10-1982

Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Company

Lewis F. Powell Jr.

Grant

CADC's decision that the Govt acted arbitrarily in rescinding Regulations that would have required Auto Companies to install "airbags" & "automatic seat belts" — at cost to public of a billion dollars.

PRELIMINARY MEMORANDUM

Nov. 5, 1982 Conference

List 1, Sheet 2

No. 82-354

ok | MOTOR VEHICLE MFR. ASSN. v. STATE FARM INS. CO., et al. | Cert to CA DC (Bazelon, Mikva; Edwards, concurring) | Federal/Civil | Timely

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No. 82-355

ok | CONSUMER ALERT, et al. v. STATE FARM INS. CO., et al. | same | Federal/Civil | Timely

again!

Grant? Surely the CADC is wrong, but how many "errors" can the Court correct from that court this year? eff

No. 82-398

DEPARTMENT OF TRANSPORTATION, et al. — same

v.

STATE FARM INS. CO., et al. — Federal/Civil — Timely

SUMMARY: The CA DC held that the government acted arbitrarily and capriciously in rescinding the "passive restraint" (airbags and automatic seatbelts) automobile safety standard. 680 F.2d 206 (CA DC 1982). These curve-lined petitions for cert followed.

FACTS AND HOLDING BELOW: In 1966, Congress passed the National Traffic and Motor Vehicle Safety Act. 15 U.S.C. §§ 1381 et seq. (1976 & Supp. IV 1980). This Act directs the Secretary of Transportation to issue automobile safety standards that "shall be practicable, shall meet the need for motor vehicle safety, and shall be stated in objective terms." 15 U.S.C. § 1392 (a). The Act says nothing specifically about passive restraints.

In 1967, DOT issued a regulation (Standard 208) requiring manual seatbelts in all cars. Most people refused to use their seatbelts, however, and their installation did not reduce significantly the number of traffic injuries. Consequently, the consumer lobby and the insurance industry set out to convince DOT of the necessity for some type of passive restraint, one that would require no cooperation on the part of the citizenry.

In 1970, DOT modified Standard 208 to include passive protection requirements. In 1972, it issued a final version of Standard 208, which required installation of passive restraints or manual belts coupled with ignition interlocks in all passenger cars built between 1973 and 1975, and required passive restraints in all cars after 1975. This rule was struck down as to passive restraints in Chrysler Corp. v. Dep't of Transportation, 472 F.2d 659 (CA 6 1972).

In 1974, Congress amended the Act to bar federal safety standards requiring any kind of ignition interlock (which prevent the car from starting unless the front seat belts are fastened) or continuous buzzer to warn that seatbelts were unfastened. The agency then omitted the ignition interlock and buzzer requirements.

In 1976, the Republican Secretary of Transportation, William Coleman, suspended the passive restraint requirement altogether. Four months later, Coleman's Democratic successor, Brock Adams, reopened rulemaking on passive restraints. In 1977, Adams issued a new mandatory passive restraint regulation, known as Modified Standard 208. 42 Fed.Reg. 34,289 (July 5, 1977). The Reagan administration's decision to rescind Modified Standard 208 prompted the instant litigation.

Modified Standard 208 required manufacturers to install passive restraints on all large cars by 1982, and on all cars by 1984. Two types of passive restraints satisfied the standard: airbags and automatic seatbelts. In 1977, the agency expected that most manufacturers would install airbags.

In February 1981, Adams's successor, Andrew Lewis, reopened rulemaking on passive restraints and proposed rescission of Modified Standard 208. After receiving comments and holding hearings, the agency amended Modified Standard 208 to rescind the passive restraint requirement. 49 C.F.R. Part 571, 46 Fed.Reg. 53,419 (October 29, 1981)(Notice 25).

In brief, in 1981 the agency rescinded the passive restraint requirement because design changes in the type of restraint that most manufacturers were planning to use made it impossible for the agency to predict that enough people would use the restraints to justify the additional costs of $1 billion/year.

Specifically, the manufacturers had decided to use detachable automatic belts rather than either air bags or continuous belts. Detachable belts have a buckle so they can be released in an emergency. Continuous belts are designed to spool out so the occupant can get out of the car in an emergency. The manufacturers abandoned air bags because they were too expensive, and chose detachable over continuous belts because of concern over public acceptance of ~~them~~ the latter.

Although all the evidence indicated that usage rates on continuous automatic belts were very high, there was no evidence at all on useage rates for detachable automatic belts. The agency declined to extrapolate from the data for non-detachable belts, noting that "[o]nce a detachable automatic belt is detached, it becomes identical to a manual belt. Contrary to assertions of some supporters of the standard, its use thereafter requires the same type of affirmative action

that is the stumbling block to obtaining high usage levels of manual belts." Ptn. App. 98a. The agency explained why the data on usage rates for the automatic belts in VW Rabbits and Chevrolet Chevettes was inapposite (primarily because they were functionally non-detachable), and concluded that "the change in car manufacturers' plans has left the agency without any factual basis for reliably predicting the likely usage increases due to detachable automatic belts, or for even predicting the likelihood of any increase at all." Id. at 99a.

The agency then considered and rejected the possibility of amending the standard to require a use-inducing feature. It noted that it lacked authority to require ignition interlocks, and stated that continous, non-detachable belts were undesireable because of the "widespread, latent and irrational fear by many members of the public that they could be trapped by the seat belt after a crash." Id. at 110a. The agency did not consider requiring airbags.[1]

Finally, the agency concluded that it was unreasonable to impose the $1 billion/year cost of passive restraints on the public in view of the uncertainty over the increase, if

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[1]Some of the public comment had claimed that the Act is a "technology-forcing" statute mandating the best protection technologically available. In response, the agency stated: "[T]he issue of automatic restraints now before the agency is not a 'technology-forcing' issue. The manual seat belt available in every car sold today offers the same, or more, protection than either the automatic seat belt or the air bag. Instead, the agency today faces a decision to force people to accept protection that they do not choose for themselves." Ptn. App. 116a.

any, in usage expected from such restraints. It therefore rescinded the passive restraint requirement.

