

7 Q Do you know how far they are normally  
8 transported when they are picked up in the field? I suppose  
9 you could find that maybe they are carried twenty or thirty  
10 miles within the State of Arizona to a packing plant.

11 A That is possible.

12 Q At least as far as they are carried here across  
13 the state line.

14 A I would think that that would be possible. The  
15 point that I am about to make is that they can be carried a  
16 good deal farther. They go in and there has been no sorting  
17 of quality fruit from the culls, no sorting of one color from  
18 another color, and this as borne out by the record is also  
19 important. There is no sorting according to variety. Every-  
20 thing goes into that trailer. They are inspected, but they  
21 are inspected only for the purpose of determining the presence  
22 of pickle worm, which is a quality defect of canteloupes. They  
23 are given a pickle worm certificate indicating that they have  
24 been determined to be free of pickle worm, and that  
25 certificate is given to the California inspector on the

1 California side of the line. From that point, provided that  
2 they meet the test, they go right on through the inspection  
3 station presumably on their way to be packed. But Mr. Justice,  
4 once those canteloupes leave the State of Arizona, there is  
5 no way that we have of assuring ourselves that they will not  
6 go right on through to San Diego, Los Angeles, San Francisco  
7 or anywhere else, be sold in bulk lot to a chain store buyer,  
8 and when asked where did these canteloupes come from, the  
9 answer comes back, Parker, Arizona.

10 Q What about the standards in California? They  
11 sort of protect their people, don't they? Is there any  
12 difference between the fruit standards in California and those  
13 in Arizona?

14 A Yes, Mr. Justice, there are, and those are set  
15 forth.

16 Q Which way do they operate? Are they higher  
17 or lower than Arizona?

18 A The differences in the language of the statutes  
19 would indicate the Arizona's standards are more demanding than  
20 California standards. For example --

21 Q What interest does Arizona have in protecting  
22 the people of California?

23 A None, Mr. Justice. Our interest just as in  
24 the case.

25 Q Is in protecting the name of Arizona.

1           A       That is correct. Just as this Court said in  
2 Sligh vs. Kirkwood, the State of Florida has a great interest  
3 in protecting the reputation of its citrus fruits.

4           Both California and Arizona proscribe serious defects  
5 and both California and Arizona say it is a serious defect if  
6 it affects the edible portion of the canteloupe. The  
7 California statute stops at that point. The Arizona statute  
8 goes on to say or if it affects the appearance, which  
9 California says nothing about, or the shipping quality of the  
10 fruit. The parties have stipulated that these matters of  
11 appearance and shipping quality are factors which affect the  
12 reputation of the produce, but are separate and apart.

13           Q       Do you accept the certificate of the  
14 California inspectors if they want to ship these canteloupe  
15 back into Arizona for retail sale?

16           A       Certificate that what?

17           Q       I suppose you have regulations to check on the  
18 quality of imported canteloupes?

19           A       Yes, but Arizona is --

20           Q       You don't reinspect them, do you, when they  
21 are shipped back into Arizona?

22           A       I am sure that we would not,

23           Q       Are you sure you would accept the certificate  
24 of the California inspector if the California law meets what  
25 you think is a reasonable standard?



1           A        Yes. I know of no such certificate, but that  
2 is beside the point if there were one. The point is this.  
3 I would suppose that fully 90 per cent of canteloupes that are  
4 grown in the State of Arizona are not marketed in the State  
5 of Arizona. Arizona is a canteloupe producing state. Its  
6 consumption does not anywhere near match its production. What  
7 we are concerned about is the reputation, and preserving the  
8 reputation that our produce has in other states where they are  
9 in fact consumed.

10                 Now, Mr. Abramson will tell you that they fully  
11 intend to pack it in Blythe according to California standards.  
12 We feel that California standards are not exactly the same as  
13 Arizona's, and therefore in any event we feel that it follows  
14 inexorably from the proposition that Arizona has the right to  
15 enact a standardization law, that it can enforce it through  
16 its own inspection officers. It need not rely upon the  
17 application of California law through California officers.

