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Oneok, Inc. v. Learjet, Inc.

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Oneok, Inc. v. Learjet, Inc., 135 S. Ct. 1591 (2015)

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In an ongoing dispute, the Supreme Court has allowed retail natural gas purchasers to bring state law anti-trust claims against natural gas pipelines for price manipulation. While holding that the Natural Gas Act does not create field pre-emption over these claims, the opinion hinted that there might still be conflict pre-emption. Justice Scalia, in his dissent, argued forcefully that the majority had misapplied and misconstrued the applicable case law, which, he argued, clearly created field pre-emption.

I. INTRODUCTION

At issue in *Oneok, Inc. v. Learjet, Inc.* was whether state anti-trust claims, brought by a group of manufacturers, hospitals, and others ("Buyers") against interstate pipelines ("Pipelines"), were pre-empted by the Natural Gas Act when the actions alleged in the suit affected both wholesale and retail gas prices.[1] The Buyers alleged that the Pipelines manipulated the price index of natural gas under state anti-trust law.[2] The Buyers, as retail purchasers of natural gas, alleged that they overpaid for natural gas due to the Pipeline's manipulation of the natural gas price indices.[3] The Pipelines asserted that the Buyer's price manipulation claims were pre-empted by the Natural Gas Act because they operated interstate pipelines.[4] The Supreme Court of the United States held that the Natural Gas Act did not pre-empt state anti-trust claims because state laws were aimed at a broad field of anti-trust enforcement and not specifically at natural gas regulation.[5] The dissent argued that the majority poorly misconstrued precedent.[6] The Court did leave the door open, however, for conflict pre-emption claims.[7]

II. FACTUAL AND PROCEDURAL BACKGROUND

The Natural Gas Act was enacted to regulate the interstate shipment and sale of gas to local distributers for sale.[8] The act granted the Federal Energy Regulatory Commission ("FERC") (formerly the Federal Power Commission ("FPC")) rate-setting authority in the natural gas industry.[9] Originally, the market was divided in to three sections: pumping gas; shipping and selling gas to retail

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1 Oneok, Inc. v. Learjet, Inc., 135 S. Ct. 1591, 1594 (2015).
2 *Id.* at 1598.
3 *Id*.
4 *Id.*
5 *Id.* at 1601.
6 *See id.* at 1603 (Scalia, J., dissenting).
7 *Id.* at 1602 (majority opinion).
8 *Id.* at 1595; *see* Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672, 682 (1954).
9 Pub. L. No. 75-688, § 5(a), 52 Stat. 821 (1938).

sellers; and purchasing gas by users.[10] Since 1992, the FERC has relied on a competitive marketplace approach to determine rates.[11] The FERC generally determines if a jurisdictional seller lacks market power and, if so, issues a blanket certificate that allows the seller to charge market-based rates for gas.[12] Within this system, many large gas consumers began purchasing directly from gas suppliers instead of from resellers.[13]

In 2003, the FERC found that a number of gas suppliers were falsely reporting to price indices by "'inflating the volume of trades, omitting trades, and adjusting the price of trades.'"[14] In response, the FERC revoked numerous blanket market certificates, issued a policy statement setting standards for price reporting, and issued a Code of Conduct prohibiting actions that did not have a legitimate business purpose.[15] Additionally, Congress passed the Energy Policy Act of 2005, giving the FERC further authority in regulating the manipulation of the price indices.[16]

The Buyers were a number of businesses that purchased large quantities of natural gas directly from interstate pipelines for their own use.[17] The Buyers brought numerous state-law antitrust suits in both state and federal courts against the Pipelines.[18] The Pipelines removed the cases to the United States District Court for the District of Nevada, where they were consolidated.[19] The district court granted summary judgment for the Pipelines on the basis that the Pipelines were "jurisdiction sellers."[20] The United States Court of Appeals for the Ninth Circuit reversed this decision.[21] The Ninth Circuit held that the price manipulation affected both wholesale—jurisdictional—and retail—non-jurisdictional—sales, so state law claims were not pre-empted.[22] The Supreme Court granted certiorari in order to resolve confusion in the lower courts.[23]

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[10] *Oneok*, 135 S. Ct. at 1595.

