MAINE v. TAYLOR
477 U.S. 131 (1986)

JUSTICE BLACKMUN delivered the opinion of the Court.

Appellee Robert J. Taylor operates a bait business in Maine. Despite a Maine statute prohibiting the importation of live baitfish, he arranged to have 158,000 live golden shiners delivered to him from outside the State. The shipment was intercepted, and a grand jury indicted Taylor. Taylor moved to dismiss the indictment on the ground that Maine's import ban unconstitutionally burdens interstate commerce and therefore may not form the basis for a prosecution.

II

The Commerce Clause of the Constitution grants Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, 8, cl. 3. "Although the Clause thus speaks in terms of powers bestowed upon Congress, the Court long has recognized that it also limits the power of the States to erect barriers against interstate trade." Maine's statute restricts interstate trade in the most direct manner possible, blocking all inward shipments of live baitfish at the State's border. Still, this fact alone does not render the law unconstitutional. The limitation imposed by the Commerce Clause on state regulatory power "is by no means absolute," and "the States retain authority under their general police powers to regulate matters of `legitimate local concern,' even though interstate commerce may be affected."

In determining whether a State has overstepped its role in regulating interstate commerce, this Court has distinguished between state statutes that burden interstate transactions only incidentally, and those that affirmatively discriminate against such transactions. While statutes in the first group violate the Commerce Clause only if the burdens they impose on interstate trade are "clearly excessive in relation to the putative local benefits," statutes in the second group are subject to more demanding scrutiny. The Court explained in *Hughes v. Oklahoma*, that once a state law is shown to discriminate against interstate commerce "either on its face or in practical effect," the burden falls on the State to demonstrate both that the statute "serves a legitimate local purpose," and that this purpose could not be served as well by available nondiscriminatory means.

The District Court and the Court of Appeals both reasoned correctly that, since Maine's import ban discriminates on its face against interstate trade, it should be subject to the strict requirements of *Hughes v. Oklahoma*.

III

The evidentiary hearing on which the District Court based its conclusions was one before a Magistrate. Three scientific experts testified for the prosecution and one for the defense. The prosecution experts testified that live baitfish imported into the State posed two significant threats to Maine's unique and fragile fisheries. First, Maine's population of wild fish - including

its own indigenous golden shiners - would be placed at risk by three types of parasites prevalent in out-of-state baitfish, but not common to wild fish in Maine. Second, nonnative species inadvertently included in shipments of live baitfish could disturb Maine's aquatic ecology to an unpredictable extent by competing with native fish for food or habitat, by preying on native species, or by disrupting the environment in more subtle ways.

The prosecution experts further testified that there was no satisfactory way to inspect shipments of live baitfish for parasites or commingled species. According to their testimony, the small size of baitfish and the large quantities in which they are shipped made inspection for commingled species "a physical impossibility." Parasite inspection posed a separate set of difficulties because the examination procedure required destruction of the fish. Although statistical sampling and inspection techniques had been developed for salmonids (i. e., salmon and trout), so that a shipment could be certified parasite-free based on a standardized examination of only some of the fish, no scientifically accepted procedures of this sort were available for baitfish.

Appellee's expert denied that any scientific justification supported Maine's total ban on the importation of baitfish. He testified that none of the three parasites discussed by the prosecution witnesses posed any significant threat to fish in the wild, and that sampling techniques had not been developed for baitfish precisely because there was no need for them. He further testified that professional baitfish farmers raise their fish in ponds that have been freshly drained to ensure that no other species is inadvertently collected.

Weighing all the testimony, the Magistrate concluded that both prongs of the *Hughes* test were satisfied. The District Court, after an independent review of the evidence, reached the same conclusions. First, the court found that Maine "clearly has a legitimate and substantial purpose in prohibiting the importation of live bait fish," because "substantial uncertainties" surrounded the effects that baitfish parasites would have on the State's unique population of wild fish, and the consequences of introducing nonnative species were similarly unpredictable. Second, the court concluded that less discriminatory means of protecting against these threats were currently unavailable, and that, in particular, testing procedures for baitfish parasites had not yet been devised. Even if procedures of this sort could be effective, the court found that their development probably would take a considerable amount of time.

Although the proffered justification for any local discrimination against interstate commerce must be subjected to "the strictest scrutiny," the empirical component of that scrutiny, like any other form of factfinding, "`is the basic responsibility of district courts, rather than appellate courts.'" As this Court frequently has emphasized, appellate courts are not to decide factual questions de novo, reversing any findings they would have made differently.

No matter how one describes the abstract issue whether "alternative means could promote this local purpose as well without discriminating against interstate commerce," the more specific question whether scientifically accepted techniques exist for the sampling and inspection of live baitfish is one of fact, and the District Court's finding that such techniques have not been devised cannot be characterized as clearly erroneous. Indeed, the record probably could not support a

contrary finding. Two prosecution witnesses testified to the lack of such procedures, and appellee's expert conceded the point, although he disagreed about the need for such tests. That Maine has allowed the importation of other freshwater fish after inspection hardly demonstrates that the District Court clearly erred in crediting the corroborated and uncontradicted expert testimony that standardized inspection techniques had not yet been developed for baitfish. This is particularly so because the text of the permit statute suggests that it was designed to regulate importation of salmonids, for which, the experts testified, testing procedures had been developed.

