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Commerce Clause - States Lose Power to Prescribe Highway Safety Regulations

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NOTES

COMMERCE CLAUSE—STATES LOSE POWER TO PRESCRIBE HIGHWAY SAFETY REGULATIONS—*Kassel v. Consolidated Freightways Corp.*, ___ U.S. ___, 101 S. Ct. 1309 (1981).

INTRODUCTION

Since *Gibbons v. Ogden*,[1] courts have wrestled with the problem of state legislation which affects interstate commerce. This problem is due to the fact that the Commerce Clause of the United States Constitution is silent as to whether states can regulate interstate commerce in the absence of federal regulation.[2] Some authorities argue that federal power is exclusive.[3] Others argue that, absent federal legislation, states are free to regulate interstate commerce.[4] The United States Supreme Court has taken a middle ground, usually upholding nondiscriminatory state regulations in areas which do not require uniform national standards.[5]

The Supreme Court has been reluctant to overturn state highway safety regulations,[6] according them a "strong presumption of validity."[7] In particular, limitations on truck lengths have been

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1. 22 U.S. (9 Wheat.) 1 (1824).

2. U.S. CONST. art. I, §8, cl. 3. "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes."

3. In *Gibbons*, *supra* note 1, at 198-200, Chief Justice Marshall leaned towards this view, but did not decide the question, since it was not necessary for the decision. *See* P. BENSON, THE SUPREME COURT AND THE COMMERCE CLAUSE 21 (1970).

4. Chief Justice Taney advocated this position in The License Cases, 46 U.S. (5 How.) 504, 573 (1847); *See* L. TRIBE, AMERICAN CONSTITUTIONAL LAW 322 (1978).

5. Best & Co. v. Maxwell, 311 U.S. 454 (1940); Cooley v. Board of Wardens of Philadelphia, 53 U.S. (12 How.) 299 (1851); *see* J. NOWAK, *et al.*, HANDBOOK ON CONSTITUTIONAL LAW 244 (1978).

6. Mauer v. Hamilton, 309 U.S. 598 (1940); South Carolina State Highway Department v. Barnwell Brothers, Inc., 303 U.S. 177 (1938); Sproles v. Binford, 286 U.S. 374 (1932).

7. Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 524 (1959).

considered especially appropriate for state regulation.[8] But in the recent case of *Kassel v. Consolidated Freightways Corp.*,[9] the Supreme Court held unconstitutional as violative of the Commerce Clause an Iowa statute generally barring sixty-five-foot twin-trailer trucks from state highways. *Kassel* marks a departure from the Supreme Court "hands-off" policy towards state highway safety regulations and could further restrict states' powers to prescribe such regulations.

THE CASE

An Iowa statute[10] generally prohibited the use of sixty-five-foot twin-trailer trucks within the state, while allowing fifty-five-foot single-trailer trucks and sixty-foot twin-trailer trucks.[11] Respondent, Consolidated Freightways Corp., a common carrier operating in forty-eight states under a certificate of public convenience and necessity, was unable to use its sixty-five-foot twin-trailer trucks in Iowa. The carrier filed an action in the United States District Court for the Southern District of Iowa, averring that the Iowa statute unconstitutionally burdened interstate commerce by increasing transportation costs without contributing to highway safety. Respondent sought an injunction prohibiting Iowa from enforcing the challenged statute against the operation of sixty-five-foot twin-trailer trucks on certain interstate highways and roads furnishing access between such interstates and rest, food, fuel, and repair facilities.[12] Iowa claimed the regulations were reasonable safety measures and, therefore, valid under its police power.[13]

The District Court granted the injunction, finding the statute unconstitutional because the evidence showed that the prohibited twin-trailer trucks were as safe as the permitted single-trailer trucks.[14] The United States Court of Appeals for the Eighth Cir-

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8. Mauer v. Hamilton, 309 U.S. 598 (1940); South Carolina State Highway Department v. Barnwell Brothers, Inc., 303 U.S. 177 (1938).

9. ___ U.S. ___, 101 S. Ct. 1309 (1981).