[11] *Id.* at 1597.

[12] *Id.*; *see* Regulations Governing Blanket Marketer Sales Certificates, 57 Fed. Reg. 57952, 57958 (Dec. 8, 1992).

[13] *Oneok*, 135 S. Ct. at 1597; *see* General Motors Corp. v. Tracy, 519 U.S. 278 (1997).

[14] *Oneok*, 135 S. Ct. at 1597 (quoting FED. ENERGY REG. COMM'N, FINAL REPORT ON PRICE MANIPULATION IN WESTERN MARKETS: FACT-FINDING INVESTIGATION OF POTENTIAL MANIPULATION OF ELECTRIC AND NATURAL GAL PRICES, Docket No. PA02-2-000 ES-6 (Mar. 2003), *available at* http://www.casio.com/Documents/Part1_26-Mar-03.pdf).

[15] *Id*. at 1597-98.

[16] *Id.* at 1598; *see* Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005).

[17] *Oneok*, 135 S. Ct. at 1598.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 1599.

[22] *Id.*

[23] *Id.*

III. ANALYSIS

The Pipelines argued at the Supreme Court that state anti-trust lawsuits are within the field that the Natural Gas Act pre-empts because the lawsuits targeted activities that affected both wholesale and retail prices.[24] The Pipelines argued that because the FERC has authority to regulate wholesale prices and the FERC has prohibited the type of activities the lawsuits target the, lawsuits were pre-empted.[25] The Pipelines also argued that the lawsuits would allow state courts to reach different conclusions than the FERC about the same activities.[26]

The Supreme Court rejected these arguments, stating that the Natural Gas Act "'was drawn with meticulous regard for the continued exercise of state power, not to handicap or dilute it in any way.'"[27] The Court went on to state that precedent "emphasize[s] the importance of considering the *target* at which the state law *aims* in determining whether that law is pre-empted."[28] To support this conclusion, the Court pointed to precedent that considers the "'significant distinction'" in gas law pre-emption to be between "'measures *aimed directly at* interstate purchasers and wholesale for resale, and those aimed at' subjects left to the States [sic] to regulate."[29] The Court contrasted this precedent with *Northern Natural Gas Co. v. State Corporation Commission of Kansas*, where pre-emption was found because the state laws were "'unmistakably and unambiguously *directed at purchasers*.'"[30]

The Pipelines presented *Schneidewind v. ANR Pipeline Co.* as contrary authority to the conclusion in *Northern Natural*.[31] In *Schneidewind*, the Court held that a state law requiring public utilities to obtain state approval before issuing long-tern securities was pre-empted by the Natural Gas Act.[32] In the present case, the Court rejected this argument, again focusing on what the state laws intend to regulate.[33] The Court distinguished the present case because the state laws at issue in *Schneidewind* were specifically aimed at controlling the rates and facilities of natural gas companies.[34]

The Pipelines also focused on the need for a "clear division between areas of state and federal authority in natural-gas regulation."[35] The Court stated that this need is an ideal and does not reflect how natural gas regulation works in

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[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.* (quoting Panhandle E. Pipe Line Co. v. Pub. Serv. Comm'n of Ind., 332 U.S. 507, 517-518 (1947)).
[28] *Id.* (emphasis in original).
[29] *Id.* at 1600 (quoting N. Natural Gas Co. v. State Corp. Comm'n of Kan., 372 U.S. 84, 94 (1963)).
[30] *Id.* (quoting Nw. Cent. Pipeline Corp. v. State Corp. Comm'n of Kan., 489 U.S. 493, 514 (1989) (citing *N. Natural*, 372 U.S. at 92)) (emphasis in original).
[31] *Id.* (discussing Schneidewind v. ANR Pipeline Co., 485 U.S. 293 (1988)).
[32] *Schneidewind*, 485 U.S. at 306-09.
[33] *Oneok*, 135 C. Ct. at 1600-01.
[34] *Id.* at 1600.
[35] *Id.* at 1601.

