No. 161

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937

SOUTH CAROLINA STATE HIGHWAY DEPARTMENT ET AL., *Appellant,*
v.
BARNWELL BROTHERS, INC., ET AL., *Appellees.*

MOTION OF STATE OF TEXAS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

THE STATE OF TEXAS, by the undersigned, its Attorney General, and Assistant Attorney General, respectfully moves this Honorable Court for leave to file in this case the accompanying brief as *amicus curiae.* The ground of this motion, which is set out more fully in the Preliminary Statement of the brief, is that the State of Texas is vitally interested in the important question of State's rights, which is involved.

We are deeply concerned because of the effect this case may have upon the laws of Texas which at present provide for a net load limit of 7,000 pounds for trucks.

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Attorney General of Texas.

GEORGE P. KIRKPATRICK,
Assistant Attorney General of Texas.

SUBJECT INDEX

AUTHORITIES

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BRIEF FOR STATE OF TEXAS AS AMICUS CURIAE

I.

Preliminary Statement.

The opinion of the court below is officially reported in *Barnwell Brothers, Inc. et al. v. South Carolina State Highway Department et al.,* 17 Fed. Supp. 803.

The bill of complaint was filed by certain shippers and by certain motor carriers engaged in truck transportation for compensation over South Carolina highways in interstate commerce assailing a statute of that State imposing restrictions upon the size and weight of motor trucks. The District Court of the United States for the Eastern District of South Carolina held that the statute imposed an unreasonable burden upon interstate commerce when applied to commercial trucks operating in interstate

commerce upon certain designated highways and other "standard concrete highways," and authorized an injunction against the enforcement of the size and weight restrictions against such trucks operating upon such highways.

Almost immediately after the lower court's decision was announced in this case, hereinafter referred to as the "South Carolina case," a bill of complaint was filed in the United States District Court for the Northern District of Texas by certain motor carriers for hire engaged in interstate commerce, attacking Sections 5 and 5-b of Article 827-A of the Penal Code of Texas, which became effective January 1, 1932, and which prohibits the transportation of a net truck load of more than 7,000 pounds over the highways of Texas. The style of that case is *Houston and North Texas Motor Freight Lines et al. v. L. G. Phares et al.,* 19 Fed. Supp. 420, decided May 14, 1937. Although the bill of complaint in the Texas case followed closely the bill of complaint and the opinion of the lower court in the *South Carolina case, the* United States District Court for the Northern District of Texas dismissed complainant's bill. The decision was not appealed.

II.

The State of Texas Is Interested in Preserving Its Exercise of Police Power in Regulating the Use of Its Highways.

The court in the *South Carolina case* recognized the principle that South Carolina had the right to

prescribe reasonable regulations pertaining to the use of its highways in order to protect and promote the public safety and welfare and to preserve the highways. That right, however, was practically nullified by the court's absolute disregard of the findings of fact presumably made by the legislature of South Carolina when the load limit law was enacted, and by the court's holding in effect that it has the power to substitute its findings for those of the legislature and its exercise of discretion for that of the sovereign State of South Carolina. If such a decision is sustained the future of the highway systems of the several States will rest not with the people whose money has made those systems possible, but will depend upon the ability of astute litigants and counsel to convince the court that it should substitute its judgment for that of the legislature as to the manner and degree that a valid power is to be exercised. The State of Texas is vitally interested in preventing such a result.

As of December 31, 1935, it was estimated by the American Association of State Highway Officials, April, 1936, that there was a total of 220,643 miles of rural highways in Texas, 20,461 miles (record of U. S. Bureau of Public Roads) of which are included in the State Highway System. For the year 1935 there were 1,382,104 motor vehicles registered in the State of Texas (record of U. S. Bureau of Public Roads), giving 6.3 motor vehicles per mile of rural highways, and 67.5 motor vehicles per mile of rural highways in the State Highway System. The latter figure varies for the different States

from 7.1 in Nevada to 455.1 in New Jersey. The decision in the *South Carolina case* emphasizes what various States have done in the matter of regulation of the use of the highways, and leans toward adoption by the court, in utter disregard of legislative discretion and prorogative, of an engineering formula relating to a static wheel load to apply indiscriminately to all States. The unfairness of such a trend is obvious. At the present time the construction and maintenance of State highway systems is largely dependent upon funds received from motor vehicle taxes. The wide disparity between the States in the number of motor vehicles per mile renders it impossible to create through taxation an equal ability to build and maintain roads. The same inability is likewise brought about by the equally wide variance in population and wealth in the States per mile of highway.

In the *South Carolina case* the court comments at length upon the Federal aid which has been granted State highway departments. The Texas State Highway Department was created in 1917. Its records reflect that through August 31, 1935, it has actually spent $383,627,213 on the State Highway System. That figure does not include the many millions of dollars spent by counties on those same roads before they were incorporated in the State Highway System. The first grant of Federal aid was made to Texas in 1918. The total of those grants through August 31, 1935, is $91,416,630. That figure loses its significance when it is considered that it represents less than the amount taken by the Federal

government from the people of Texas through excise taxes on gasoline, tires, and lubricating oils, all products regarded as legitimate objects of taxation in order to provide funds for highway construction and maintenance. For example, the Federal tax of 1c per gallon on gasoline yielded $8,190,922 in Texas during the year 1935. There is no basis either in law or in fact for the assumption that grants of Federal aid to the Highway Department of Texas have purchased the right of way for interstate trucks over the Texas highways. Such a conclusion was at least hinted at in the *South Carolina case* with reference to South Carolina highways.

The court's decision has nullified the load limit law as to certain highways, and left it effective as to others. That action is calculated to develop an increased use of the best highways by a class of traffic, to-wit, exceedingly heavy trucks, which constitutes a grave menace to the safety of other members of the public using those highways. The largest and heaviest trucks, and consequently the most inimicable to public safety and the most detrimental to the highways, would be concentrated on the best highways. The members of the public generally will be forced to choose between abandoning the use of the best highways or assuming the risks incident to their use with the concentration thereon of all of the most dangerous traffic in the entire State. Thus to enable a few to profit the great majority of the public would be penalized for having spent large sums of money to construct the best types of highways.