The CA DC granted the petition for review, holding that the decision to rescind the passive restraint requirement was arbitrary and capricious.

The first issue it faced was the proper scope of review of a decision to rescind a rule that had not yet gone into effect, as opposed to a decision not to promulgate a rule. It termed this a question of "first impression." 680 F.2d at 218. It rejected the agency claim that a decision to rescind deserves the same deference as an agency's choice not to act, and held that rescission is subject to the same scope of review as the promulgation of a rule. Id. at 228.

After reviewing Congress's acts and non-acts with respect to passive restraints over the prior decade, the CA stated:

> [The agency] is not writing on a clean slate; it cannot suggest that the congressional actions and failures to act described above have no bearing on the agency's freedom to regulate on this question. It follows that [the agency] has the burden of explaining why it has changed course, and of showing that rescission of Modified Standard 208 was reasonable.

CA DC - burden on Agency

Id. at 229 (footnote omitted). The CA clarified that it would uphold the rescission if the agency "clearly articulates a reasonable basis for that action." Id. "We must ascertain the facts on which [the agency] relied, determine whether those facts have some basis in the record, and judge whether a reasonable decisionmaker could respond to those facts as the agency did." Id. at 230.

The CA then held that the recission was arbitrary and capricious for two reasons. First, in light of (1) the evidence that automatic belts now on the road are effective, (2) the low marginal cost of automatic seatbelts versus the high benefits in deaths and injuries avoided, and (3) Congressional acquiesence in the agency's prior rulings and findings, it was irrational and arbitrary for the agency not even to seek evidence to determine whether detachable belts would be effective. "[The agency] has some burden, in other words, to show that a regulation once considered to prevent deaths and injuries efficiently can no longer be expected to do so." Id. at 231. However, the agency has offered "not one iota of evidence to support [its] conclusion that Modified Standard 208 as written will fail to increase nationwide seatbelt use by 13 percentage points or more." Id.

Second, the majority held it was irrational and arbitrary for the agency not to consider the obvious alternatives--air bags and non-detachable seat belts. The CA dismissed the agency's treatment of non-detachable seat belts as summary. "By artificially narrowing the options available--or ignoring those options completely--the agency acted in a totally arbitrary fashion." Id. at 233. Judge Edwards did not join this part of the court's opinion.

The CA then remanded to the agency. Two months later, on August 4, 1982, the CA issued an order and memorandum sua sponte staying the compliance dates of Modified Standard 208 from September 1, 1982, until September 1, 1983.

CONTENTIONS: Petrs contend: (1) the CA erred in applying a different standard to a descision to rescind a rule than it would have to a decision not to promulgate that same rule; (2) the CA erred in finding a "congressional mandate" in post-enactment legislative history; (3) the CA erred in invalidating the agency's rescission of a prospective rule because the agency failed to consider regulatory alternatives that were neither raised by the agency's notice of proposed rulemaking nor foreclosed by the agency's rescission order; (4) the CA exceeded the proper limits of judicial review in ordering the passive restraint requirement into effect on September 1, 1983; and (5) the CA erred in finding the agency's action to be arbitrary and capricious.

Resps contend: (1) this case presents the application of well-settled principles of law to unique facts; and (2) the decision below was correctly decided.

DISCUSSION: I recommend a GRANT for three reasons. First, the case presents a novel question of law on which the Court's guidance would be helpful to the lower courts: What is the appropriate scope of review of a decision to rescind a regulation that has not yet gone into effect? Second, the CA DC seems to have exceeded its powers in requiring the agency to consider alternatives to the automatic seatbelts that the manufacturers were planning to use. Third, a grant seems appropriate in light of magnitude of the money involved ($1 billion/year costs versus alleged savings of $4 billion), the impact on a key sector of the nation's economy, the damage the

decision below has done to the administration's deregulation policy, and the likelihood that the CA DC was wrong.

However, there is no merit to the claim that the CA erred in setting a compliance date for implementation of Modified Standard 208. By striking down the rescission order, the CA restored the status quo ante. It then exercised its powers as a court of equity to delay by one year the implementation dates in Modified Standard 208.

In conclusion, the Court should GRANT all three petitions for cert, but should limit the grant to exclude Question 5 in No. 82-354 and Question 3 in No. 82-398 (the implementation date questions).

There are responses in each case and a reply in No. 82-354.

October 23, 1982 Levene Opn in petn

PRELIMINARY MEMORANDUM

November 5, 1982 Conference

List 1, Sheet 2

No. 82-355

CONSUMER ALERT, et al.	Cert to CA DC (Bazelon, Mikva; Edwards, concurring)	
v.		
STATE FARM INS. CO., et al.	Federal/Civil	Timely

SUMMARY: Please see the cert memo in No. 82-354.

Levene

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PRELIMINARY MEMORANDUM

November 5, 1982 Conference

List 1, Sheet 2

No. 82-398

DEPARTMENT OF TRANSPORTATION, et al.

v.

STATE FARM INS. CO., et al.

Cert to CA DC (Bazelon, Mikva; Edwards, concurring)

Federal/Civil

Timely

SUMMARY: Please see the cert memo in No. 82-354.

Levene

November 5, 1982

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 82-355

CONSUMER ALERT

vs.

STATE FARM INS. CO.

Grant & Consolidate with 82-354

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.													
Rehnquist, J.													
Stevens, J.													
O'Connor, J.													

November 5, 1982

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 82-398

DOT

vs.

STATE FARM INS. CO.

Also motion of Automobile Occupant Protective Assn. for leave to file brief as amicus curiae.

Grant & Consolidate 82-354

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.													
Rehnquist, J.													
Stevens, J.													
O'Connor, J.													

November 5, 1982

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 82-354

MOTOR VEHICLE MFR. ASSN.

vs.

STATE FARM INS. CO.

Grant
all Rural
&
consolidate

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.		✓											
Brennan, J.			✓										
White, J.		✓											
Marshall, J.			✓										
Blackmun, J.			✓										
Powell, J.		✓											
Rehnquist, J.		✓											
Stevens, J.		✓											
O'Connor, J.		✓											
.....													