10. IOWA CODE ANN., 321.457 (1975).

11. The specific law in question reads as follows: 6. "No combination of three (3) vehicles coupled together one of which is a motor vehicle, unladen or with load, shall have an overall length, inclusive of front and rear bumpers in excess of sixty feet."

12. Consolidated Freightways Corp. v. Kassel, 475 F. Supp. 544, 546 (S.D. Iowa 1979).

13. *Id.* at 549.

14. *Id.* at 553.

cuit affirmed.[15] The United States Supreme Court, though divided in its reasoning, affirmed (in a four-two-three decision), and agreed that the Iowa statute violated the Commerce Clause of the Constitution.[16]

HISTORY—IN GENERAL

The question of whether states could regulate interstate commerce first arose in *Gibbons v. Ogden*,[17] wherein Chief Justice Marshall speculated that the power could be reserved exclusively for the federal government.[18] The Chief Justice did later recognize, in *Willson v. Black-Bird Creek Marsh Co.*,[19] that states do have police power to regulate local concerns, even though the regulations affect interstate commerce.[20] In the interim between *Gibbons* and *Cooley v. Board of Wardens of Philadelphia*,[21] the Court was unable to formulate a test to distinquish between an impermissible state regulation of interstate commerce and a permissible regulation pursuant to a state's police power.[22]

In *Cooley*[23] the Court determined that the validity of an exercise of state power depends on the nature of the subject of the regulation: if the item is such that national uniformity is needed, federal power is exclusive; if the item is one of local concern requiring different treatment in different locales, states can regulate in the absence of federal legislation.[24]

Another test was enunciated in *Smith v. Alabama*,[25] where the Court drew a distinction between state regulations which directly affect interstate commerce and state police power regulations that

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15. Consolidated Freightways Corp. v. Kassel, 612 F.2d 1064 (8th Cir. 1979).

16. Kassel v. Consolidated Freightways Corp., ___ U.S. ___, 101 S. Ct. 1309 (1981).

17. 22 U.S. (9 Wheat.) 1 (1824). A New York act granting two persons the exclusive steamship navigation rights in New York waters was held violative of the Commerce Clause, since Congress had licensed other vessels to trade in waters which included New York waters.

18. *Id.* at 198-200.

19. 27 U.S. (2 Pet.) 245 (1829).

20. *Id.* at 251-52.

21. 53 U.S. (12 How.) 299 (1851).

22. *See* J. NOWAK, *et al.*, HANDBOOK ON CONSTITUTIONAL LAW 247 (1978).

23. 53 U.S. (12 How.) 299 (1851). A Pennsylvania law that required vessels to use a pilot or pay a fee was upheld as not violative of the Commerce Clause.

24. *Id.* at 319.

25. 124 U.S. 465, 482 (1888). The Court upheld an Alabama statute that required the licensing of locomotive engineers.

indirectly affect commerce. The former were deemed unconstitutional; the latter were declared valid. Forty years later, Justice Stone, dissenting in *Di Santo v. Pennsylvania*,[26] urged the abandonment of the direct-indirect test and the adoption of the balancing test, which became the majority rule in *United States v. Darby*.[27]

The balancing test is used today to determine the validity of state statutes affecting interstate commerce. A recent Supreme Court statement of the test is found in *Pike v. Bruce Church, Inc.*:[28]

> [The] general rule [can] be phrased as follows: Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden posed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.[29]

HISTORY—STATE HIGHWAY SAFETY REGULATIONS

Absent federal legislation, states may prescribe regulations governing highway use if they do not place undue burden on interstate commerce, are reasonable and nondiscriminatory.[30] The negative side of the Commerce Clause curtails state power, but absent congressional action, states can regulate local matters in ways that affect interstate commerce.[31] The Supreme Court has found that state highway safety and conservation statutes, in particular, do

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26. 273 U.S. 34, 44 (1927). The Court struck down a Pennsylvania statute requiring steamship ticket vendors to obtain a license.

27. 312 U.S. 100 (1941). The Court upheld the Fair Labor Standards Act of 1938.

28. 397 U.S. 137 (1970).