In the *South Carolina case* the court appears to

overlook entirely the fact that the gross weight limit law was made applicable to all of the highways in the State, and that its reasonableness should not be made to depend solely upon its application to a particular highway. If the load limit law is reasonable when applied to the entire highway system of the State, it should not be stricken either in whole or in part by the fact that a small percentage of the highways may be capable of sustaining a greater weight. This is true first because the load limitation is designed as much to protect life and public safety as it is to preserve the highways, and second, if public regulations and restrictions must vary so as to conform with mathematical exactness to the potential carrying capacities of each type of construction, having due regard for both surface and subsurface conditions, the problem of enforcement would be so great as to amount to a practical nullification of this exercise of the police power. For instance, in Texas the records of the Maintenance Section of the Texas State Highway Department show that in January, 1937, the following general types of highways were included in the system of State highways:

Type	*Miles*
Earth	5,100
Gravel and shell	1,137
Bituminous top (varying from 3/8 inch to 1½ inches thick)	7,840
Asphalt top	2,107
Concrete	4,703
Portion through cities	550

The subsurface conditions present innumerable variations and frequently every type of construction will be found on a single State highway. There is only one highway in Texas, namely National Highway No. 75 from the Red River to Galveston, which consists of concrete construction or its equivalent (brick) throughout, but even here the width of 18 feet over long portions thereof renders this highway unsafe for the general public. In many instances the width of a single highway will present wide variation in a relatively short distance.

It was only a few years ago *after* the highways of Texas had been deluged with cotton trucks transporting hundreds of thousands of bales of cotton that the people of Texas wrote the present 7,000 pound net load limit law on the statute books of this State. It is noteworthy that the 7,000-pound net load limit law was not enacted until *after* the citizens of Texas had seen some of their best highways severely damaged, worn out and destroyed by commercial trucks. They had also experienced the inconveniences, congestion, hazards and dangers as a result of the inordinate use of their highways by motor trucks moving large and heavy loads of freight.

The 7,000-pound net load limit law of Texas, applicable to trucks engaged in both interstate and intrastate commerce, was sustained by this court in *Sproles v. Binford,* 286 U. S. 374, decided May 23, 1932. Not only has Texas sought to protect the life and limb and insure the safety of its citizens, and in so doing conserve and protect its highways, by

means of a net load limit for trucks, but by reasonable regulation, applicable alike to commercial trucks engaged both in interstate and intrastate commerce, this State has controlled the use of its highways, and the number of such motor trucks operating over its highways. These laws have been challenged and sustained by this honorable court. *Stephenson v. Binford,* 287 U. S. 251; *Wald Transfer & Storage Company v. Smith,* 4 Fed. Supp. 61, affirmed 290 U. S. 596.

In *Stephenson v. Binford, supra,* this court made a comprehensive review of the Texas Motor Carrier laws, and said:

> "The Texas Statute, on the contrary, rests definitely upon the policy of highway conservation * * * ."

In *New-Way Lumber Company v. Smith,* 96 S. W. (2d) 282, decided July 15, 1936, the Supreme Court of Texas, referring to the Motor Carrier Laws of Texas, said that the dominant purpose of the laws is the safety of the public from injury and loss of life through the operation of motor vehicles on the public highways. The court further stated that these laws have for their reasonable purpose the protection of the highways. Even with the present restrictive truck laws in full force and effect in Texas, yet according to a tabulation contained in "1935 Texas Highway Taxes and Truck Accidents," made and published by the Railway and Express Employees Association of Texas, there were, during this one year, 2,480 truck accidents in Texas, in

which 572 persons were killed and 3,327 injured. The same publication contains the following statistical data with reference to accidents involving motor trucks on Texas highways:

	1932	1933	1934	1935
Number of accidents recorded	717	1487	1701	2480
Number of people killed	241	362	515	572
Number of people injured	887	1972	2314	3327

Data showing the following has been collected from authoritative sources to be included in the 1936 edition of the same publication:

Class	Number of Vehicles	—People Killed— Total	Per 1000 Vehicles
All motor vehicles	1,474,302	1,974	1-1/3
All motor trucks	284,829	576	2
Regulated motor trucks for hire	4,111	32	7-3/4

If all Texas motor vehicles had killed at the same rate as all regulated trucks for hire, Texas Highway deaths would have been 11,470 instead of 1,975 for 1936. Are the lives of Texas citizens to be further endangered through the use of their highways by larger and heavier trucks operating for hire because a court, by looking with favor on a certain engineering formula as applied to a particular type of highway construction, overturns the exercise of legislative discretion and judgment based on an intimate knowledge of the facts and a bitter experience of the people? The interest of Texas in this Hon-

orable Court's decision in the *South Carolina case* is manifest.

Since other briefs filed herein contesting the propriety of the decision contain thorough discussions of the evidence in the *South Carolina case* and of the relation of the court's findings to the evidence, we shall make but brief mention of those matters. And as the lower court very properly held that the Federal government has not attempted to regulate the size and weight limitations per truck, we will also omit any discussion of that question.

The broad constitutional question presented is whether a Federal court can enjoin the exercise of police power by a State in a field where that power is conceded, simply by finding that a different exercise of the police power, in the opinion of the court, would have been more prudent, and without having before it evidence which conclusively proves that there is no possible basis upon which the exercise of police power could be sustained as reasonably necessary to effect the purpose sought to be accomplished. In other words, where the evidence is conflicting and the attendant presumptions in favor of a proper exercise of the police power by the legislature of a State are not conclusively rebutted, can a Federal court substitute its findings for those of the legislature and thus nullify a State statute pertaining to a matter over which the State has the exclusive right to legislate within constitutional limits?

All italics appearing herein are ours.

III.

BRIEF SUMMARY OF ARGUMENT

1. Since it is conceded that the State has the exclusive right, within constitutional limits, to prescribe regulations pertaining to the use of its highways for the purpose of protecting life and safety and preserving the highways, every reasonable presumption will be indulged that a particular regulation prescribed by a State is reasonably necessary to attain the result sought to be accomplished; and this presumption continues until a complainant conclusively rebuts it by bringing forward evidence to show there is no conceivable basis upon which the regulation can find support. A judicial finding of unreasonableness based on conflicting or inconclusive evidence is an invasion by the judiciary of the fact finding function of the legislature. If there be doubt as to the existence of reasonable factual support for the legislative finding, it must stand. *Corporation Commission v. Lowe,* 281 U. S. 431, 438; *Pacific States Box and Basket Company v. White,* 296 U. S. 176, 185; *O'Gorman & Young v. Hartford Fire Insurance Co.,* 282 U. S. 251, 257, 258.