Reversed 4/25 Excellent memo. Mark's
I agree with [redacted] view that
CADC should be reversed.

men 04/24/83

BENCH MEMORANDUM

Nos. 82-354, 82-355, 82-398:

Motor Vehicle Manufacturers Ass'n v.

State Farm Mutual Automobile Insurance Co.

From: Mark April 24, 1983

Questions Presented

1. Whether the National Highway Traffic Safety Administration acted unlawfully in rescinding a rule requiring that all motor vehicles carry passive restraints such as airbags or passive seatbelts. no.

2. Whether the Court of Appeals erred by reinstating the rule and establishing a date for its effectiveness, rather than simply remanding to the agency for further proceedings. I'll not reach this Q

I.

There are two major questions here: (i) what standard of review applies when an agency rescinds a previously adopted rule, and (ii) whether the agency in this case met that standard. I disagree with both CADC's standard and its conclusion. I therefore recommend reversal. I agree!

A

A brief chronology of key events may be useful in analyzing this case: Very useful

1966 -- National Traffic and Motor Vehicle Safety Act is passed, giving Secretary of Transportation power to enact safety standards.

1967 -- DOT issues Standard 208, mandating safety belts in all cars.

1969-1972 -- DOT conducts rulemaking concerning passive restraint systems.

1972 -- DOT issues Modified Standard 208, requiring "complete passive protection" on all vehicles issued after August 1975; in interim, vehicles must have lap and shoulder belts plus ignition interlocks. CA6 upheld the decision to require passive restraints, but suspended the rule because DOT had made testing errors in setting performance specifications. Chrysler Corp. v. DOT, 472 F.2d 659 (1972).

1974 -- Congress enacts the Motor Vehicle and Schoolbus Safety Amendments, banning any federal standard requiring ignition interlocks or continuous buzzers that warn that seatbelts

are not in use. Also, it provided that any future amendment to Standard 208 would be subject to congressional veto.

1974 -- DOT proposed a new standard requiring "detachable" passive restraints -- restraints with a simple pushbutton release.

1976 -- Secretary Coleman suspended the passive restraint standard, initiated a new rulemaking, and finally concluded that no mandatory rule should be promulgated.

1977 -- Four months later, new Secretary Adams issued new passive restraint regulation, requiring either airbags or detachable passive restraints. This rule was upheld by CADC in Pacific Legal Foundation v. Department of Transportation, 593 F.2d 1338 (1979). Congressional veto resolutions were proposed but not passed. The standard was to become mandatory between 1982 and 1984.

1979-1980 -- Appropriations riders passed in both years prohibited funds for DOT implementation of the standard.

1981 -- New Secretary Lewis reopended the rulemaking, ordered a one-year delay in implementation, and then amended the standard to eliminate the passive restraint requirement.

B

Judge Mikva's opinion for CADC can be described only as remarkable. (This may be seen by the fact that resps here largely abjure reliance on the legal analysis used by CADC.) The opinion contains three key errors.

1. First, CADC came up with the idea of determining the

standard of review after reviewing the legislative history and determining "congressional intent":

> "In determining the scrutiny with which the arbitrary and capricious standard should be applied to NHTSA's rescission of Modified Standard 208 ... we must first consider the extent to which NHTSA's action may be inconsistent with the congressional purpose behind the Safety Act. It may seem unusual to discuss this legislative history before a precise standard of judicial review has been formulated, but in this case there is no better way to undertake such a task." Pet. App. 32a.

CADC then reviewed the entire series of congressional events between 1974 and 1981 and concluded that it suggests "a congressional commitment to the concept of automobile crash protection devices for vehicle occupants that we may not take lightly," id., at 46a, and that "each time Congress reviewed the passive restraint standard it was essentially confirmed," id., at 47a. Because of this allegedly clear evidence of congressional intent, CADC found that the standard of review must be thorough, searching, careful, etc.

The remarkable thing about the legislative history reviewed by CADC is that not a single affirmative action by Congress occurred during that period, other than the appropriations riders forbidding DOT to implement the rule. Judge Mikva relied on such things as Congress' failure to veto the rule, favorable reports on the rule from certain committees or subcommittees, statements of support from individual congressmen, etc. My reading of those legislative battles suggests that CADC is quite wrong in finding any clear support for Standard 208 as issued in 1977. More important, I think this case is totally inappropriate for applica-

tion of a theory of legislative ratification. The passive restraint rule never has been in effect, and the congressional material cited by CADC consists solely of internal debates that never produced any legislative action at all.

2. CADC noted that NHTSA rescinded the passive restraint rule on a 3-part analysis: (i) automakers would comply by using detachable passive restraints, (ii) once detached, a detachable restraint is just like a manual belt, and (iii) it cannot reliably be predicted that any increase in seat belt usage resulting from the passive feature will be sufficient to justify the additional costs. CADC agreed on the first two points, but not on the third.

The interesting feature of the DC's disagreement is that CADC expressly did not disagree with NHTSA's view that there was "substantial uncertainty" about the usage rates with detachable belts. Instead, CADC held that this finding was not sufficient: "[T]he question is not whether evidence shows that usage rates will increase by the necessary amount, but whether there is evidence showing they will not." Id., at 51a. In other words, once a regulation has been passed on the basis of certain assumptions, an agency is forbidden to rescind that regulation unless it can prove that those assumptions are false. The fact that an agency subsequently determines that there is "substantial uncertainty" about the validity of those assumptions is not sufficient to justify suspension of that regulation.

I do not think any elaborate analysis is needed to demonstrate that this standard is wrong. If an agency decides to act

on assumption X, but later finds that X is questionable, it seems well within the agency's broad discretion to decide not to go ahead with the action. The point is that an agency has discretion in deciding whether to adopt or rescind informal rules, and that means that the burden of proof falls not on the agency, but on those challenging the agency's action.

3. An alternative reason given by Judge Mikva -- in a portion of the opinion that Judge Edwards refused to join -- was that the agency erred by failing to consider amending Standard 208 to eliminate the detachable feature that made the required passive restraints similar to manual belts. In other words, the agency should have considered requiring either airbags or nondetachable passive restraints. "By artificially narrowing the options available -- or ignoring those options completely -- the agency acted in a totally arbitrary fashion." Id., at 56a.