18                 Let us assume that the standards were exactly the  
19 same today. We have no guarantee that those standards are  
20 going to be carried out. We have no guarantee that California  
21 will not change its law tomorrow. We have no guarantee that  
22 the California inspection officers are going to do their job.  
23 Indeed, there is some difference. You can read it in the  
24 statute. If a five per cent difference will make our statute  
25 unconstitutional, would a ten per cent difference then validate

1 it? At all points, the conclusion is simply inevitable that  
2 starting from the premise which we feel is justified, as set  
3 forth by this Court in Turner vs. Maryland, Sligh vs. Kirkwood,  
4 and in the Pacific States case, we do have the right to  
5 prescribe these standard containers, and we have the right to  
6 enforce it through our own inspection officers.

7 Now, the Bruce Church Company has said, "We intend  
8 to pack these in California." I have articulated some of the  
9 reasons there is a problem with this. Even assuming that that  
10 is correct, if this Appellee is allowed to ship them across the  
11 state line in violation of the statute, we are going to have  
12 to let others, and we have no control over how those will be  
13 sold or whether they will be packed in standard containers at  
14 all. The only way that we can assure that is to require that  
15 before the produce leaves the state it is packed neatly in a  
16 new clean container, arranged orderly, uniform in size,  
17 uniform in color, uniform in variety, so that when the grocer  
18 opens that box, he knows that he can take the canteloupes out  
19 of their box, put them on the shelf and they will make a nice  
20 neat attractive assortment, uniform in color, uniform in size,  
21 and up to quality that is guaranteed by the Arizona  
22 Standardization Act, and that is what is meant by  
23 standardization, and that is what we are trying to preserve.

24 Q Does this record show whether when these  
25 canteloupes are marketed in California or any other state they

1 are identified after the package is broken as Arizona  
2 canteloupe in supermarkets and so forth?

3 A Mr. Justice, this record does not show  
4 anything on that, and I would think it would be a matter of  
5 individual choice with the grocer. He might or he might not.  
6 But you see, he is our customer, and so are the jobbers and  
7 the wholesalers. They know that they can depend on the  
8 stamp on the outside of these containers, "Arizona produce", as  
9 meaning something, because it has been packed in accordance  
10 with the Arizona standards.

11 Q How do you read the opinion of the District  
12 Court? They did not say that these regulations were not  
13 authorized by the state statute.

14 A I read the opinion of the District Court with  
15 great difficulty.

16 Q It implied that.

17 A It certainly did.

18 Q To the extent that it did, we are not in a very  
19 good position to disagree with it, are we?

20 A I know what you are referring to, Mr. Justice.  
21 There are these positions that say that under normal  
22 circumstances you give a certain amount of deference to the  
23 District Court, but I would submit --

24 Q It is a little more than that. Ordinarily we  
25 don't undertake here, do we, to review interpretations of

1 state laws?

2 A Mr. Justice, I submit that under circumstances  
3 such as this, there simply is no way that you can read the  
4 statute any other way. The canteloupe statute in its present  
5 form says that all canteloupe shall be packed in closed  
6 standard containers approved the state. I just can't read  
7 that to say anything else than all canteloupes shall be packed--

8 Q Then I take it that the administrators had  
9 not been obeying that law for many years.

10 A That is correct.

11 Q They administered the law over a long period of  
12 years quite to the contrary, isn't that right?

13 A Yes, that is correct. There were individual  
14 instances in which the administrators were not obeying the law.  
15 Mr. Justice, the last time I was before the Court, I learned  
16 that that particular principle does not invalidate a statute,  
17 and we have cited Lassen vs. the State of Arizona on that very  
18 point. At that time, Mr. Justice Marshall and I were co-counsel  
19 in that case, and I think that has been adequately covered in  
20 our brief. Mr. Pike knows that he did wrong. That may be a  
21 matter of concern for the officials of the State of Arizona,  
22 but it is not something that makes the statute unconstitutional.

23 I do want to reserve five minutes for rebuttal. I  
24 understand that would still give me about five minutes.

25 I would like to treat just briefly the basic rules



1 of law that have been laid down by this Court which are  
2 determinative on this issue. One of them has already been  
3 mentioned in the case that was argued before us, and that is  
4 that the judicial function in applying the commerce clause to  
5 statute which are challenged as allegedly violative of the  
6 commerce clause is a very limited one. The case of South  
7 Carolina vs. Barnwell Brothers clarified once and for all that  
8 the test under the commerce clause is the same as it is under  
9 substantive due process, and that under that test the judicial  
10 inquiry stops with a two pronged inquiry. No. 1, is there a  
11 legitimate state objective, and No. 2, is the state  
12 regulation reasonably anticipated to carry out that objective.