Before this Court, appellee does not argue that sampling and inspection procedures already exist for baitfish; he contends only that such procedures "could be easily developed." Unlike the proposition that the techniques already exist, the contention that they could readily be devised enjoys some support in the record. Appellee's expert testified that developing the techniques "would just require that those experts in the field . . . get together and do it." He gave no estimate of the time and expense that would be involved, however, and one of the prosecution experts testified that development of the testing procedures for salmonids had required years of heavily financed research. In light of this testimony, we cannot say that the District Court clearly erred in concluding that the development of sampling and inspection techniques for baitfish could be expected to take a significant amount of time.

More importantly, we agree with the District Court that the "abstract possibility" of developing acceptable testing procedures, particularly when there is no assurance as to their effectiveness, does not make those procedures an "[a]vailabl[e] . . . nondiscriminatory alternativ[e]" for purpose of the Commerce Clause. A State must make reasonable efforts to avoid restraining the free flow of commerce across its borders, but it is not required to develop new and unproven means of protection at an uncertain cost.

We agree with the District Court that Maine has a legitimate interest in guarding against imperfectly understood environmental risks, despite the possibility that they may ultimately prove to be negligible. "[T]he constitutional principles underlying the commerce clause cannot be read as requiring the State of Maine to sit idly by and wait until potentially irreversible environmental damage has occurred or until the scientific community agrees on what disease organisms are or are not dangerous before it acts to avoid such consequences."

Nor do we think that much doubt is cast on the legitimacy of Maine's purposes by what the Court of Appeals took to be signs of protectionist intent. Shielding in-state industries from out-of-state competition is almost never a legitimate local purpose, and state laws that amount to "simple economic protectionism" consequently have been subject to a "virtually per se rule of invalidity." But there is little reason in this case to believe that the legitimate justifications the State has put forward for its statute are merely a sham or a "post hoc rationalization." In suggesting to the contrary, the Court of Appeals relied heavily on a 3-sentence passage near the end of a 2,000-word statement submitted in 1981 by the Maine Department of Inland Fisheries and Wildlife in opposition to appellee's proposed repeal of the State's ban on the importation of live baitfish: "`[W]e can't help asking why we should spend our money in Arkansas when it is far better spent at home? It is very clear that much more can be done here in Maine to provide our

sportsmen with safe, home-grown bait. There is also the possibility that such an industry could develop a lucrative export market in neighboring states.'"

We fully agree with the Magistrate that "[t]hese three sentences do not convert the Maine statute into an economic protectionism measure." As the Magistrate pointed out, the context of the statements cited by appellee "reveals [they] are advanced not in direct support of the statute, but to counter the argument that adequate bait supplies in Maine require acceptance of the environmental risks of imports."

The other evidence of protectionism identified by the Court of Appeals is no more persuasive. The fact that Maine allows importation of salmonids, for which standardized sampling and inspection procedures are available, hardly demonstrates that Maine has no legitimate interest in prohibiting the importation of baitfish, for which such procedures have not yet been devised. Nor is this demonstrated by the fact that other States may not have enacted similar bans, especially given the testimony that Maine's fisheries are unique and unusually fragile. Finally, it is of little relevance that fish can swim directly into Maine from New Hampshire. As the Magistrate explained: "The impediments to complete success . . . cannot be a ground for preventing a state from using its best efforts to limit [an environmental] risk."

The evidence in this case amply supports the District Court's findings that Maine's ban on the importation of live baitfish serves legitimate local purposes that could not adequately be served by available nondiscriminatory alternatives.

JUSTICE STEVENS, dissenting.

There is something fishy about this case. Maine is the only State that blatantly discriminates against out-of-state baitfish by flatly prohibiting their importation. Although golden shiners are already present in Maine (and, perhaps not coincidentally, the subject of a flourishing domestic industry), Maine excludes golden shiners grown and harvested (and, perhaps not coincidentally, sold) in other States. This kind of stark discrimination against out-of-state articles of commerce requires rigorous justification by the discriminating State.

The invocation of environmental protection or public health has never been thought to confer some kind of special dispensation from the general principle of nondiscrimination in interstate commerce. If Maine wishes to rely on its interest in ecological preservation, it must show that interest, and the infeasibility of other alternatives, with far greater specificity. Otherwise, it must further that asserted interest in a manner far less offensive to the Commerce Clause.

Maine's unquestionable natural splendor notwithstanding, the State has not carried its substantial burden of proving why it cannot meet its environmental concerns in the same manner as other States with the same interest in the health of their fish and ecology.