There is no question that it would have been permissible for the agency to have considered these alternatives to rescinding the rule. Indeed, one would hope that an agency would consider all options. But the failure to do so cannot be a basis of reversal. The effect of Judge Mikva's analysis is to say that NHTSA acted arbitrarily because instead of rescinding the existing rule -- a rule NHTSA believes is unjustifiable -- it should have adopted a different and more stringent rule. This is tantamount to requiring the agency to promulgate a certain rule. I do not think a court may tell an administrative agency that it abused its discretion in not adopting a particular substantive rule that the court believes would be preferable to rescission of

an existing rule.

C

As outlined above, I think CADC's analysis is wrong. In my view, the standard for rescinding a rule is no more stringent than the general "arbitrary and capricious" standard that applies to adoption of a rule. Under this general test, I think the action of NHTSA should be upheld. So long as the agency was correct in finding that there is substantial uncertainty about belt usage with detachable passive restraints, I would hold that the agency may choose to suspend or eliminate the requirement. (Note that CADC made no finding on the accuracy of this "substantial uncertainty" finding. Thus, this Court could remand to CADC on that question, though I suspect the Court will prefer to resolve this case once and for all.)

I should point out that I am not much impressed with the reasonableness of the agency's action in this case. The evidence strongly suggests that a "true" passive restraint requirement (i.e., airbags and/or nondetachable restraints) would save thousands of lives and would be cost-effective. The evidence also suggests that some nondetachable restraints do provide sufficient opportunity for emergency egress. The agency's primary reason for not going to such a standard is possible public hostility. While I do not discount this possibility, I am not sure it should overcome the otherwise strong evidence of the need for a regulation. Like the Reagan administration, I believe there is a lot of unnecessary and counterproductive federal regulation; unlike the Reagan administration, I believe there are cases where feder-

al regulation is fully justified. Of course,

In short, I am under no illusion as to what is happening here: this was primarily a political decision by the new administration to delete a rule that it believed was unnecessary and in fact harmful to the auto industry. If this decision had eliminated a longstanding agency regulation, I might recommend a different outcome. But it must be remembered that the rule rescinded was adopted at the very beginning of the new Carter administration, despite a final rulemaking determination four months earlier by Secretary Coleman (Ford administration) that such a rule should not be promulgated. And that Carter administration rule was upheld by CADC under a deferential analysis. Given that the rule never took effect, and given that its proposed content has shifted with the political winds, I do not think NHTSA's action was unlawful. Such discontinuous agency decisionmaking is not to be encouraged. But Congress has been unwilling or unable to act decisively in instructing the agency as to what type of rule to enact. (I would note that this is a case where the congressional veto provision was used as a substitute for congressional decisionmaking; in 1974 the House voted overwhelmingly to forbid any passive restraint rule, but the conference, to avoid deciding this issue, inserted a veto provision instead.)

II

As you have indicated that you believe the agency did not act arbitrarily and capriciously, you need not reach the question whether CADC acted improperly in instructing the agency to imple-

ment the rule as of September 1, 1983. In my view, if CADC was correct in its decision on the merits, it did not abuse its discretion in entering this order. The effect of CADC's decision was to leave the rule in effect, and that means the agency must comply with it. All CADC did was give what it thought was a reasonable period of time for the agency to do so.

III

CADC should be reversed, and the decision of the agency should be upheld.

Mark

82-354 MOTOR VEHICLE v. STATE FARM CADC Argued 4/26/83

Air bags ~~passive~~ "passive restraints" case

What reasons?

Rex Lee (SG)

CADC's decision is unprecedented.

Where predictive judgments cannot be made by an agency, its judg. must be accepted as presumptively correct. CADC reversed this rule, & placed burden on the agency.

Standard 208 in existence since 1957 & has been amended in a process of evolution several times.

No possible reason for a Court to "freeze" this process as of the date Sec. Adams amended ~~the~~ 208 (1957)

In Pacific Legal Foundation case (CADC ~~CA D.C~~?) it was held the Secretary need not articulate facts supporting her decision

Check this

Statute has never required "passive restraints."

Sec. Lewis' decision has not ~~foreclosed~~ foreclosed any option

Cutler (Petr) (Argued feasibility of restraints)
If there was an obligation to explain, the Agency did give reasons - including the uncertainty. It need not give "facts". Here the absence of hard facts is the problem.

CADC relied primarily on the passive non-detachable seat belt. The Agency did address this alternative fully.

(After experience with 1980 Chevets" that demonstrated public rejection)

Only 3 ~~~~ experiments: In addition to 1980 Chevet, passive belts were tried on 1979 Chevets & Rabbit.

Coleman Experiment

Fitzpatrick (Rank)

Reher on Overton Park

Automatic seat belt has been used in hundreds of thousands of cars.

Agency suspend requirements for both them belts & air bags. Both of these "~~[illegible]~~ technologies" were rejected by Sec.

(WHR noted that Court can't ~~do~~ decide w issues of feasibility)

(Admitted that once detached the new belt was not better than present belts)

Sec. decision ~~[illegible]~~ Left there ~~[illegible]~~ in effect delegated its authority to the industry.

& Under Overton Park the Agency action must be supported by ~~findings~~ reasons. There was no uncertainty as to ~~[illegible]~~ reliability & acceptability of the passive seat belts (automatic & non-detachable).

? ?

SG (Reply)

Contrary to Mr. Fitzpatrick statement, the ~~seat~~ pressure belts said to have worked could not be detached.

Def. Drug Case 4/27

Reverse

1. CADC did not reject the reasons of Agency for rescinding (i.e. the substantial uncertainty as to usage, ~~un~~balanced vs. cost)

2. ~~In~~ Even assuming reasonableness of these reasons, Agency not justified in Rescinding prior Reg.

3. Put burden - in effect - on Agency to justify its action in.

In effect created a presumption of invalidity of Agency's most recent action. Burden is on ~~Petitioner~~ those who challenge the new action to prove it arbitrary & capricious.