29. *Id.* at 142. For the classic work in this area, *see* Dowling, *Interstate Commerce and State Power*, 27 VA. L. REV. 1 (1940).

30. Mauer v. Hamilton, 309 U.S. 598 (1940); South Carolina State Highway Department v. Barnwell Brothers, Inc., 303 U.S. 177 (1938).

31. Railway Express Agency, Inc. v. New York, 336 U.S. 106 (1949); Mauer v. Hamilton, 309 U.S. 598 (1940); South Carolina State Highway Department v. Barnwell Brothers, Inc., 303 U.S. 177 (1938); Sproles v. Binford, 286 U.S. 374 (1932); Morris v. Duby, 274 U.S. 135 (1927).

not violate the Commerce Clause.[32]

State vehicle size regulations have been consistently upheld on the grounds that their purpose is to promote highway safety and conservation, and the resulting effects on interstate commerce are merely incidental.[33] In *Morris v. Duby*,[34] the Supreme Court upheld a 16,500 pound vehicle weight limitation and applied the rule that uniform state highway safety and conservation regulations, applicable to both interstate and intrastate vehicles, do not unconstitutionally burden interstate commerce.[35] Similarly, in *South Carolina State Highway Department v. Barnwell Brothers, Inc.*,[36] a state statute prohibiting the use of trucks wider than ninety inches on state highways was upheld as not unreasonable and, therefore, not an undue restraint on interstate commerce.[37]

Despite language in *Barnwell* which suggests that the rational relation test is the proper one to apply in determining states' rights to issue highway safety regulations,[38] the balancing approach has been generally applied, particularly in recent cases.[39] Applying this balancing approach in *Bibb v. Navajo Freight Lines, Inc.*,[40] the Supreme Court held that an Illinois statute requiring trucks and trailers to have contour mudguards equipped on their rear wheels violated the Commerce Clause. The majority found that the statute, though not discriminatory, unduly burdened interstate commerce in that: (1) due to conflicting legislation in Arkansas, mudguards would have to be changed in order for trailers to operate in both states (a time-consuming and sometimes dangerous operation); and (2) the statute seriously interfered with interlining

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32. South Carolina State Highway Department v. Barnwell Brothers, Inc., 303 U.S. 177 (1938); Morris v. Duby, 274 U.S. 135 (1927).

33. South Carolina State Highway Department v. Barnwell Brothers, Inc., 303 U.S. 177 (1938); Morris v. Duby, 274 U.S. 135 (1927).

34. 274 U.S. 135 (1927).

35. *Id.* at 143.

36. 303 U.S. 177 (1938).

37. *Id.* at 196. Use of ninety-six-inch wide trucks (the prevailing width) would have left no room for passing on some roads.

38. "Since the adoption of one weight or width regulation, rather than another, is a legislative not a judicial choice, its constitutionality is not to be determined by weighing in the judicial scales the merits of the legislative choice and rejecting it if the weight of the evidence presented in court appears to favor a different standard." *Id.* at 191.

39. Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429 (1978); Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520 (1959).

40. 359 U.S. 520 (1959).

operations (the interchanging of trailers between two carriers).[41] Justice Harlan concurred in the result based upon the District Court's finding contour mudguards did not contribute to highway safety.[42] The Court stated that state highway safety measures carry a strong presumption of validity; furthermore, courts should not usurp legislative functions by judging alternative safety measures.[43] Only if the "total effect of the law as a safety measure in reducing accidents and casualties is so slight or problematical as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it," will the court overturn a highway safety statute.[44] Thus the Court balanced the safety effect of the statute against the resulting burden on interstate commerce.