the real world.[36] The Pipelines additionally presented two other cases they believed showed the FERC's authority to regulate activities that have consequences on retail sales.[37] The Court rejected both of these arguments.[38]

In *Mississippi Power & Light Co. v. Mississippi*, the Court held that the Federal Power Act pre-empted state inquiries in to electricity prices previously approved by the FERC.[39] The Pipelines argued that this case upheld pre-emption of state regulations similar to the regulations in the current case.[40] The Court held that *Mississippi Power* was a conflict pre-emption issue and was not applicable to the current case.[41] The Court further distinguished the current case, again focusing on what the state laws aimed to regulate, instead of the activities they actually regulated. The Court held that the pre-empted laws in *Mississippi Power* were specifically directed at jurisdictional sales of natural gas, unlike the current case.[42]

The Pipelines also argued that *Federal Power Commission v. Louisiana Power & Light Co.* was controlling.[43] In *Louisiana Power*, the Court held that the FPC had the authority to order interstate pipelines to "curtail gas deliveries to all customers, *including retail customers*."[44] The Pipelines argued that *Louisiana Power* showed that the FERC has the authority to regulate index manipulation, including how it affects retail prices.[45] The Court distinguished *Louisiana Power* as another conflict pre-emption case and determined it was not precedential in the current case.[46] The Court did focus on the possibility of future conflict pre-emption claims, however, but left them "for the lower courts to resolve."[47]

Lastly, the Court refused to defer to the FERC's determination that field pre-emption bared the Buyer's claims.[48] The Court stated that no such previous determination existed, and even if one did exist, it would not "offset the other considerations that weigh against a finding of pre-emption in this context."[49]

IV. CONCLUSION

By holding against field pre-emption, the Court has allowed, for now, companies who purchase retail gas from interstate pipelines to bring state law anti-trust claims against interstate pipeline operators. The Court affirmed the rule

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[36] *Id.*

[37] *Id.* at 1601-02; *see* Miss. Power & Light Co. v. Mississippi *ex rel*. Moore, 487 U.S. 354, 377 (1988); Fed. Power Comm'n v. La. Power & Light Co., 406 U.S. 621 (1972).

[38] *Oneok*, 135 S. Ct. at 1601-02.

[39] *Miss. Power*, 487 U.S. at 377.

[40] *Oneok*, 135 S. Ct. at 1601.

[41] *Id.*

[42] *Id.*

[43] *Id.* at 1602 (citing *La. Power*, 406 U.S. 621).

[44] *Id.* (discussing *La. Power*, 406 U.S. at 642) (emphasis in original).

[45] *Id*.

[46] *Id.*

[47] *Id.*

[48] *Id.* at 1602-03.

[49] *Id*.

of focusing on what a state law aims to regulate in determining pre-emption cases. The Court refused to determine whether or not conflict pre-emption existed because neither party briefed the issue. This case potentially exposes interstate pipelines that sell directly to customers to further liability. These implications may have future affects on how the natural gas market develops in the United States. The dissent is notable because it suggested that a clear line be drawn between federal and state regulation in natural gas law.[50] The dissent argued that once federal regulation has been applied to an act, all state laws should be pre-empted from applying to that act.[51] The majority trumped this argument, holding that the aim of the state laws was more important than the actual activity that the laws were regulating.[52] This case lends itself to a narrower, rather than broader, reading of state pre-emption in the context of natural gas law.

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[50] *Id.* at 1607 (Scalia, J., dissenting).
[51] *Id.* at 1603.
[52] *Id*. at 1600 (majority opinion).