Different case, perhaps, if the reasons had been in effect & succeeded

8 to Rev in whole or part. A majority would send "Bag" issue back to Agency

No. 82-354, Motor Vehicle v. State Farm Conf. 4/29/83

The Chief Justice Rev.

CADC failed to apply "arbitrary & capricious" standard.

Justice Brennan Rev & Remand to Agency

CADC did not give adequate deference to Agency discretion.

Agency must give rational explanation for its action.

(After full discussion WJB read his position.

WJB

Justice White Rev in part & ~~Aff in part~~ Remand

Agency did not say a word about Air Bags, & that option has been under consideration from the outset. At least Agency should have said why it was revoking as to Air Bags.

Would not affirm ~~CADC~~ CADC ordering Agency to reinstate. ~~Would~~ Would direct CADC to refer back to Agency the Air Bag issue.

CADC decided the "passive restr. Bags & belts. Agency did nothing on belts

Justice Marshall Affirm

CADC is right. Agency is not enforcing law. Motor companies are controlling the situations

Justice Blackmun Rev.

Suspect TM is

But CADC erred in relying on leg. action.

Also CADC erred in not deferring to Agency to a greater extent.

Justice Powell Rev.

See my notes

Agree with HAB.

I have not fully considered BRW's distinction bet. Air Bgs & Belts

Justice Rehnquist Rev.

CADC applied erroneous standards.
Standard is arbitrary + capricious

Justice Stevens Vacate & remd back to Agency
Do not defend CADC opinion ~~but~~ or judgment.
The Agency's action was "arbitrary & capricious".
~~It~~ Lives can be saved & the "dollar cost" is immaterial. Agency did not attempt to quantify ~~[redacted]~~ lives saved.
Agency should be required to re-examine Q as to both bags & belts.

Justice O'Connor Rev.

Agree with BRW as to air bags. SG's answer is that Agency is not required to address all Qs at one time.

215, 8, 14, 18

Sally note

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: JUN 6 1983

Recirculated: _____

See my letter to BRW of 6/7. I can join him & two more but not go to his remand to the Dept of Transportation on the passive seat belt issue.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–354, 82–355 AND 82–398

MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., ET AL., PETITIONERS
82–354 *v.*
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL.

CONSUMER ALERT, ET AL., PETITIONERS
82–355 *v.*
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL.

UNITED STATES DEPARTMENT OF TRANSPORTATION, ET AL., PETITIONERS
82–398 *v.*
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June ——, 1983]

JUSTICE WHITE delivered the opinion of the Court.

The development of the automobile gave Americans unprecedented freedom to travel, but exacted a high price for enhanced mobility. Since 1929, motor vehicles have been the leading cause of accidental deaths and injuries in the United States. In 1982, 46,300 Americans died in motor vehicle accidents and hundreds of thousands more were maimed

See BRW's answer of 6/9. I'll await the vote in other chambers.. WHR agrees with me & is writing. 6/9

and injured.[1] While a consensus exists that the current loss of life on our highways is unacceptably high, improving safety does not admit to easy solution. In 1966, Congress decided that at least part of the answer lies in improving the design and safety features of the vehicle itself.[2] But much of the technology for building safer cars was undeveloped or untested. Before changes in automobile design could be mandated, the effectiveness of these changes had to be studied, their costs examined, and public acceptance considered. This task called for considerable expertise and Congress responded by enacting the National Traffic and Motor Vehicle Safety Act of 1966, (Act), 15 U. S. C. §§ 1381 *et seq.* (1976 & Supp. IV 1980). The Act, created for the purpose of "reduc-[ing] traffic accidents and deaths and injuries to persons resulting from traffic accidents," 15 U. S. C. 1381, directs the Secretary of Transportation or his delegate to issue motor vehicle safety standards that "shall be practicable, shall meet the need for motor vehicle safety, and shall be stated in objective terms." 15 U. S. C. § 1392(a). In issuing these standards, the Secretary is directed to consider "relevant available motor vehicle safety data," whether the proposed standard "is reasonable, practicable and appropriate" for the particular type of motor vehicle ~~or~~ and the "extent to which such standards will contribute to carrying out the purposes" of the Safety Act. 15 U. S. C. § 1392(f) (1), (3), (4).[3]

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[1] NHTSA Traffic Safety Report, (April 1983).

[2] The Senate Committee on Commerce Reported:

"The promotion of motor vehicle safety through voluntary standards has largely failed. The unconditional imposition of mandatory standards at the earliest practicable date is the only course commensurate with the highway death and injury toll." S. Rep. No. 1301, 89th Cong., 2d Sess. (1966) 4.

[3] The Secretary's general authority to promulgate safety standards under the Act has been delegated to the Administrator of the National Highway Traffic Safety Administration (NHTSA). 49 CFR § 1.51(a) (1979) This opinion will use the terms NHTSA and agency interchangeably when referring to the National Highway Traffic Safety Administration, the Department of Transportation, and the Secretary of

The Act also authorizes judicial review, under the provisions of the Administrative Procedure Act (APA), 5 US.C. § 706 (1976), of all "orders establishing, amending, or revoking a Federal motor vehicle safety standard," 15 U. S. C. § 1392(b). Under this authority, we review today whether the NHTSA acted arbitrarily and capriciously in revoking the requirement in Motor Vehicle Safety Standard 208 that new motor vehicles produced after September 1982 be equipped with passive restraints to protect the safety of the occupants of the vehicle in the event of a collision. Briefly summarized, we hold that the agency failed to present an adequate basis and explanation for rescinding the passive restraint requirement and that the agency must either consider the matter further or adhere to or amend Standard 208 along lines which its analysis supports.

I

The regulation whose rescission is at issue bears a complex and convoluted history. Over the course of approximately 60 rulemaking notices, the requirement has been imposed, amended, rescinded, reimposed, and now rescinded again.