2. Reasonable restrictions imposed by a State upon the use of its highways, applicable alike to both intrastate and interstate motor vehicles, cannot be set aside merely because a Federal Court, on conflicting evidence, reaches a conclusion different from that reached by the State Legislature, or because an enforcement of the regulation would prove financially burdensome to truck owners operating

motor vehicles for hire over the highways in interstate commerce, and to certain business interests in the State. *Raft v. Van Deman & Louis Company,* 240 U. S. 342, 357; *Hebe Company v. Shaw,* 248 U. S. 297, 303; *Standard Oil Company v. Maryville,* 279 U. S. 582, 586; *O'Gorman & Young v. Hartford Fire Insurance Company,* 282 U. S. 251; *Morris v. Duby,* 274 U. S. 135, 144; *Sproles v. Binford,* 286 U. S. 374, 388 and 399, and *Bayside Fish Flour Company v. Gentry,* 297 U. S. 422, 427, 428.

3. So long as the regulation by a State of the use of its highways finds some reasonable support either in the evidence or the presumptions favoring its validity, it is immaterial that the regulations of a majority of the other States differ in degree, or that national organizations, primarily interested in uniformity of regulation and not in protecting life or safety in a particular State or preserving the highways of that State, recommend a different regulation. *Sproles v. Binford,* 286 U. S. 374, 390 and cases there cited.

4. One of the justifiable purposes of the South Carolina Weight Limit Law, as announced by the legislature, is to "permit the highways to be used freely and safely by the traveling public," in that connection it being found by the legislature that "heavy motor trucks * * * endanger the safety and lives of the traveling public." In addition to common experience, of which courts take judicial knowledge, and the legislative finding, the reasonableness of which has not been conclusively negatived, there is ample evidence in the record to war-

rant a reasonable mind in reaching the conclusion that the South Carolina Weight Limit Law is reasonably necessary to afford adequate protection to the safety and lives of members of the traveling public. Under such circumstances the court has no alternative but to sustain the law. *Buck v. Kuykendall,* 267 U. S. 307, 315; *Sproles v. Binford,* 286 U. S. 374, 385; *Continental Baking Company v. Woodring,* 286 U. S. 352, 364; *Bradley v. Public Utilities Commission of Ohio,* 289 U. S. 92, 96; *Daniel v. John P. Nutt Company,* 185 S. E. 25, certiorari denied, 297 U. S. 724, and *Sage v. Baldwin,* 55 F. (2d) 968, 969.

5. The lower court's twenty-third finding of fact that modern type vehicles engaged in interstate commerce are safer on the highways than overloaded light trucks forms no basis for its further finding that a gross weight limit of 20,000 pounds has no reasonable relation to the protection of the lives and safety of members of the traveling public. Overloaded light trucks may be equally dangerous, less dangerous, or more dangerous than the heavier trucks, yet a police regulation cannot be stricken because it is not all-embracing and does not attempt to prevent every existing evil. If the Legislature of South Carolina finds that the overloaded light truck constitutes an undue menace, presumably appropriate regulation will be provided. In the meantime every danger to the traveling public should not be given free rein because possibly one has been overlooked. *Euclid v. Ambler Realty Co.,* 272 U. S. 365; *Purity Extract & Tonic Co. v. Lynch,* 226 U. S.

192; *Silz v. Hesterberg,* 211 U. S. 31; *James-Dickson Company v. Harry,* 273 U. S. 119, 125; and *Holyoke Water Power Co. v. American Writing Paper Co.,* 300 U. S. 324.

6. State statutes limiting the size and weight of motor vehicles, equally uniform in their application to interstate and intrastate commerce, do not unreasonably burden interstate commerce or otherwise violate the Constitution. *Morris v. Duby,* 274 U. S. 135; *Sproles v. Binford,* 286 U. S. 374; *Houston & North Texas Motor Freight Lines v. Phares,* 19 F. Supp. 420; *Werner Transportation Co. v. Hughes,* 19 F. Supp. 425.

7. If the regulation of the size and weight of the motor vehicles using the highways has any reasonable relation to either safety or preserving the highways, it is immaterial that the regulation does not conform with precise mathematical exactness to the very least restriction which might serve the purposes sought to be accomplished. *Sproles v. Binford, supra,* 388; *Bunting v. Oregon,* 243 U. S. 426, 437, 438; *Hebe Co. v. Shaw,* 248 U. S. 297, 303; *Everard's Breweries v. Day,* 265 U. S. 545, 559; *Hicklin v. Coney,* 290 U. S. 169, 173; and *Bayside Fish Flour Co. v. Gentry,* 297 U. S. 422, 427, 428.

8. By adopting a weight formula based on static wheel load in determining the gross weight which a particular type of pavement can successfully withstand, the court has fallen into error in that it is a matter of common knowledge that the stress and strain on highways is determined by running wheel

loads which vary under driving conditions, and not by static wheel loads. The only limitation which can be placed on running wheel loads is a restriction of the gross weight because under certain conditions of operation practically the entire gross weight will be borne by one wheel. Consequently, a limitation of 20,000 pounds gross weight would frequently mean a wheel load of much more than 8000 to 9000 pounds, which seems to represent, under the court's seventeenth finding of fact, the weight which the standard pavement can be reasonably expected to bear. In any event, the determination of this engineering controversy was for the legislature. *Werner Transportation Co. v. Hughes,* 19 F. Supp. 425, decided June 18, 1937.

9. To be valid it is not necessary that a State fix different weights and sizes for trucks transporting property over each separate road, and/or part thereof, in the State, it being sufficient if the restriction, bearing in mind all the types, kinds, and widths of pavements, subsurface conditions and bridges, has a reasonable relation to protecting safety and preserving the highways. *Sproles v. Binford,* 286 U. S. 374, and see authorities referred to under paragraph 5 above. If the requirement was otherwise, each type of construction, each variance in width, and each change of subsurface conditions would necessitate a different restriction. Under such conditions, it is manifest that the difficulties of enforcement would amount to a practical nullification of all restrictions.

IV.

