Does NAFTA Override The U.S. Constitution?

by Phyllis Schlafly Feb. 18, 2004

Google Ads are provided by Google and are not selected or endorsed by Eagle Forum

The constitutional issues involved in NAFTA (the North American Free Trade Agreement), passed a decade ago, have just ascended the ladder to the U.S. Supreme Court. Arguments will be heard this spring on whether the non-U.S. tribunals created by NAFTA can require our government to violate federal law in order to comply with foreign rulings.

The issue is whether Mexican trucks can have open access to U.S. highways even though they don't comply with U.S. regulations. For several years, this has been a controversy in Congress, where the decision ought to be made since the U.S. Constitution gives Congress exclusive power "to regulate commerce with foreign nations."

On February 6, 2001, a five-member international tribunal established by NAFTA declared the United States to be in breach of its obligations to Mexico because of restrictions on the entry of foreign trucks. The U.S. Department of Transportation (DOT) ignored U.S. domestic statutes (including the National Environmental Protection Act and the Clean Air Act) and ordered implementation of the decision.

Mexican trucks have so far been permitted to enter only a 20-mile zone on our southern border. Their contents are then transferred to U.S. trucks for delivery in the United States.

The NAFTA tribunal ordered the United States to lift its restrictions on foreign trucks, mandating full access by Mexican trucks across the entire United States. This ruling repeatedly referred to NAFTA as a "treaty" and relied on interpretations of past treaties as justification for the decision.

But NAFTA is not a treaty. It was never submitted to the Senate as a treaty and did not receive the two-thirds majority vote that treaty ratification requires, but instead was enacted in 1993 by a congressional-executive agreement.

Implicitly at stake in this case is whether congressional bypass of the Treaty Clause, Article II, Section 2, can bind the United States as fully as a treaty does. Our system of federalism is also vulnerable, due to the deference historically given to treaties over the rights of the several states.

The Ninth Circuit decision (from which the government is appealing) correctly required DOT to comply with domestic laws by preparing an environmental impact statement prior to allowing Mexican trucks to traverse U.S. roads. Any impact statement should evaluate the Mexican trucks' adverse effect not only on nature but also on human safety.

We need an analysis not only of pollution caused by truck emissions and the wear and tear on our highways, but also of the loss of life from trucks and drivers that do not meet U.S. standards. Mexican trucks are older, heavier, and more dangerous than U.S. trucks.

Mexican drivers are less familiar with our roads and language and drive longer hours than U.S. drivers for much lower wages. The loss of life from a predictable increase in accidents should be included in the environmental impact statement.

Deaths caused by language incompatibility, such as misunderstanding road signs or directions, are an essential element of an impact analysis. The most tragic and costly truck accident in midwest history, resulting in the incineration of Rev. Scott Willis's six children in 1994, was caused by the Mexican truck driver's inability to comprehend warnings in the English language.

Fatal accidents involving foreigners unfamiliar with our roads, our rules of the road, and the English language are tragically frequent in states far from our southern border such as Colorado and Iowa.

Often vans crammed with illegal aliens are driven by "coyotes" who are paid thousands of dollars per person to transport them hundreds of miles north of the border.

The impact statement should also include the increased quantity of illicit drugs coming into the United States in Mexican trucks, much of it headed for "transshipment" sites in North or South Carolina or Georgia. U.S. Attorney Frank Whitney said that, even at the present time, "It's virtually impossible for the border patrol or customs to truly check every one of these vehicles."

In its Petition, the government argued that it would be more efficient to open our borders to trucks from Mexico and that the Ninth Circuit decision should be reversed because it protects "inefficient procedures." We are not impressed with the government's effort to rank efficiency higher than the U.S. Constitution, sovereignty, and laws.

In this Supreme Court case, the government is maintaining that its decision to open up our highways to Mexican trucks is an act of executive discretion, but in fact it is simply complying with an international tribunal never authorized by any treaty. To allow the executive branch to enforce this decision would set a very dangerous precedent for permitting the rulings of other foreign courts in Geneva, the Hague or Brussels to bypass both the U.S. Constitution and the U.S. judiciary.