The Court used similar reasoning in *Raymond Motor Transportation, Inc. v. Rice*,[45] a case strikingly similar to *Kassel*. In *Raymond*, the Court held unconstitutional as violative of the Commerce Clause a Wisconsin statute prohibiting sixty-five-foot twin-trailer trucks on state highways.[46] Appellants[47] introduced a great deal of evidence to support their claim that the statute made no contribution to highway safety.[48] The State did not introduce any safety evidence,[49] and instead argued that the appropriate standard was the rational relation test: whether the statute bears a rational relation to highway safety.[50] The Court disagreed and applied the balancing test citing the *Pike* rule,[51] but emphasized the narrowness of its holding in light of the overwhelming one-sidedness of the safety evidence.[52] The concurring opinion stressed the narrow scope of the decision; neither *Pike* nor *Raymond* suggests "that a similar balance would be struck when a State legitimately asserts the existence of a safety justification for a regulation."[53] It

41. *Id.* at 527.
42. Id. at 530 (Harlan, J., concurring opinion).
43. *Id.* at 524.
44. *Id., quoting* Southern Pacific Co. v. Arizona, 325 U.S. 761, 775-76 (1945).
45. 434 U.S. 429 (1978).
46. *Id.*
47. Consolidated Freightways Corp. was also an appellant-plaintiff in Raymond.
48. 434 U.S. at 436.
49. *Id.* at 437.
50. *Id.* at 442-43.
51. *Id.* at 441.
52. *Id.* at 447.
53. *Id.* at 449 (Blackmun, J., concurring opinion).

is against the background of the *Raymond* decision that *Kassel* is now considered.

ANALYSIS

The plurality in *Kassel* recognized the same principles of law as did the Court in *Raymond:* (1) the Court is most reluctant to invalidate state highway safety regulations;[54] (2) "if safety justifications are not illusory, the Court will not second guess legislative judgment about their importance in comparison with related burdens on interstate commerce;"[55] (3) challengers of state highway safety regulations must overcome a "strong presumption of validity;"[56] (4) regulations that only marginally affect safety and substantially interfere with interstate commerce are invalid under the Commerce Clause;[57] and (5) the Court's inquiry requires a weighing process—"a sensitive consideration of the weight and nature of the state regulating concern in light of the extent of the burden imposed on the course of interstate commerce."[58]

Applying these principles, the plurality concluded the Iowa statute unconstitutionally burdened interstate commerce.[59] Though the plurality stated, "[t]his case is *Raymond* revisited,"[60] an important difference exists between the two cases. The Court in *Raymond* found that the state "made no effort to contradict . . . evidence of comparative safety with safety evidence of its own;"[61] "it virtually defaulted in its defense of the regulation as a safety measure."[62] By contrast, all three federal courts in *Kassel* acknowledged that Iowa zealously presented safety arguments and introduced voluminous evidence to support its safety claim.[63]

Although the plurality acknowledged that Iowa made a better effort to support the safety rationale than did Wisconsin in *Raymond*, it nevertheless accepted the District Court's finding that the

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54. ___ U.S. at ___, 101 S. Ct. at 1315.

55. *Id.* at ___, 101 S. Ct. at 1316, *quoting* Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429, 449 (1978) (Blackmun, J., concurring opinion)).

56. *Id., quoting* Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 524 (1959).

57. *Id.*

58. *Id., quoting* Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429, 441 (1978).

59. *Id.*

60. *Id.*

61. 434 U.S. at 437.

62. *Id.* at 444.

63. ___ U.S. ___, 101 S. Ct. at 1331-32 (Rehnquist, J., dissenting opinion).

evidence established that the prohibited twin-trailer trucks were as safe as the permitted single-trailer trucks.[64] The plurality also accepted the District Court's finding that the statute substantially burdened interstate commerce in that it increased transportation costs and miles driven, because respondent had to reroute its truck around Iowa or use additional trucks to move the same quantity of goods through the state.[65] Thus, in applying the aforementioned legal principles, the plurality used the balancing test and concluded that respondent overcame "the strong presumption of validity" accorded the statute by demonstrating that the safety justifications were illusory (the statute only marginally affected highway safety) and the regulation substantially burdened interstate commerce.[66]

The concurring opinion did not rely on the safety arguments; instead, it reviewed the legislative history and concluded that Iowa's purpose in refusing to allow the longer trucks on its highways was to deflect through traffic—an unconstitutional discrimination against interstate commerce.[67] In 1974, the Iowa Legislature voted to increase the truck length limitation to conform to the standards of surrounding states,[68] but the Governor vetoed the legislation.[69] The legislative response to the veto was the passage of a "border cities exemption" which permitted cities near state borders to allow sixty-five-foot twin-trailer trucks while limiting trucks to sixty feet elsewhere throughout the state.[70] Because the