ARGUMENT

The South Carolina statute imposing size and weight restrictions is a reasonable exercise of the State's police power as applied to trucks transporting property over all the highways of that State, and the width and weight limitations have a reasonable relation to the protection of life and limb and highway conservation, and no unreasonable burden is placed upon interstate commerce.

The South Carolina Act was directed not primarily at the use of the highways by a particular carrier, but at the use thereof by carriers of property generally, and for the sole purpose of protecting the safety of persons having the primary right to use the highways and to preserve the highways for their primary uses. This dual purpose of highway protection and conservation, and the promotion of public safety is clearly shown by the Act itself (South Carolina Statutes at Large of 1933, page 341), a portion of which is as follows:

> "PUBLIC POLICY.—Be It Enacted by the General Assembly of the State of South Carolina: It is hereby declared to be the public policy of this State that heavy motor trucks, alone or in combination with other trucks, increase the cost of highway construction and maintenance, interfere with and limit the use of the highways for normal traffic thereon, and endanger the safety and lives of the traveling public, and that the regulations embodied in this act are necessary to achieve economy in highway costs, and to permit the highways to

be used freely and safely by the traveling public."

The declaration of policy contained in the Act, in the light of which *every word* in the Act must be read, leaves no doubt that the *object* of the law is legitimate. The means adopted by South Carolina to accomplish the legitimate end in view are not prohibited, but in principle have been expressly approved by this court.

There are approximately 60,000 miles of roads of all kinds in South Carolina. The lower court sustained the validity of the size and weight limitations as applicable to about 57,500 miles, or 96 per cent of all the roads, but denied the validity of the limitations as applied to trucks operating over some 2,400 miles of highway, or 4 per cent of the total mileage of the State. The lower court found that within the 2,400 miles there were certain weak links, including bridges and city streets, which could not support the heavier trucks without damage.

The highways and roads of South Carolina are not uniform in width; they vary in strength and construction from dirt roads to concrete pavement, and even in the case of the best concrete pavement the subgrade is not of the same strength at all times, changing with weather conditions, floods and frosts, and varying in different parts of the State and on different stretches of a particular road or highway. There is also a wide variation in the width and strength of the bridges of the State, as well as the city streets. It appears from the lower court's

opinion that there are no connected continuous highways through the State which, including bridges and city streets, have a strength designed to withstand gross load limits in excess of 20,000 pounds.

Respecting width limitations, it will be noted that South Carolina's regulation would have been sustained if a width of six additional inches had been allowed, that is, if a truck width of eight feet had been permitted instead of seven and one-half feet. With regard to weight limitations, it seems clear that the court would have upheld the Act if, instead of the 20,000 pound gross weight restriction, it had conformed to a suggested engineering or mathematical formula, which gives consideration solely to wheel load as distinguished from gross weight. Under the court's formula it would appear that the weight can be increased indefinitely by increasing the number of wheels. In a subsequent portion of this brief we point out that wheel load varies under running conditions, and the only effective limitation on wheel load is a limitation on gross weight.

There is a presumption that a State police statute is valid, and any doubt must be resolved in favor of the legislative enactment.

There is a presumption that a State in enforcing its local policies conforms to all Constitutional requirements. It is elementary that every doubt must be resolved in favor of the validity of any Act of a State legislature. Since it is conceded the State has exclusive right, within Constitutional limits,

to prescribe regulations pertaining to the use of its highways for the purpose of protecting life and safety and preserving the highways, every reasonable presumption will be indulged that a particular regulation prescribed by a State is reasonably necessary to attain the result sought to be accomplished. Such a regulation will be sustained if from the evidence reasonable minds could differ as to the reasonableness and necessity therefor, or if all of the presumptions in favor of a Constitutional exercise of the police power by the legislature in prescribing the regulations are not conclusively rebutted. *Corporation Commission v. Lowe,* 281 U. S. 431, 438; *Pacific States Box & Basket Company v. White,* 296 U. S. 176. In the latter case there was involved the validity of a State police measure, and this court said (p. 185):

> "The order here in question deals with a subject clearly within the scope of the police power. See Turner v. Maryland, 107 U. S. 38. When such legislative action 'is called in question, if any state of facts reasonably can be conceived that would sustain it, there is a presumption of the existence of that state of facts, and one who assails the classification must carry the burden of showing by a resort to common knowledge or other matters which may be judicially noted, or to other legitimate proof, that the action is arbitrary."

Since the evidence as to the reasonableness of the size and weight limitations is sharply conflicting, the statute must be sustained.

It is clear that the court below improperly undertook to weigh all the evidence, and then substituted its personal opinion for the judgment of the South Carolina legislature. It is well settled that if there is any basis whatsoever for the legislative enactment the court is precluded from interfering.

The court may take judicial notice of what is common knowledge, namely, that size and weight limitations for trucks promote public safety and highway conservation. However, it is not necessary to depend solely upon judicial notice in this case, as several expert witnesses testified that the size and weight limitations of the statute have an important bearing upon accidents and the protection of life, limb and public safety.

Mr. Clifford Older, one of the foremost engineers of the United States, testified that "the weight of a vehicle has a direct relation to its danger or safety," and that "the heavier the vehicle the more destruction it is capable of causing if it is in an accident." This witness further testified that the danger becomes greater as the length and width of the vehicle increases (Tr. 240, 241, 242).

Mr. J. S. Williamson, Chief Engineer of the South Carolina Highway Commission, testified that there are fifty miles of bridges in the State highway system, and about 75 per cent of that mileage was designed to carry a load not in excess of ten tons (Tr.

174); that although most of South Carolina's concrete pavement is 18 feet in width, over 100 miles is only 16 feet wide, and one little stretch in Sumpter County is only 9 feet wide (Tr. 177, 179). This witness further testified that many cities and towns of the State have streets which are very narrow; that at intersections a car and a long truck would have difficulty passing; and that a long truck would also experience some difficulty in turning corners (Tr. 178).

The statistics given in the preliminary part of this brief show the experience in Texas has been that accidents and loss of life increase in a more or less direct proportion to the size and weight of trucks.