13 We submit that under other decisions of this Court  
14 both of those requirements are clearly satisfied. You have  
15 Sligh vs. Kirkwood, which is discussed extensively in our  
16 brief. It is the case in which this Court upheld the Florida  
17 statute prohibiting the sale of immature citrus or citrus which  
18 was otherwise unfit for human consumption.

19 Q Before you move on, you have repeatedly relied  
20 on three decisions, as I understand it.

21 A Yes.

22 Q Sligh against Kirkwood, Pacific States Box  
23 and Basket.

24 A Yes, and Turner against Maryland.

25 Q And Turner against Maryland I don't think is in

1 your briefs, either one of them.

2 A Look on page 31. It is cited in Mr. Justice  
3 Brandeis' opinion in Pacific States Box and Basket.

4 Q An internal reference.

5 A That is correct. After seeing the Appellee's  
6 brief and reconsidering, I concluded we should have given it.  
7 We gave it too short shrift.

8 Q A little bit more star billing.

9 A That is correct. But these three cases, I  
10 submit to the Court, clearly establish the legitimate interest  
11 of the state. That is all we have to show, that the state does  
12 have a legitimate interest in preserving the reputation of its  
13 fruits and vegetables by setting these standards of quality  
14 and of pack.

15 Now, the real issue in the case, the dispositive  
16 issue in the case, is this, and arises in this fashion. The  
17 Appellee, as I read his brief, agrees there may under certain  
18 circumstances be a legitimate interest in enforcing standardi-  
19 zation, but he says there is a qualifying consideration in  
20 this case because in the context of canteloupes, they can't be  
21 packed except in a packing shed. We agree that under present  
22 technology they can't. Therefore, in the Appellee's view,  
23 this case comes within those decisions of this Court which  
24 have said that where it is the sole objective of the statute  
25 to require packing to be accomplished in this state, that

1 renders the statute unconstitutional under Baldwin vs. Seelig,  
2 Polar Ice Cream vs. Sanders, and so forth. And the Appellee  
3 takes one more step, as indeed he must, and that is to say  
4 that the purpose of the Arizona statute is the same, and that  
5 is to preserve the packing business for this state. So that  
6 really the ultimate issue, the dispositive issue between these  
7 two parties, is what is the purpose of the statute. Is it the  
8 purpose which has been testified to on this record? Is it the  
9 purpose that is set forth in the preamble to the statute  
10 itself? Is it the purpose that has been upheld by this Court  
11 in Sligh vs. Kirkwood, Pacific States, and Turner vs. Maryland?  
12 Or is it a purpose which will make it invalid?

13           Once the case is viewed in that fashion, I submit  
14 to this Court that the answer is very clear, because this  
15 Court has made it clear in a number of cases, that it will  
16 not reexamine the wisdom of a state legislative determination,  
17 and that so long as there is a proper purpose that this  
18 purpose will be assumed to be the purpose on which the state  
19 legislature relied.

20           I need not recap those cases at this time. They are  
21 set forth in our brief, and I believe that they adequately  
22 dispose of this contention.

23           Unless the Court has any further questions, I would  
24 like to reserve the balance of my time.

25           MR. CHIEF JUSTICE BURGER: Thank you, Mr. Lee.

1 Mr. Abramson.

2 ARGUMENT OF JACOB ABRAMSON, ESQ.

3 ON BEHALF OF APPELLEE

4 MR. ABRAMSON: Mr. Chief Justice, and may it please  
5 the Court, my learned colleague has stated that the  
6 dispositive issue in this case is the purpose of the Arizona  
7 law. What is the purpose? It has already been made clear  
8 what the purpose is, and this is to achieve credit to the  
9 State of Arizona for good fruit. The concern is not about  
10 receiving discredit for poor fruit, because in this case the  
11 poor fruit is going to be packed in other states. It is to  
12 receive credit for good fruit.

13 Q I did not understand his argument that way.  
14 I understood that he had two barrels to his gun, one to get  
15 credit for the good and to avoid the disadvantages of being  
16 credited with the bad if somebody sold bad fruits as Arizona  
17 fruits.

18 A Mr. Justice, the argument of Appellant is  
19 that Parker fruit is good fruit. He wants it to be labeled  
20 as good fruit. This is the main concern. In his argument he  
21 states this repeatedly, that it is to enhance the reputation  
22 by identifying the fruit as Arizona fruit. The point I am  
23 getting to is that the determining question here is not what  
24 is the purpose of the Arizona law, even if the purpose is to  
25 obtain credit, although this Court has never gone so far as to



1 permit what the Appellant seems to do here in furtherance of  
2 that purpose. Even to achieve credit we say is not an improper  
3 purpose. It is fine, we say, if one wants to do a good job  
4 and to get credit for it. But that is not the issue. The  
5 issue before this Court is how far may the State of Arizona  
6 go in trying to achieve this purpose.