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64. *Id.* at ___, 101 S. Ct. at 1316. Iowa's evidence demonstrated that the prohibited trucks took longer to pass, could only be backed for short distances, and were more likely to jackknife than permitted fifty-five-foot single-trailer trucks. The District Court and the Supreme Court plurality found the longer passing time and limited backing ability irrelevant on interstate highways. As for the jackknifing factor, the plurality noted that the prohibited sixty-five-foot twin-trailer trucks are less likely to jackknife than the permitted sixty-foot twin-trailer trucks. In addition, respondent introduced accident statistics that demonstrated no significant difference in the accident, injury and death rate of the prohibited longer trucks as compared with similar rates for the allowed fifty-five-foot single-trailer trucks. *Id.* at ___, 101 S. Ct. at 1316-17.

65. *Id.* at ___, 101 S. Ct. at 1318.

66. *Id.* at ___, 101 S. Ct. at 1320.

67. *Id.* at ___, 101 S. Ct. at 1322 (Brennan, J., concurring opinion).

68. Iowa House File 671 (1974).

69. In his veto message, the Governor noted that the bill, "would benefit only a few Iowa-based companies while providing a great advantage for out-of-state trucking firms and competitors at the expense of our Iowa citizens." Governor's Veto Message of March 2, 1974, reprinted in App. 626.

70. IOWA CODE ANN. § 321.457(7) (West Supp. 1981).

concurring justices found the purpose of the Governor and legislature was to deflect through traffic, they declared the regulation unconstitutional.[71]

The dissent relied on the rational relation test. Justice Rehnquist wrote that once the Court determines that the state law is a valid safety measure, the only balancing the Court should do is to determine whether "the asserted safety justification, although rational, is merely a pretext for discrimination against interstate commerce."[72] He concluded Iowa's evidence demonstrated that the statute was a rational safety measure, not an attempt to discriminate against interstate commerce.[73]

The dissent points out several weaknesses in the reasoning of the plurality and concurring opinions. First, the plurality declared Iowa's safety justifcations to be illusory because they have limited applicability to interstate highways.[74] The injunction granted by the District Court, however, permits the trucks to travel limited distances on roads furnishing access between rest stops and the interstates.[75] The plurality ignored the characteristics of these access roads in rejecting Iowa's asserted safety justifications. Thus, it is possible that Iowa's safety justifications are applicable to these access roads and the longer trucks could add dangers to highway traffic on these roads. Since all courts considering the case ignored the characteristics of these roads, it appears the granted injunction was overbroad.

More importantly, both the plurality and concurring opinions erroneously relied on the Governor's veto message and the "border cities exemption" to find an impermissible motive to discriminate against interstate commerce.[76] Iowa's sixty-foot limit became law in 1963 when few states permitted sixty-five-foot twin-trailer trucks. Because most states had similar regulations, few carriers used the longer trucks, so Iowa's statute did not impede interstate commerce. By the time the *Kassel* action began, all surrounding states had increased their length limitations.[77] Iowa, for whatever

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71. ___ U.S. at ___, 101 S. Ct. at 1323 (Brennan, J., concurring opinion).
72. *Id.* at ___, 101 S. Ct. at 1326-27 (Rehnquist, J., dissenting opinion).
73. *Id.* at ___, 101 S. Ct. at 1327-34 (Rehnquist, J., dissenting opinion).
74. *Id.* at ___, 101 S. Ct. at 1317.
75. 475 F. Supp. 544, 554 (S.D. Iowa 1979).
76. ___ U.S. at ___, and ___, 101 S. Ct. at 1319 and 1323.
77. MINN. STAT. ANN. § 169.861 (West Supp. 1981); ILL. ANN. STAT. ch. 95 ½, § 15-107 (Smith-Hurd Supp. 1981); MO. ANN. STAT. § 304.170 (Vernon Supp. 1981); NEB. REV. STAT. § 39-6,179 (Supp. 1979); S.D. CODIFIED LAWS ANN. § 32-22-

reasons, decided not to increase its limitations. The effect of the *Kassel* decision, is to declare Iowa's law unconstitutional, not because it was invalid when passed, but because, by 1979, factors outside the state combined to discourage interstate truck travel through Iowa. Such factors—the passage of longer truck length limitations in surrounding states and increased carrier use of longer trucks—occurred independently of any action by Iowa. The impermissible purpose found by the plurality and concurrence results, therefore, not from enacting protectionist legislation, but from not enacting new legislation.[78]