The foregoing demonstrates that the evidence in the record is conflicting. Eminent authorities entertain the opinion that the size and weight limitations have a reasonable relation to the protection of life, limb and public safety. The well established rule, applicable here, was recently applied by this court in *Old Dearborn Distributing Company v. Seagram-Distillers Corporation,* 299 U. S. 183. In sustaining an Illinois statute, the court said (196):

> "We need say no more than that the question may be regarded as fairly open to difference of opinion. * * * Where the question of what the facts establish is a fairly debatable one, we accept and carry into effect the opinion of the legislature. Radice v. New York, 264 U. S. 292, 294; Zahn v. Board of Public Works, 274 U. S. 325, 328, and cases cited."

That the lower court erred, in view of the sharply

conflicting evidence and differences of opinion, in substituting its finding for that of the legislature, is also borne out by the following cases: *Raft v. Van Deman & Lewis Company,* 240 U. S. 342, 357; *Hebe Company v. Shaw,* 248 U. S. 297, 303; *Standard Oil Company v. Maryville,* 279 U. S. 582, 586; *O'Gorman & Young v. Hartford Fire Insurance Company,* 282 U. S. 251, 257, 258; *Sproles v. Binford,* 286 U. S. 374, 388, 399; *Bayside Fish Flour Co. v. Gentry,* 297 U. S. 422; and *New York, New Haven & Hartford Railroad Company v. New York,* 165 U. S. 628, 631, 632.

This Honorable Court has repeatedly recognized, and will take judicial notice of the fact, that "these powerful and speedy trucks are the *menace* of the highways," and that the movement of vehicles over the highways is attended by constant and serious danger to the public. *Continental Baking Co. v. Woodring,* 286 U. S. 352, 364, 366. That highway hazards increase with the increase in the number and size of the vehicles, and that the exclusion of the larger and heavier vehicles promotes safety has been expressly recognized by this court. *Morris v. Duby,* 274 U. S. 135, quoting at pages 143, 144 from *Buck v. Kuykendall,* 267 U. S. 307, 315; *Sproles v. Binford,* 286 U. S. 374, 385.

The State of South Carolina has done here precisely what this Honorable Court said that a State might do. *Buck v. Kuykendall,* 267 U. S. 307; *Bradley v. Public Utilities Commission,* 289 U. S. 92. In *Buck v. Kuykendall, supra,* the court said (314):

"The highways belong to the State. It may

> make provision appropriate for securing the safety and convenience of the public in the use of them. Kane v. New Jersey, 242 U. S. 160."

and also (315):

> "With the increase in the number and size of the vehicles used upon a highway, both the danger and the wear and tear grow. To exclude unnecessary vehicles — particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject."

In *Bradley v. Public Utilities Commission of Ohio, supra,* this court said (95):

> "The State may exclude from the public highways vehicles engaged exclusively in interstate commerce if of a size *deemed* dangerous to the public safety."

One of the justifiable purposes of the South Carolina size and weight limit law, as announced by the legislature, is to "permit the highways to be used freely and safely by the traveling public," in that connection it being found by the legislature that "heavy trucks * * * endanger the safety and lives of the traveling public."

South Carolina *deemed* excessively large and heavy trucks dangerous to life and limb, and it has promulgated appropriate regulation designed to securing the safety and convenience of the public. In its opinion the lower court states that "it is true

that the enforcement of the provisions of the statute would probably reduce traffic on the highways to the extent that it would greatly reduce the amount of long distance hauling by truck." * * * Numerous decisions of this and other courts remove any doubt that the exclusion of trucks from the highways promotes the protection of life and limb.

Since every presumption must be indulged in favor of the validity of the legislative enactment and as there is substantial evidence in the record that the size and weight limitations promote safety and protect life and limb, and as this Honorable Court and numerous other courts have repeatedly recognized and taken judicial notice that means similar to those adopted by South Carolina constitute an appropriate exercise of the police power to accomplish the legitimate end of public safety, it was manifest error for the court below to substitute its opinion for the judgment of the legislature. The legislature of South Carolina would be derelict in its duty if it failed to make every reasonable effort to protect the life and safety of the citizens of that State. Although the lower court gave scant consideration to this aspect of the case, it is obvious from the standpoint of public safety alone and irrespective of the necessities of highway conservation, that the size and weight limitations must be sustained.

The Size and Weight Limitations Have a Reasonable Relation to Both Public Safety and Highway Conservation and Such Restrictions Do Not Place an Undue Burden on Interstate Commerce.

The validity of the South Carolina statute now under review was sustained by the Supreme Court of South Carolina in *Daniel v. John P. Nutt Company,* 185 S. E. 25, certiorari denied, 297 U. S. 724. In its opinion the State court said:

> "The legislature, however, after due consideration of all the facts and circumstances, concluded that the Act was necessary, first, 'to achieve economy in highway costs' and, second, 'to permit the highways to be used freely and safely by the traveling public.' *That heavy vehicles increase the cost of construction and maintenance of the highways is a fact of common knowledge.* For more than twenty years this State has graduated the license fees of motor vehicles according to their weight. *All know that the danger of a motor vehicle increases with its weight, and that the width and length of motor vehicles bear direct relation to the safety of others using the highways.*"
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> * * *
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> "*That there is a direct relation between the weight and size of motor vehicles and the consequent damage to the highways resulting from their use, and the consequent danger to others from their operation is no longer open to controversy,* and reasonable regulations in this respect are within the police power and entirely within the legislative domain."

In *Hicklin v. Coney,* 290 U. S. 169, 173, this court recently said:

> "Carrying capacity, the size and weight of trucks, unquestionably have a direct relation to the wear and hazards of the highways."

What was said by the Supreme Court in *New York, New Haven and Hartford Railroad Company v. New York,* 165 U. S. 628, 632, is applicable to the statute under review:

> "We know from the face of the statute that it has a real, substantial relation to an object as to which the State is competent to legislate, namely, the personal security of those who are passengers on cars used within its limits."