7 In order to achieve this purpose, the State of  
8 Arizona through the interpretation of the Arizona law by the  
9 Appellant is saying three things must occur. One, the packing  
10 must be done in Arizona; two, the packing must be done in a  
11 packing shed in Arizona; and in the context of this case,  
12 where the Church Company does not have packing facilities at  
13 Parker, and indeed cannot have such facilities because there  
14 are no railroad lines going in there, must construct packing  
15 facilities at Parker. To be sure, Appellant states the law  
16 does not in terms say you must do this, and therefore we can't  
17 hear you to complain, but this is the necessary effect of his  
18 order. In fact, the Appellant in its brief expressly states  
19 this, that this is the dilemma in which the Appellee finds  
20 itself, that in order to comply with the order, it must do these  
21 three things.

22 We submit that this goes too far in its encroachment  
23 on the Federal concern with maintaining a free flow of  
24 interstate commerce. We submit it is contrary to decisions  
25 of this Court which we have cited, the shrimp cases in which

1 learned counsel has alluded to in his statement. We submit  
2 that this is the real issue. How far may the State of Arizona  
3 go in obtaining credit for good fruit, or in keeping out poor  
4 fruit.

5 There has been no case cited by Appellant in which  
6 this Court has gone so far as to say that these three  
7 requirements may be imposed.

8 Q I thought the Sligh case certainly talked very  
9 much to that subject.

10 A Mr. Justice, the Sligh case involved a statute  
11 which stated simply that citrus fruits unfit for consumption  
12 shall not be handled. It had nothing to do with the question  
13 of interstate. It was purely a criminal statute, and imposed  
14 a penalty for the handling of such fruits. The Sligh case  
15 would have been a case similar to ours if the state in that  
16 case had said this citrus fruit must be packed in this state,  
17 but that was not the situation in the Sligh case.

18 Mention has been made of the Pacific Box case. This  
19 involved a law of the State of Oregon which established certain  
20 standard containers to be used for packing in that state of  
21 raspberries and strawberries. An out of state manufacturer of  
22 containers challenged this law, saying, "I want to come into  
23 Oregon and sell my containers in Oregon." These were different  
24 containers from those provided under the Oregon law. This  
25 Court held that Oregon may within its right prescribe

1 containers. But that case did not involve the situation such  
2 as here. If the Oregon statute had said raspberries and  
3 strawberries must be packed in Oregon, this would have  
4 presented before this Court the same issue which it has before  
5 it now.

6 Q There is a factual difference that you probably  
7 cannot send raspberries in the bulk in truckloads. You have  
8 to have them in small containers. So that that issue would not  
9 come up there.

10 A We submit that the Pacific States decision was  
11 correct, your Honor, that a state may provide that where  
12 commodities are packed within the state, certain containers  
13 shall be used, but I submit again, Mr. Justice, that the statute  
14 in the Pacific States Box case did not state that the packing,  
15 the processing and packing of raspberries and strawberries  
16 shall be performed in the State of Oregon. Had it done so, it  
17 would have presented the same issue which we have here.

18 Q How about Turner against Maryland?

19 A Turner against Maryland, I think this case  
20 gets closer. This was an 1882 case. Counsel for Western  
21 Growers has stated with reference to that case that it cited  
22 a long string of statutes. These were statutes in colonial  
23 times. Much has happened since 1882, advancements in  
24 transportation, processing, packing, handling, and of course  
25 this Court since that time has rendered decisions in Toomer vs.

1 Witsell, the Haydel cases, the Dean Milk case, and I think we  
2 are moving with the times. This Court has stated on numerous  
3 occasions that it will be guided by practical considerations.  
4 Mr. Justice White has already touched upon one point that I  
5 would like to make, namely, that the problem which brings us  
6 before this Court is one which exists in the border districts,  
7 which join the States of California and Arizona, that is to  
8 say, the districts along the Colorado River. Here the same  
9 climatic conditions prevail. Climate, weather, atmospheric  
10 conditions know no state borders. Given these same growing  
11 conditions, it is not uncommon for the same grower to have  
12 growing operations on both sides of the border.