As originally issued by the Department of Transportation in 1967, Standard 208 simply required the installation of seatbelts in all automobiles. 32 Fed. Reg. 2408, 2415 (Feb. 3, 1967). It soon became apparent that the level of seatbelt use was too low to reduce traffic injuries to an acceptable level. The Department therefore began consideration of "passive occupant restraint systems"—devices that do not depend for their effectiveness upon any action taken by the occupant except that necessary to operate the vehicle. 34 Fed. Reg. 11,148 (July 2, 1969). Two types of automatic crash protection emerged: automatic seatbelts and airbags. The automatic seatbelt is a traditional safety belt, which when fastened to the interior of the door remains attached without impeding entry or exit from the vehicle, and deploys auto-

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matically without any action on the part of the passenger. The airbag is an inflatable device concealed in the dashboard and steering column. It automatically inflates when a sensor indicates that deceleration forces from an accident have exceeded a preset minimum, then rapidly deflates to dissipate those forces. After substantial on-the-road experience with both devices, it was estimated by NHTSA that passive restraints could prevent approximately 12,000 deaths and over 100,000 serious injuries annually. 42 Fed. Reg. at 34,298.

In 1969, the Department formally proposed a standard requiring the installation of passive restraints, 34 Fed. Reg. 11,148 (July 2, 1969), thereby commencing a lengthy series of proceedings. In 1970, the agency revised Standard 208 to include passive protection requirements, 35 Fed. Reg. 16, 927 (Nov. 3, 1970), and in 1972, the agency amended the standard to require full passive protection for all front seat occupants of vehicles manufactured after August 15, 1975. 37 Fed. Reg. 3911 (Feb. 24, 1972). In the interim, vehicles built between August 1973 and August 1975 were to carry either passive restraints or lap and shoulder belts coupled with an "ignition interlock" that would prevent starting the vehicle if the belts were not connected.[4] On review, the agency's decision to require passive restraints was found to be supported by "substantial evidence" and upheld. *Chrysler Corp.* v. *Dep't of Transportation*, 472 F. 2d 659 (CA 6 1972).[5]

In preparing for the upcoming model year, most car mark-

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[4] Early in the process, it was assumed that passive occupant protection meant the installation of inflatable airbag restraint systems. See 34 Fed. Reg. 11,148. In 1971, however, the agency observed that "some belt-based concepts have been advanced that appear to be capable of meeting the complete passive protection options," leading it to add a new section to the proposed standard "to deal expressly with passive belts." 36 Fed. Reg. 12,858, 12,859 (July 8, 1971).

[5] The court did hold that the testing procedures required of passive belts did not satisfy the Safety Act's requirement that standards be "objective." 472 F. 2d., at 675.

ers chose the "ignition interlock" option, a decision which was highly unpopular, and led Congress to amend the Act to prohibit a motor vehicle safety standard from requiring or permitting compliance by means of an ignition interlock or a continuous buzzer designed to indicate that safety belts were not in use. Motor Vehicle and Schoolbus Safety Amendments of 1974, Pub. L. 93–492, § 109, 88 Stat. 1482, 15 U. S. C. § 1410b(b). The 1974 Amendments also provided that any safety standard that could be satisfied by a system other than seatbelts would have to be submitted to Congress where it could be vetoed by concurrent resolution of both houses. 15 U. S. C. § 1410b(b)(2).[6]

The effective date for mandatory passive restraint systems was extended for a year until August 31, 1976. 40 Fed. Reg. 16,217 (April 10, 1975); *id.* at 33,977 (Aug. 13, 1975). But in June 1976, Secretary of Transportation William Coleman initiated a new rulemaking on the issue, 41 Fed. Reg. 24,070 (June 9, 1976). After hearing testimony and reviewing written comments, Coleman extended the optional alternatives indefinitely and suspended the passive restraint requirement. Although he found passive restraints technologically and economically feasible, the Secretary based his decision on the expectation that there would be widespread public resistance to the new systems. He instead proposed a demonstration project involving up to 500,000 cars installed with passive restraints, in order to smooth the way for public acceptance of mandatory passive restraints at a later date. Department of Transportation, The Secretary's Decision Concerning Motor Vehicle Occupant Crash Protection (December 6, 1976).

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[6] To comply with the Amendments, NHTSA proposed new warning systems to replace the prohibited continuous buzzers. 39 Fed. Reg. 42,692 (Dec. 6, 1974). More significantly, NHTSA was forced to rethink an earlier decision which contemplated use of the interlocks in tandem with detachable belts. See n. 14, *infra*.

Coleman's successor as Secretary of Transportation disagreed. Within months of assuming office, Secretary Brock Adams decided that the demonstration project was unnecessary. He issued a new mandatory passive restraint regulation, known as Modified Standard 208. 42 Fed. Reg. 34,289 (July 5, 1977); 42 CFR § 571.208 (1977). The Modified Standard mandated the phasing in of passive restraints beginning with large cars in model year 1982 and extending to all cars by model year 1984. The two principal systems that would satisfy the Standard were airbags and passive belts, leaving to the manufacturers the choice of which system to install. In *Pacific Legal Foundation* v. *Dep't of Transportation*, 593 F. 2d 1338 (CADC), cert. denied, 444 U. S. 830 (1979), the Court of Appeals upheld Modified Standard 208 as a rational, nonarbitrary regulation consistent with the agency's mandate under the Act. The standard also survived scrutiny by Congress, which did not exercise its authority under the legislative veto provision of the 1974 Amendments.[7]

Over the next several years, the automobile industry geared up to comply with Modified Standard 208. As late as July, 1980 NHTSA reported:

> "On the road experience in thousands of vehicles equipped with airbags and automatic safety belts has confirmed agency estimates of the life-saving and injury-preventing benefits of such systems. When all cars are equipped with automatic crash protection systems, each year an estimated 9,000 more lives will be saved and tens of thousands of serious injuries will be prevented." NHTSA Prog. Rep., 4 (Rec. 1627).

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[7] No action was taken by the full House of Representatives. The Senate committee with jurisdiction over NHTSA affirmatively endorsed the standard, S. Rep. No. 481, 95th cong., 1st Sess. (1977), and a resolution of disapproval was tabled by the Senate. 123 Cong. Rec. 33,332 (1977).