In spite of the decisions of this and numerous other courts to the contrary, the lower court held that there is no reasonable relation between the means and the end, that is, that the particular limitations of size and weight have no reasonable relation to either public safety or the preservation of the highways, and consequently place an undue burden on interstate commerce. This honorable court has decided definitely that State statutes limiting the size and weight of motor trucks, equally uniform in their application to interstate and intrastate commerce, do not burden interstate commerce or violate the commerce clause of the Constitution. *Sproles v. Binford, supra; Morris v. Duby, supra.* For other recent decisions see *Houston & North Texas Motor Freight Lines v. Phares,* 19 Fed. Supp. 420, decided May 14, 1937; *Werner Transp. Co. v. Hughes,*

19 Fed. Supp. 425; decided June 18, 1937; *Ashland Transfer Co. v. State Tax Commission,* 247 Ky. 144, 56 S. W. (2d) 691, opinion reconsidered and reaffirmed October 29, 1937, by the Court of Appeals of Kentucky in *Whitney v. Fife,* not yet reported; *Continental Baking Co. v. Woodring,* 286 U. S. 352; *Hicklin v. Coney,* 290 U. S. 169; *Hendrick v. Maryland,* 235 U. S. 610; *Bradley Utilities Commission of Ohio,* 289 U. S. 92; *Stephenson v. Binford,* 287 U. S. 251; and *Aero Mayflower Transit Co. v. Georgia Public Service Commission,* 295 U. S. 285.

In *Sproles v. Binford, supra,* the validity of the Texas statute imposing a net load limit of 7,000 lbs. for trucks was upheld against an attack made under the commerce clause. The court said (388, 389):

> "Limitations of size and weight are manifestly subjects within the broad range of legislative discretion. * * * When the subject lies within the police powers of the State, debatable questions as to reasonableness are not for the courts, but for the legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome. Standard Oil Co. v. Marysville, 279 U. S. 582, 586; Price v. Illinois, 238 U. S. 446, 452, 453; Hadacheck v. Los Angeles, 239 U. S. 394, 410; Euclid v. Ambler Realty Co., 272 U. S. 365, 388; Zahn v. Board of Public Works, 274 U. S. 325, 328. Applying this principle, this court, in Morris v. Duby, 274 U. S. 135, sustained the regulation of the Highway Commission of Oregon, imposed under legislative authority, which reduced the combined maximum weight in the case of motor

> trucks from 22,000 lbs., which had been allowed under prior regulations, to 16,500 lbs. See, also, Carley & Hamilton v. Snook, 281 U. S. 66, 73. The requirement in Morris v. Duby, related to the gross load limit, but we know of no constitutional distinction which would make such legislation appropriate, and deny to the State the authority to exercise its discretion in fixing a net load limit."

In *Morris v. Duby, supra,* the court quoted with approval from its opinion in *Buck v. Kuykendall,* 267 U. S. 307, 315:

> "To exclude unnecessary vehicles—particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject."

In *Bradley v. Public Utilities Commission of Ohio, supra,* this court held that a State could properly *exclude* from the public highways vehicles engaged exclusively in interstate commerce if of a size deemed dangerous to the *public safety.* Also it was said that "*safety* may require that no additional vehicle be admitted to the highway."

In *Continental Baking Co. v. Woodring,* 286 U. S. 352, 364, the court quoted with approval the following from the District Court's opinion:

> "The highways are being pounded to pieces by these great trucks which, combining weight with speed, are making the problem of maintenance well-nigh insoluble. The legislature

> but voiced the sentiment of the entire State in deciding that those who daily use the highways for commercial purposes should pay an additional tax. Moreover, these powerful and speedy trucks are the menace of the highways."

The court further said (366):

> "Motor vehicles may properly be treated as a special class, because their movement over the highways, as this court has said, 'is attended by constant and serious dangers to the public, and is also abnormally destructive to the ways themselves'."

Though admitting that the size and weight restrictions would exclude some commercial trucks from the highways, thereby accomplishing in part the objects of the statute, yet to justify its conclusion that the restrictions were unreasonable, the lower court made frequent reference to the great and constantly increasing amount of motor traffic upon the 2,400 miles of South Carolina highways. It is a matter of common knowledge that the State or through highways are the most traveled and hence the most congested. An increase in the size of the trucks would itself add to the congestion, and as the unit cost of truck transportation decreases as the size of the pay load increases, a relaxing of the existing limitations would be calculated to attract more trucks to the highways, thus further complicating the problem of congestion. Certainly the frequency of use and congestion upon these highways have a direct bearing upon and relation to

traffic safety and highway protection. In *Sproles v. Binford, supra,* this court said (385):

> " * * * and this increase in 'truck density' justifies the dimensional and weight restrictions of the statute in the interest of public safety and convenience and highway protection."

Also in *Buck v. Kuykendall,* 267 U. S. 307, this court said (315):

> "To exclude unnecessary vehicles—particularly the large ones commonly used by carriers for hire—promotes both safety and economy."

In *Sage v. Baldwin,* 55 F. (2) 968, 969, the District Court said:

> "The exclusion of unnecessary vehicles aids safety and economy * * * ."

Since the existence of an actual, effective, reasonable relation between the means and the end is not open to question, since this court has repeatedly held that the means employed, viz., the size and weight limitations, are appropriate methods of accomplishing the legitimate purposes of the Act, and since it is admitted in the opinion of the lower court that at least one of those purposes would be accomplished by the size and weight restrictions, the decision nullifying those restrictions is indeed startling.

The right of the States to control, by *prohibition* or *permit,* under their police power, the use of their highways by interstate, as well as intrastate, car-

riers, has been recognized by this court. *Bradley v. Public Utilities Commission of Ohio, supra; Wald Storage & Transfer Co. v. Smith,* 4 Fed. Supp. 61, affirmed, *per curiam* opinion, 290 U. S. 596. In sustaining the validity of Texas truck laws requiring authority from the Railroad Commission of Texas before common carrier motor vehicles used in *interstate* commerce could operate over Texas highways, the court said in the *Wald case, supra*:

> "Prior decisions of this court, Sproles v. Binford (D. C.), 52 F. (2d) 730, affirmed 286 U. S. 374, 52 S. Ct. 581, 76 L. Ed. 1167, Stephenson v. Binford (D. C.), 53 F. (2d) 509, affirmed 287 U. S. 267, 53 S. Ct. 181, 77 L. Ed. 288; Sage v. Baldwin (D. C.), 55 F. (2d) 968 (not appealed); C. J. Allen v. Galveston Truck Line Corporation, 53 S. Ct. 694, 77 L. Ed. .....; and the recent decision of the Supreme Court of the United States in line with all of these, C. A. Bradley v. Public Utilities Comm. of Ohio, 53 S. Ct. 577, 77 L. Ed....., decided April 10, 1933, have established the full right of the State to control, by prohibition and permit as to intrastate business and its right also to *control the use* of the public roads by persons desiring to use them for hire as to *interstate business, by prohibition and permit,* in the exercise of police power of the State to promote safety of life and limb, and the convenience of use of the highways for the purpose for which they were primarily designed, as well as for the preservation of the State's property in the roads and their protection against injury and destruction."

