

Supreme Court of the United States

ROWE

v.

NEW HAMPSHIRE MOTOR TRANSPORT ASSOCIATION

No. 06-457.

Argued Nov. 28, 2007.

Decided Feb. 20, 2008.

Justice BREYER delivered the opinion of the Court.

We here consider whether a federal statute that prohibits States from enacting any law “related to” a motor carrier “price, route, or service” pre-empts two provisions of a Maine tobacco law, which regulate the delivery of tobacco to customers within the State. We hold that the federal law pre-empts both provisions.

I

A

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In 1980, Congress deregulated trucking. And a little over a decade later, in 1994, Congress similarly sought to pre-empt state trucking regulation. In doing so, it borrowed language from the Airline Deregulation Act of 1978 and wrote into its 1994 law language that says: “[A] State ... may not enact or enforce a law ... related to a price, route, or service of any motor carrier ... with respect to the transportation of property.”

The State of Maine subsequently adopted An Act To Regulate the Delivery and Sales of Tobacco Products and To Prevent the Sale of Tobacco Products to Minors, two sections of which are relevant here. The first section forbids anyone other than a Maine-licensed tobacco retailer to accept an order for delivery of tobacco. It then adds that, when a licensed retailer accepts an order and ships tobacco, the retailer must “utilize a delivery service” that provides a special kind of *recipient-verification* service. . . .

The second section forbids any person “knowingly” to “transport” a “tobacco product” to “a person” in Maine unless either the sender or the receiver has a Maine license. . . .

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II

A

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In *Morales*, the Court determined: (1) that “[s]tate enforcement actions *having a connection with, or reference to*” carrier “ ‘rates, routes, or services’ are pre-empted,” (2) that such pre-emption may occur even if a state law’s effect on rates, routes or services “is only indirect,” (3) that, in respect to pre-emption, it makes no difference whether a state law is “consistent” or “inconsistent” with federal regulation, and (4) that pre-emption occurs at least where state laws have a “significant impact” related to Congress’ deregulatory and pre-emption-related objectives.

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B

In light of *Morales*, we find that federal law pre-empts the Maine laws at issue here. Section 1555-C(3)(C) of the Maine statute forbids licensed tobacco retailers to employ a “delivery service” unless that service follows particular delivery procedures. In doing so, it focuses on trucking and other motor carrier services (which make up a substantial portion of all “delivery services,” § 1551(1-C)), thereby creating a direct “connection with” motor carrier services.

At the same time, the provision has a “significant” and adverse “impact” in respect to the federal Act’s ability to achieve its pre-emption-related objectives. The Solicitor General and the carrier associations claim (and Maine does not deny) that the law will require carriers to offer a system of services that the market does not now provide (and which the carriers would prefer not to offer). And even were that not so, the law would freeze into place services that carriers might prefer to discontinue in the future. The Maine law thereby produces the very effect that the federal law sought to avoid, namely, a State’s direct substitution of its own governmental commands for “competitive market forces” in determining (to a significant degree) the services that motor carriers will provide.

We concede that the regulation here is less “direct” than it might be, for it tells *shippers* what to choose rather than *carriers* what to do. Nonetheless, the effect of the regulation is that carriers will have to offer tobacco delivery services that differ significantly from those that, in the absence of the regulation, the market might dictate. . . .

. . . That presumption means that the Maine law imposes civil liability upon the carrier, not simply for its knowing transport of (unlicensed) tobacco, but for the carrier’s *failure sufficiently to examine every package*. The provision thus requires the carrier to check each shipment for certain markings and to compare it against the Maine attorney general’s list of proscribed shippers. And it thereby directly regulates a significant aspect of the motor carrier’s package pick-up and delivery service. In this way it creates the kind of state-mandated regulation that the federal Act pre-empts.

Maine replies that the regulation will impose no significant additional costs upon carriers. But even were that so (and the carriers deny it), Maine’s reply is off the mark. As with the

recipient-verification provision, the “deemed to know” provision would freeze in place and immunize from competition a service-related system that carriers do not (or in the future might not) wish to provide. To allow Maine to insist that the carriers provide a special checking system would allow other States to do the same. And to interpret the federal law to permit these, and similar, state requirements could easily lead to a patchwork of state service-determining laws, rules, and regulations. That state regulatory patchwork is inconsistent with Congress' major legislative effort to leave such decisions, where federally unregulated, to the competitive marketplace. . . .

C

Maine's primary arguments focus upon the *reason why* it has enacted the provisions in question. Maine argues for an exception from pre-emption on the ground that its laws help it prevent minors from obtaining cigarettes. In Maine's view, federal law does not pre-empt a State's efforts to protect its citizens' public health, particularly when those laws regulate so dangerous an activity as underage smoking.

. . . The Act says nothing about a public health exception. To the contrary, it explicitly lists a set of exceptions (governing motor vehicle safety, certain local route controls, and the like), but the list says nothing about public health. . . .

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. . . Given the number of States through which carriers travel, the number of products, the variety of potential adverse public health effects, the many different kinds of regulatory rules potentially available, and the difficulty of finding a legal criterion for separating permissible from impermissible public-health-oriented regulations, Congress is unlikely to have intended an implicit general “public health” exception broad enough to cover even the shipments at issue here.

This is not to say that this federal law generally pre-empts state public health regulation: for instance, state regulation that broadly prohibits certain forms of conduct and affects, say, truckdrivers, only in their capacity as members of the public (*e.g.*, a prohibition on smoking in certain public places). We have said that federal law does not pre-empt state laws that affect rates, routes, or services in “too tenuous, remote, or peripheral a manner.” And we have written that the state laws whose “effect” is “forbidden” under federal law are those with a “*significant* impact” on carrier rates, routes, or services.

In this case, the state law is not general, it does not affect truckers solely in their capacity as members of the general public, the impact is significant, and the connection with trucking is not tenuous, remote, or peripheral. . . .

Maine adds that it possesses legal authority to prevent *any* tobacco shipments from entering into or moving within the State, and that the broader authority must encompass the narrower authority to regulate the *manner* of tobacco shipments. But even assuming purely for argument's sake that Maine possesses the broader authority, its conclusion does not follow. To accept that conclusion would permit Maine to regulate carrier routes, carrier rates, and carrier services, all on the ground that such regulation would not restrict carriage of the goods as seriously as would a total ban on shipments. And it consequently would severely undermine the effectiveness of Congress' pre-emptive provision. Indeed, it would create the very exception that

we have just rejected, extending that exception to all other products a State might ban. We have explained why we do not believe Congress intended that result.

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For these reasons, the judgment of the Court of Appeals is affirmed.

Justice GINSBURG, concurring.

. . . I write separately to emphasize the large regulatory gap left by an application of the FAAAA perhaps overlooked by Congress, and the urgent need for the National Legislature to fill that gap.

* * *

Justice SCALIA, concurring in part.

I join the opinion of the Court, except those portions that rely on the reports of committees of one House of Congress to show the intent of that full House and of the other-with regard to propositions that are apparent from the text of the law, unnecessary to the disposition of the case, or both.