In February 1981, however, Secretary of Transportation Andrew Lewis reopened the rulemaking due to changed economic circumstances and, in particular, the difficulties of the automobile industry. 46 Fed. Reg. 12,033 (Feb. 12, 1981). Two months later, the agency ordered a one-year delay in the application of the standard to large cars, extending the deadline to September 1982, 46 Fed. Reg. 21,172 (April 9, 1981) and at the same time, proposed the possible rescission of the entire standard. 46 Fed. Reg. 21,205 (April 9, 1981). After receiving written comments and holding public hearings, NHTSA issued a final rule (Notice 25) that rescinded the passive restraint requirement contained in Modified Standard 208.

II

In a statement explaining the rescission, NHTSA maintained that it was no longer able to find, as it had in 1977, that the automatic restraint requirement would produce significant safety benefits. Notice 25, 46 Fed. Reg. 53,419 (Oct. 29, 1981). This judgment reflected not a change of opinion on the effectiveness of the technology, but a change in plans by the automobile industry. In 1977, the agency had assumed that airbags would be installed in 60% of all new cars and automatic seatbelts in 40%. By 1981 it became apparent that automobile manufacturers planned to install the automatic seatbelts in approximately 99% of the new cars. For this reason, the life-saving potential of airbags would not be realized. Moreover, it now appeared that the overwhelming majority of passive belts planned to be installed by manufacturers could be easily detached and left that way permanently. Passive belts, once detached, then required "the same type of affirmative action that is the stumbling block to obtaining high usage levels of manual belts." For this reason, the agency concluded that there was no longer a basis for reliably predicting that the standard would lead to any significant increased usage of restraints at all.

In view of the possibly minimal safety benefits, the automatic restraint requirement no longer was reasonable or practicable in the agency's view. The requirement would require approximately $1 billion to implement and the agency did not believe it would be reasonable to impose such substantial costs on manufacturers and consumers without more adequate assurance that sufficient safety benefits would accrue. In addition, NHTSA concluded that automatic restraints might have an adverse effect on the public's attitude toward safety. Given the high expense and limited benefits ~~on~~ detachable belts, NHTSA feared that many consumers would regard the standard as an instance of ineffective regulation, adversely affecting the public's view of safety regulation and, in particular, "poisoning popular sentiment toward efforts to improve occupant restraint systems in the future."

State Farm Mutual Automobile Insurance Co. and the National Association of Independent Insurers filed petitions for review of NHTSA's rescission of the passive restraint standard. The United States Court of Appeals for the District of Columbia Circuit held that the agency's rescission of the passive restraint requirement was arbitrary and capricious. 680 F. 2d 206 (1982). While observing that rescission is not unrelated to an agency's refusal to take action in the first instance, the court concluded that, in this case, NHTSA's discretion to rescind the passive restraint requirement had been restricted by various forms of congressional 'reaction' to the passive restraint issue. It then proceeded to find that the rescission of Standard 208 was arbitrary and capricious for three reasons. First, the court found insufficient as a basis for rescission NHTSA's conclusion that it could not reliably predict an increase in belt usage under the Standard. The court held that there was insufficient evidence in the record to sustain NHTSA's position on this issue, and that, "only a well-justified refusal to seek more evidence could render re-

scission non-arbitrary." 680 F. 2d at 232. Second, a majority of the panel[8] concluded that NHTSA inadequately considered the possibility of requiring manufacturers to install non-detachable rather than detachable passive belts. Third, the majority found that the agency acted arbitrarily and capriciously by failing to give any consideration whatever to requiring compliance with Standard 208 by the installation of airbags.

The court allowed NHTSA 30 days in which to submit a schedule for "resolving the questions raised in the opinion." 680 F. 2d, at 242. Subsequently, the agency filed a Notice of Proposed Supplemental Rulemaking setting forth a schedule for complying with the court's mandate. On August 4, 1982, the court of Appeals issued an order staying the compliance date for the passive restraint requirement until September 1, 1983, and requested NHTSA to inform the Court whether that compliance date was achievable. NHTSA informed the court on October 1, 1982 that based on representations by manufacturers, it did not appear that practicable compliance could be achieved before September 1985. On November 8, 1982, we granted certiorari, —— U. S. —— (1982), and on November 18, the court of appeals entered an order recalling its mandate.

III

Unlike the Court of Appeals, we do not find the appropriate scope of judicial review to be the "most troublesome question" in the case. Both the Motor Vehicle Safety Act and the 1974 Amendments to the Act concerning occupant crash protection standards indicate that motor vehicle safety standards are to be promulgated under the informal rulemaking procedures of § 553 of the Administrative Procedure Act. 5 U. S. C. § 553 (1976). The agency's action in promulgating such standards therefore may be set aside if found to be "ar-

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[8] Judge Edwards did not join the majority's reasoning on these points.

bitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U. S. C. § 706(2)(A). *Citizens to Preserve Overton Park* v. *Volpe*, 401 U. S., 402, 414 (1971); *Bowman Transportation, Inc.* v. *Arkansas-Best freight System, Inc.*, 419 U. S. 281 (1974). We believe that the rescission or modification of an occupant protection standard is subject to the same test. Section 103(b) of the Motor Vehicle Safety Act, 15 U. S. C. § 1392(b), states that the procedural and judicial review provisions of the Administrative Procedure Act "shall apply to all orders establishing, amending, or revoking a Federal motor vehicle safety standard," and suggests no difference in the scope of judicial review depending upon the nature of the agency's action.

Petitioner Motor Vehicle Manufacturers Association (MVMA) disagrees, contending that the rescission of an agency rule should be judged by the same standard a court would use to judge an agency's refusal to promulgate a rule in the first place—a standard Petitioner believes considerably narrower than the traditional arbitrary and capricious test and "close to the borderline of nonreviewability." MVMA Brief at 35. We reject this view. The Safety Act expressly equates orders "revoking" and "establishing" safety standards; neither that Act nor the APA suggests that revocations are to be treated as refusals to promulgate standards. Petitioner's view would render meaningless Congress' authorization for judicial review of orders revoking safety rules. Moreover, the revocation of an extant regulation is substantially different than a failure to act. Revocation constitutes a reversal of the agency's former views as to the proper course. A "settled course of behavior embodies the agency's informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress. There is, then, at least a presumption that those policies will be carried out best if the settled rule is adhered to." *Atchison, Topeka & Santa Fe Ry.* v. *Wichita Bd of Trade*, 412 U. S. 800, 807–808 (1973). Accordingly, an agency changing its course

Nothing "settled" here

by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance.