If South Carolina, in order to promote safety and

preserve the highways, can prohibit the use of the highways, certainly it is entitled to accomplish the same purposes by a less severe restriction.

A Police Statute of a State May Not Be Set Aside Because Compliance Therewith Is Burdensome.

It is very apparent from the lower court's decision that undue importance was attached to possible financial burdens which the enforcement of the act might impose upon those operating and using excessively large and heavy trucks in interstate commerce. Prospective profits were allowed to outweigh human life and safety and conservation of the highways. The interests of the vast body of tax payers was totally disregarded. Even if compliance with the police regulation would prevent truck and other business interests from making the profits which might be made in the absence of any restriction, that fact does not warrant striking down the Act. The same point was considered in *Morris v. Duby, supra* (at page 144):

> "The mere fact that a truck company may not make a profit unless it can use a truck with a load weighing 22,000 or more pounds does not show that regulation forbidding it is either discriminatory or unreasonable."

In *Sproles v. Binford, supra,* this court said (at pages 388 and 389):

> "When the subject lies within the police power of the State, debatable questions as to reasonableness are not for the courts but for

> the legislature, which is entitled to form its own judgment, *and its action within its range of discretion cannot be set aside because compliance is burdensome.*"

In *Houston and North Texas Motor Freight Lines v. Phares,* 19 Fed. Supp. 420, 422, the United States District Court for the Northern District of Texas recently declined to enjoin the enforcement of the 7,000 pounds net load limit law for trucks in Texas, saying:

> "The pleading here discloses, in Sections 15 and 20 of the bill, that the complainants have developed and built up a *prosperous* business under the existing laws."

Since operators in Texas have built up a prosperous business under a law limiting the net load to 7,000 pounds, it would appear that the 20,000 pound gross weight limit law of South Carolina would allow an even wider margin of profit.

Scientific Precision Is Not Required of State Police Statutes

It is clear from the lower court's opinion that it does not approve the specification of gross weight limits for trucks, but favors the use of a formula based on wheel loads as being more nearly accurate in determining the stress and strain that a given type of highway construction can withstand. However, the selection by the court of a formula different from that chosen by the legislature does not consti-

tute a basis for the invalidation by the former of an Act of the latter.

If a State regulation of the size and weight of motor vehicles using the highways has any reasonable relation to safety or preserving the highways, it is immaterial that the regulation does not conform with precise mathematical exactness to the very least restriction which might serve the purpose sought to be accomplished. Nor is scientific precision required of State police regulations. *Sproles v. Binford,* 286 U. S. 374, 388; *Bunting v. Oregon,* 243 U. S. 426, 437, 438; *Hebe Company v. Shaw,* 248 U. S. 297, 303; *Everard's Breweries v. Bay,* 265 U. S. 545, 559; *Hicklin v. Coney,* 290 U. S. 169, 173; and *Bayside Fish Flour Company v. Gentry,* 297 U. S. 422, 427, 428.

In *Sproles v. Binford, supra,* it was urged that the 7,000-pound net load limit law of Texas for trucks was not in accord with sound engineering opinion. The court said (388):

> "Limitations of size and weight are manifestly subjects within the broad range of legislative discretion. To make *scientific precision* a criterion of constitutional power would be to subject the State to an intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure."

The Police Regulation of a State May Not Be Invalidated Because the Restrictions Imposed Differ in Degree from Those of Other States.

With varying highway, financial, traffic and other conditions in the different states it is essential that the power and authority of each State to regulate the use of its highways be and remain unimpaired to the end that special requirements may be imposed which are best calculated to meet local conditions. It is clear from the lower court's opinion that an attempt is being made to force South Carolina to adopt highway regulations substantially identical to those of other states. Such action is unwarranted.

So long as the regulation by a State of the use of its highways finds some reasonable support, either in the evidence, or the presumption favoring its validity, it is immaterial that the regulations of a majority of the other States differ in degree, or that national organizations, primarily interested in unformity of regulations and not in protecting life or safety in a particular State, or preserving the highways of that State, recommend a different regulation. Police regulations of a State are not thus subject to attack. *Sproles v. Binford,* 286 U. S. 374, and cases there cited. In the *Sproles case* this court said (390):

> "In the instant case, there is no discrimination against interstate commerce and the regulations adopted by the State, assuming them to be otherwise valid, fall within the established principle that in matters admitting of diversity

of treatment, according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act. Minnesota Rates cases, 230 U. S. 352, 399, 400. *As this principle maintains essential local authority to meet local needs, it follows that one State cannot establish standards which would derogate from the equal power of other States to make regulations of their own.* See Hendrick v. Maryland, 235 U. S. 610, 622; Kane v. New Jersey, 242 U. S. 160, 167; Michigan Commission v. Duke, 266 U. S. 570, 376; Interstate Busses Corp. v. Blodgett, 276 U. S. 245, 250, 251; Sprout v. South Bend, 277 U. S. 163, 169; Continental Baking Co. v. Woodring, *ante,* p. 352."

The Exercise of the Police Power by a State Need Not Be All-Embracing, Or Cure All Possible Abuses and Evils.

The lower court's twenty-third finding of fact that modern type vehicles engaged in interstate commerce are safer on the highways than overloaded light trucks does not constitute sufficient basis for a finding that a gross weight limit of 20,000 pounds has no reasonable relation to protection of lives and safety of members of the traveling public. Overloaded light trucks may be equally dangerous, less dangerous, or more dangerous than the heavier trucks, yet a police regulation cannot be stricken merely because it is not all-embracing and does not attempt to prevent every existing evil. If the Legislature of South Carolina finds that the overloaded light truck constitutes an undue menace, presumably appro-

priate regulation will be provided. In the meantime, every danger to the traveling public should not be given free rein because possibly one has been overlooked. In *James-Dickinson Company v. Harry,* 273 U. S. 119, this court said (125):

> "It is claimed that the Texas statute violates the equal protection clause of the Fourteenth Amendment because it applies only to fraud in transactions involving the purchase of real estate or of stock in a corporation or joint stock company. The contention is clearly unfounded. *A statute does not violate the equal protection clause merely because it is not all-embracing. Zucht v. King,* 260 U. S. 174, 177. *A State may direct its legislation against what it deems an existing evil, without covering the whole field of possible abuses.*"

The South Carolina Weight Limit Law Applies to All Highways in the State and if Reasonable With Reference to All Those Highways, It Should Not Be Stricken As to 4% of Them Even Though that 4% May Be Capable of Sustaining a Heavier Weight.