13 Now, the question was raised, what is the area of  
14 production. It is not too great, Mr. Justice, because the  
15 crops which are involved are of such a highly perishable  
16 nature that they must be taken out of the ground, processed,  
17 packed, and put in cars on their way within a matter of just  
18 a few hours. So the distance, you don't have the possibility  
19 of dealing in large distances. I would say a radius of 30  
20 miles, 40 miles, something of that nature.

21 The Church Company, the Appellee here, has  
22 operations on both sides, as you know. It has operations at  
23 Parker under a lease with the Colorado River Indian tribes.  
24 This is a distance of 25 miles from the border. It has been  
25 doing its packing at Blythe on the California side, five miles



1 over on the California side.

2 Q Do you grow cantaloupe on the Blythe side?

3 A Yes, on the Blythe side, and because these  
4 are growers who don't enjoy federal subsidies, whose production  
5 costs and transportation costs are among the highest in the  
6 nation, their success or failure depends on their ability to be  
7 efficient. This means to economize. So if a grower of this  
8 kind requires packing facilities, he will put them on one side  
9 of the line or the other, wherever they fit in with his  
10 operations. He is obviously not going to duplicate his  
11 facilities.

12 Now, the same situation exists at Yuma on the Arizona  
13 side, and at Bard on the California side. These are just  
14 opposite one another across the river a short distance of  
15 possibly five miles, and for years there has been transport  
16 of cantaloupe and other commodities from the California side  
17 at Bard over to Yuma on the Arizona side, where they have been  
18 processed and packed just as these cantaloupes have been at  
19 Blythe.

20 California, as you know, has a law very similar. We  
21 can draw fine lines about particular words or sentences, but  
22 basically they are the same. There is testimony in the record  
23 that the California law and inspection, if anything, is more  
24 stringent than the Arizona law, but we need not make an issue  
25 of this. In any event, this has been going on from Bard to

1 Yuma for a long time. California has never raised a question.  
2 They have never attempted to stop this practice. They have  
3 reconciled it with their law. The State of California knows  
4 about this pending litigation,

5 Q When you pack Arizona cantaloupe at Blythe,  
6 are you required by the California law to say that they are  
7 California cantaloupes, or just that they are packed at Blythe?

8 A California, Mr. Justice, does have a law  
9 similar to that of Arizona which requires some identification  
10 on the container. The record shows that in this particular  
11 case, where the same containers are used both where packing is  
12 done in Arizona and in California, they have imprinted upon  
13 them, "Packed in Season in Arizona and California, Main Office,  
14 Salinas, California." This is where the main office of the  
15 Church Company is located.

16 Q Packed in season?

17 A Packed in season in Arizona and California.

18 Q That is the label that you put on your Blythe  
19 packs of Arizona cantaloupe?

20 A That is on the crate, yes.

21 Q Why would you say Arizona, because they are  
22 not packed in Arizona?

23 A This is what appears on the crate, "Packed in  
24 Season in Arizona and California". It indicates that packing  
25 may go on in each state.

1 Q Isn't that what Arizona's Legislature is  
2 claiming, or by this statute claimed, the right to have  
3 Arizona products identified as such?

4 A In response to this point, Mr. Justice, I  
5 believe I should explain how these cantaloupes are marketed.  
6 Some question has been raised, I think possibly by the Chief  
7 Justice, as to whether these commodities are identified at the  
8 store level. They are not. These cantaloupes are sold by the  
9 growers to a small group of buyers who are present right there  
10 on the spot. They are there every day, they or their  
11 representatives. They are at the point of production, whether  
12 it is the packing shed or field. They are inspecting the  
13 produce. They know exactly where it has been grown. They know  
14 who the grower is. They know the quality or they would not be  
15 buying it there. They are there to inspect the quality.

16 Q Who are these buyers? Grocers?

17 A These are wholesale jobbers, they are  
18 receivers, distributors, but who have their representatives  
19 right there on the spot. They move from place to place as the  
20 harvests progress.

21 Q How about their customers?

22 A Their customers are in turn receivers, car lot  
23 receivers all over the country who receive these in car lots.  
24 The sales are in car lots or truck loads. They are not sold as  
25 individual packages. Eventually when they reach their terminus,

1 terminal points throughout the nation, the distributors will  
2 then distribute them among chain stores, possibly, among  
3 retail stores. Once they reach the store, they are taken out  
4 of the package and put on a shelf. The housewife does not know  
5 where this cantaloupe has come from. If she likes it, if it  
6 tastes good, she will come back and buy it.