Kassel goes further than any previous Supreme Court decision which invalidated state highway safety regulations. It is the only case in which the Court has struck down a truck length limitation when the state submitted evidence demonstrating safety justifications for the regulation. Though the plurality did not address the effect of this decision on other states' vehicle length limitations, the implication of *Kassel* is clear: the seventeen states[79] that still prohibit sixty-five-foot twin-trailer trucks on their interstates must discover new safety evidence to justify such restrictions if they wish to successfully defend them against Commerce Clause challenges. Since the characteristics of interstate highways throughout the country are generally uniform,[80] unless safety evidence can be found other than that which Iowa presented, it appears that those seventeen states will be unsuccessful in defending Commerce Clause challenges to their shorter truck length limitations as applied to interstate highways.

CONCLUSION

In holding Iowa's truck length limitation unconstitutional because the state failed to increase it to conform to the regulations of surrounding states, thereby resulting in a burden on interstate commerce, the Supreme Court has sent state legislatures a message: when vehicle size regulations on interstate highways are in-

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10 (Supp. 1981).

78. *See* ___ U.S. at ___, 101 S. Ct. at 1334 (Rehnquist, J., dissenting opinion).

79. Doubles are prohibited in Maine, New Hampshire, Vermont, Massachusetts (except turnpike), Rhode Island, Connecticut, Pennsylvania, West Virginia, Virginia, Tennessee, North Carolina, South Carolina and Alabama. Doubles in excess of fifty-five feet are prohibited in New York (longer permitted on turnpike, New Jersey, Mississippi, and Georgia).

80. The Secretary of Transportation must apply geometric and construction standards uniformly throughout all the states. 23 U.S.C. § 109 (b.) (1976).

volved, the judicial deference traditionally given to state highway safety regulations may no longer be extended. Unless states can clearly demonstrate valid safety justifications for their regulations, minority states may have to conform their truck length limitations (when applied to interstate highways) to those of the majority of states.

Despite the aforementioned flaws in the plurality and concurring opinions, it appears this decision was necessary because, as respondent demonstrated, by 1979, Iowa's statute did substantially burden interstate commerce.[81] One final question remains: when will the Court strike down state legislation, valid when passed, that due to statutory changes in other states, eventually burdens interstate commerce? *Kassel* indicates that the past validity of a statute is of little importance; the key factor is its current effect on interstate commerce coupled with its ability to effectuate a legitimate local interest. It appears that the balancing approach will be applied to weigh states' justifications supporting statutes which affect interstate commerce against the resulting burden on such commerce in light of the most current conditions. There appears to be little cause for alarm, however, among states' rights advocates. As long as changing conditions do not appreciably reduce the local public interest or the statute's effectuation of such interest, the increased burden on interstate commerce will probably not be enough to tip the scales in favor of invalidation. Restated in terms of the *Kassel* decision, if the Court had found Iowa's safety justifications to be legitimate, the statute would probably have been upheld despite its increasing burden on interstate commerce.

Like state legislatures, Congress should also discern a message from the decision: it is time to enact federal legislation governing the use of carriers on interstate highways. In 1980, the Senate passed a bill that would have pre-empted the field of truck lengths by setting a national limit of sixty-five feet, but the House of Representatives took no action on the bill.[82] Until such legislation is enacted, the Supreme Court will continue to make essentially legislative decisions concerning carrier use of the interstate highway system.

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81. ___ U.S. at ___, 101 S. Ct. at 1318.

82. S.B. 1360, 96th Cong., 2d Sess., 126 CONG. REC. S1661, 1665 (1980).