Since the statute is reasonable and necessary as a means of protecting all of the highways and bridges in the state, and as a means of promoting safety in their use, the court erred in holding it unreasonable as to a few of the highways merely because the court concluded that those highways were capable of sustaining a greater weight. The lower court sustained the validity of the size and

weight limitations with reference to 57,500 miles of the State's 60,000 miles of roads, or 96 per cent of the total, but denied the validity with reference to 2,400 miles of highway. The court enjoined the enforcement of the Act in so far as operations over the latter mileage are concerned, provided the vehicles do not exceed 96 inches in width. The effect of the order will be to cause a concentration of the largest and heaviest trucks on the best highways in the State. Such trucks are recognized as a menace to safety. As a result of the court's decision, the traveling public in South Carolina must either submit itself to this increased danger or abandon the use of the best highways in the State. So far as the taxpayer is concerned, the court has removed the incentive to build the best type of highway.

We submit that it is not necessary for a State to prescribe different motor truck regulations restricting size and weight for each highway, or part thereof, in the State, and authorizing the use thereon of the maximum size and weight which they reasonably can be expected to bear. If such regulations were attempted, they would be based solely upon the physical potentialities of each type of construction, and would disregard wholly the element of safety. But South Carolina, unlike the lower court, apparently places as high a premium on the lives of its citizens as on financial gain to those using ponderous trucks, and does not want to disregard the element of safety. Under those circumstances a regulation of size and weight is valid which, bearing in

mind all types, kinds and widths of pavement, varying subsurface conditions, mileage through cities and design of the bridges, has a reasonable relation either to protection of safety or preservation of highways throughout the entire State. If the requirement was otherwise, each type of construction, each variance in width, and each change of subsurface conditions would necessitate a different restriction. Under such circumstances it is manifest that the difficulties of enforcement would amount to a practical nullification of all restrictions.

In a number of cases this court has upheld the power of a state legislature to consider a problem of this character in its entirety, and to refuse separate treatment of different classes because of administrative difficulties which might be incurred if such special treatment were provided. In *Aero Mayflower Transit Co. v. Georgia Public Service Commission,* 295 U. S. 285, an interstate motor carrier assailed a statute which imposed a flat fee, alleging that the fee was an unreasonable one, since the carrier made only a limited use of the entire State highway system. In rejecting the contention of the motor carrier the court said (289):

> "The appellant urges the objection that its use of roads in Georgia is less than that by other carrier engaged in local business, yet they pay the same charge. The fee is not for the mileage covered by a vehicle. There would be administrative difficulties in collecting on that basis. The fee is for the privilege of a use as extensive as the carrier wills that it shall be. There is

nothing unreasonable or oppressive in a burden so imposed."

In *Euclid v. Ambler Realty Co.,* 272 U. S. 365, 388, the court stated that "the inclusion of a reasonable margin to insure effective enforcement, will not put upon a law, otherwise valid, the stamp of invalidity." See also *Purity Extract and Tonic Company v. Lynch,* 226 U. S. 192; *Silz v. Hesterberg,* 211 U. S. 31; *James-Dickson Company v. Harry,* 273 U. S. 119; and *Holyoke Water Power Company v. American Writing Paper Company,* 300 U. S. 324.

The Lower Court Erred In Adopting Weight Specifications Based on a Static Wheel Load.

The lower court accepted without qualification the proposition urged by the truckers and others having a very definite interest in the use of highways by heavier and larger motor vehicles operated thereon for hire, that "highway stresses are ruled by wheel loads and not by gross loads," and from this premise concluded that gross weights have no reasonable relation to preservation of the highways, or the safety of the public. There is disagreement in the engineering field upon the question whether highway stresses are ruled by wheel loads or by gross weights. It is well known that wheel loads, under actual running conditions, such as going up hills, around curves, traversing irregularities of road surface and shifting of cargo, are constantly changing. Therefore, the specification of a *static wheel load* fails to secure any effective or real regulation.

On the other hand, restriction of the gross weight effectively limits the wheel load under running conditions. It is common knowledge that under actual driving conditions the entire gross weight must, at times, be borne almost entirely by one wheel. Consequently, a limitation of 20,000 pounds gross weight would frequently mean a wheel load of much more than 8000 or 9000 pounds, which seems to represent, under the court's seventeenth finding of fact, the weight which the standard pavement can be reasonably expected to bear.

It is universally accepted that gross weight is the important and controlling consideration in so far as many bridges are concerned. And where varying subgrade conditions exist, and the record shows that such conditions do exist in South Carolina, the many concrete slabs perform to some extent the functions of a bridge. As stated by the District Court in *Werner Transportation Company v. Hughes,* 19 Fed. Supp. 425, 429:

> "Where a weakened subgrade condition exists, the pavement slab performs to some extent the functions of a bridge, in which case the total or gross weight imposed upon the slab determines the stress induced upon the material constituting the slab."

Therefore, the aggregate or gross weight of truck and load under actual running conditions is a matter of prime importance as applied to the general run of concrete highways, some of which have weak and variable subgrade conditions. The same is true with reference to bridges. The court clearly

erred in declining to recognize that gross weight has an important bearing in determining the stress induced upon the material constituting the highway structures. Gross weight also determines the force involved in the event of a collision. Other conditions being equal, that force increases in direct proportion to the square of the speed.

The South Carolina legislature was familiar with the condition of the highways of that State, and there is nothing to impeach the good faith of that legislative body, nor the pronouncements of the Supreme Court of South Carolina which have been referred to herein. Under the circumstances, it was clearly improper for the lower court to substitute its opinion and fact findings for those of the legislature of South Carolina.

Respectfully submitted,

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