7 Q I don't know how you can generalize that way  
8 on the state of this record. Certainly there are housewives  
9 who go into stores and having had a good experience, a  
10 favorable experience with certain types of fruit or other  
11 merchandise, will say, "Is this California or is it Texas or  
12 is it Arizona?" Now, each of those states has an important  
13 interest in protecting that, do they not? Isn't that what  
14 the Sligh case really was to a large extent about? And Turner,  
15 as well?

16 A The Sligh case, your Honor, if I may submit,  
17 is a health and safety measure which seeks to prevent the use  
18 of citrus fruits unfit for human consumption. It is not  
19 directed to the question which has been raised by Appellant,  
20 namely, the protection or the gaining of credit for good fruit.

21 Q Maybe that is what the record supported, but the  
22 courts seemed to go beyond that, because this Court said the  
23 protection of the state's reputation in foreign markets with  
24 the consequent beneficial effect upon a great home industry  
25 may have been within the legislative intent.



1           A       It was to prevent the export of poor fruit.  
2 But the Appellant here does not stress this, but stresses  
3 rather the credit for good fruit.

4           We have indicated also that the Appellant's order  
5 represents the reversal of long time practice. He states before  
6 this Court that he was wrong all of these years, that his  
7 conduct was unlawful. When he issued the order to Appellant  
8 he gave no reason, no explanation. At no time has he stated  
9 whether his conclusion that he was wrong was the result of any  
10 decision, no mention of any such thing, but he says had he  
11 been properly advised, he would have done differently. Well,  
12 we have the State of California in the same situation. The  
13 State of California has never raised any question, and does not  
14 raise one at this time. It knows of this litigation. It has  
15 not sought to intervene in any way.

16           In conclusion, your Honors, we submit that in making  
17 this three fold requirement in consequence of Appellant's  
18 order, namely, that the packing be done in the State of  
19 Arizona, that this be done in a packing shed in Arizona, and  
20 that the Appellee construct packing facilities in Arizona,  
21 goes far beyond anything this Court has sanctioned in modern  
22 times. We submit that it is not the prerogative of the State  
23 of Arizona to say to a grower, "You must construct your packing  
24 plant in this state". This is an economic consideration which  
25 the businessman must make, where it is to his best advantage

1 to establish his facilities. We submit that the decision of  
2 the Court below was fully justified both on the law and the  
3 facts and should be upheld.

4 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Abramson.  
5 Mr. Lee, you have seven minutes.

6 REBUTTAL ARGUMENT OF REX E. LEE, ESQ.

7 ON BEHALF OF THE APPELLANT

8 MR. LEE: Thank you, your Honor.

9 The significant contention raised by Mr. Abramson,  
10 and this of course has been at the heart of his position  
11 throughout this entire litigation, is that the purpose of this  
12 statute is to require the packing be done in the State of  
13 Arizona. We simply assert that is not the purpose, and under  
14 the well established rules of statutory construction in  
15 constitutional cases as set forth on page 34 to 39 of our brief  
16 Courts simply don't ascribe improper purposes to the statute.  
17 The statute nowhere says anything about a packing shed. I  
18 would point out to the Court that this statute deals with 37  
19 different products, only one of which is cantaloupes. Most of  
20 them don't have to be packed in a packing shed. Most of them  
21 can be packed in the field, and we can inspect them there, and  
22 that is fine. The concern of the statute is not the packing  
23 be done in the state. The concern of the statute is that we  
24 be able to inspect it in the pack in order to determine that  
25 the statutory standards --

1 Q Isn't that the effect of the statute?

2 A In this case, Mr. Justice, that is correct.

3 Q That cantaloupes have to be packed inside the  
4 state.

5 A There is no question in this case that that is  
6 correct. So the question is where does it fall? Is it a  
7 Sligh vs. Kirkwood, Turner vs. Maryland case, or is it a  
8 Haydel case? I would simply point out that in Haydel, this  
9 Court concluded that there was no other possible reason for the  
10 requirement of packing within the state other than the sole  
11 requirement that they wanted to keep the packing business for  
12 themselves. Were that the case in this statute, it would be  
13 made applicable to lettuce, it would be made applicable to  
14 asparagus, it would be made applicable to cauliflower and the  
15 whole gamut of products. It is not. There is no requirement.  
16 The only reason that they have to build a packing shed is that  
17 they cannot pack except in a packing shed. So far as we are  
18 concerned if they want to pack underneath a shade tree, that  
19 is fine. We can then carry out the inspection responsibilities  
20 with which Mr. Pike is charged under the statute.

