03-1230 AMERICAN TRUCKING ASSN V. MICHIGAN PUBLIC SERVICE COMM'N

DECISION BELOW: 662 NW2d 784

LOWER COURT CASE NUMBER: 226052, 226122, 226053, 226137

QUESTION PRESENTED:

Michigan imposes an annual tax on motor carriers of $100 per vehicle for the privilege of transporting property between points within the State. Though accepting that it "may be" that interstate motor carriers wishing to make such intrastate hauls "invariably will pay a higher per mile fee than the carrier who operates solely intrastate," the Michigan Court of Appeals upheld the tax over petitioners' Commerce Clause challenge. Deepening a split among state courts of last resort, the Michigan Court of Appeals reasoned that (i) this Court's "fair apportionment" requirement does not apply to taxes that are used to fund regulatory activities and (ii) petitioners could not rely on the discriminatory structure of the tax and instead were required to adduce evidence that particular trucking companies' "route choices are affected by imposition of the fee." Against this background, the question presented is:

Whether an unapportioned flat tax like Michigan's can be spared from invalidation under the Commerce Clause on the ground that it is used to pay for regulatory activities and/or because the taxpayer did not adduce evidence quantifying the discriminatory effect of the tax on interstate commerce.

ORDER OF 1/21/2005: LIMITED TO THE FOLLOWING QUESTIONS: 1) “Whether the $100 fee upon vehicles conducting intrastate operations violates the Commerce Clause of the United States Constitution.” 2) “Whether the $100 fee upon vehicles operating solely in interstate commerce is preempted by 49 U.S.C. §14504.” CONSOLIDATED WITH 03-1234 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 1/14/2005