21 Now, with regard to Sligh vs. Kirkwood, I simply  
22 thoroughly disagree that that was a health and safety measure.  
23 I need not re-read the language that the Chief Justice has read.  
24 That language is significant for two reasons. First of all,  
25 it points out that it is a proper purpose to be concerned

1 with the state's reputation in interstate commerce, and  
2 secondly, it points out that as long as that could have been  
3 the legislative purpose, then the statute will be upheld.

4 Mr. Abramson, I understand his comments agreed that  
5 Turner vs. Maryland was against him, but argues that it is too  
6 old and therefore the Court ought not to follow it. Mr.  
7 Justice Stewart, so that you don't think I am totally  
8 incompetent in having missed it the first time around, let me  
9 point out that the language that I found which thoroughly  
10 resolves this comes at the end of a very long, long opinion.  
11 In order to save you the same problem, might I point out that  
12 is at page 57 of the United States Reports.

13 Finally, and in conclusion, and I won't need to use  
14 my seven minutes, this is an economic regulation. It is a  
15 regulation imposed by a state pursuant to its police powers  
16 and this Court has made it very clear, starting with Nebia vs.  
17 New York that there is a heavy burden which rests upon those  
18 individuals who seek to upset that police power regulation on  
19 the ground that it is unconstitutional. There is no Federal  
20 statute with which this is inconsistent certainly under this  
21 Court's decisions in Paul, and so forth.

22 In conclusion --

23 Q Before you get to your summary, has this  
24 statute involving, as you suggest, many other products of  
25 Arizona, been challenged in the state courts at any time?



1           A       Never on these grounds, your Honor. There  
2 have been probably half a dozen at the outside pieces of  
3 litigation involving these statutes, and most of them have  
4 involved bonds that the shippers have put up, but nothing of  
5 this magnitude.

6           Q       None of the issues involved here.

7           A       None of the issues involved here have ever  
8 been passed upon by a state court.

9           It is agreed on all sides, supported by the record,  
10 supported by square holdings of this Court, that the State of  
11 Arizona has a legitimate interest so long as these fruits and  
12 vegetables remain, in the language of this Court, within the  
13 bosom of the State of Arizona, in requiring that they be  
14 packed according to the standards the State of Arizona has  
15 prescribed. Once you start from that premise, it is simply  
16 inevitable that the State has the right enforce those standards  
17 according to its own inspection officers.

18           The statutory standards necessarily involve  
19 matters of judgment, material misrepresentation of the entire  
20 quantity, uniformity of quality, uniformity of size, uniformity  
21 of color. These are judgment matters. We submit that the  
22 State of Arizona has the right to have these judgment matters  
23 resolved by the judgment of its own inspection officers, and  
24 not inspection officers of someone else outside the state.

25           In conclusion, when the case first came up, Mr. Pike

1 came to me and said, "What is this law, this federal law that  
2 our law violates?" I said, "Well, Mr. Pike, it is the  
3 Constitution." He said, "Well, it is written in English,  
4 isn't it? Can't I read it?" I said, "Well, Mr. Pike, the  
5 Constitutions, you have to understand, have a wealth of  
6 decisions behind them." He said, "Nevertheless, it is written  
7 in English; let me see it."

8 I showed it to him, and he said, "Congress shall have  
9 the power to regulate interstate commerce." He said, "Has  
10 Congress passed a law saying that we can't have a standardiza=  
11 tion act in Arizona?" I of course replied that Congress had  
12 not passed such a law.

13 I think it is important to bear in mind, as I am sure  
14 this Court well knows, that in the absence of Congressional  
15 legislation, the judicial function is a narrow one, and we  
16 submit that this case clearly falls within the bounds of  
17 legitimate exercise of state police powers, and the judgment  
18 of the lower Court should be reversed. Thank you.

19 MR. CHIEF JUSTICE BURGER: Thank you for your  
20 submission, Mr. Lee. Thank you, Mr. Abramson. The case is  
21 submitted.

22 We will recess now.

23 (Whereupon at 12:00 Noon the argument in the above  
24 entitled matter was concluded.)

25 - - -