In so holding, we fully recognize that "regulatory agencies do not establish rules of conduct to last forever," *American Trucking Assoc., Inc.* v. *Atchison, Topeka & Santa Fe Ry.*, 387 U. S. 397, 416 (1967), and that an agency must be given ample latitude to "adapt their rules and policies to the demands of changing circumstances." *Permian Basin Area Rate Cases*, 390 U. S. 747, 784 (1968). But the forces of change do not always or necessarily point in the direction of deregulation. In the abstract, there is no more reason to presume that changing circumstances require the rescission of prior action, instead of a revision in or even the extension of current regulation. If Congress established a presumption from which judicial review should start, that presumption—contrary to petitioner's views—is not *against* safety regulation, but *against* changes in current policy that are not justified by the rulemaking record. While the removal of a regulation may not entail the monetary expenditures and other costs of enacting a new standard, and accordingly, it may be easier for an agency to justify a deregulatory action, the direction in which an agency chooses to move does not alter the standard of judicial review established by law.

The Department of Transportation accepts the applicability of the "arbitrary and capricious" standard. It argues that under this standard, a reviewing court may not set aside an agency rule that is rational, based on consideration of the relevant factors and within the scope of the authority delegated to the agency by the statute. We do not disagree with this formulation.[9] The scope of review under the "arbitrary

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[9] The Department of Transportation suggests that the aribtrary and capricious standard requires no more than the minimum rationality a statute must bear in order to withstand analysis under the Due Process Clause. We do not view as equivalent the presumption of constitutionality afforded

and capricious" standard is narrow and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made." *Burlington Truck Lines* v. *United States*, 371 U. S. 156, 168 (1962). In reviewing that explanation, we must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Bowman Transp.* v. *Ark.-Best Freight System*, *supra*, at 285; *Citizens to Preserve Overton Park* v. *Volpe*, *supra*, at 416. Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court should not attempt itself to make up for such deficiencies: "We may not supply a reasoned basis for the agency's action that the agency itself has not given." *SEC* v. *Chenery Corp.*, 332 U. S. 194, 196 (1947). We will, however, uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." *Bowman Transp.* v. *Ark.-Best Freight Systems*, *supra*, at 286. See also *Camp* v. *Pitts*, 411 U. S. 138, 142 (per curiam). For purposes of this case, it is also relevant that Congress required a record of the rulemakingproceedings to be compiled and submitted to a reviewing court, 15 U. S. C. § 1394, and intended that agency findings under the Motor Vehicle Safety Act would be supported by "substantial evidence on the record considered as a whole." S. Rep. No. 1301, 89th Cong., 2d Sess. 8 (1966); H. R. Rep. No. 1776, 89th Cong., 2d

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legislation drafted by Congress and the presumption of regularity afforded an agency in fulfilling its statutory mandate.

Sess. 21 (1966).

IV

The Court of Appeals correctly found that the arbitrary and capricious test applied to rescissions of prior agency regulations, but then erred in intensifying the scope of its review based upon its reading of legislative events. It held that congressional reaction to various versions of Standard 208 "raise[d] doubts" that NHTSA's rescission "necessarily demonstrates an effort to fulfill its statutory mandate," and therefore the agency was obligated to provide "increasingly clear and convincing reasons" for its action. 680 F. 2d at 222, 229. Specifically, the Court of Appeals found significance in three legislative occurences:

> "In 1974, Congress banned the ignition interlock but did not foreclose NHTSA's pursuit of a passive restraint standard. In 1977, Congress allowed the standard to take effect when neither of the concurrent resolutions needed for disapproval was passed. In 1980, a majority of each house indicated support for the concept of mandatory passive restraints and a majority of each house supported the unprecedented attempt to require some installation of airbags." 680 F. 2d, at 228.

From these legislative acts and non-acts the court of appeals derived a "congressional commitment to the concept of automatic crash protection devices for vehicle occupants." *Id.*

This path of analysis was misguided and the inferences it produced are questionable. It is noteworthy that in this Court Respondent State Farm expressly agrees that the post-enactment legislative history of the Safety Act does not heighten the standard of review of NHTSA's actions. Brief of Respondents State Farm Mutual Automobile Insurance Co. at 13. State Farm's concession is well-taken for this Court has never suggested that the *standard* of review is enlarged or diminished by subsequent congressional action. While an agency's interpretation of a statute may be *confirmed or rati-*

fied by subsequent Congressional failure to change that intepretation, *Bob Jones University* v. *United States*, —— U. S. ——, —— (1983); *Haig* v. *Agee*, 453 U. S. 280, 291–300 (1981), in the case before us, even an unequivocal ratification—short of statutory incorporation—of the passive restraint standard would not connote approval or disapproval of an agency's later decision to rescind the regulation. That decision remains subject to the arbitrary and capricious standard.

That we should not be so quick to infer a Congressional mandate for passive restraints is confirmed by examining the post-enactment legislative events cited by the Court of Appeals. Even were we inclined to rely on inchoate legislative action, the inferences to be drawn fail to to suggest that the NHTSA acted improperly in rescinding Standard 208. First, in 1974 a mandatory passive restraint standard was ~~yet to be promulgated,~~ Congress had no reason to preempt that course. Moreover, one can hardly infer support for a mandatory standard from Congress' decision to provide that such a regulation would be subject to disapproval by resolutions of disapproval in both houses. Similarly, no mandate can be divined from the tabling of resolutions of disapproval which were introduced in 1977. The failure of Congress to exercise its veto might reflect legislative deference to the agency's expertise and does not indicate that Congress would disapprove of the agency's action in 1981. And even if Congress favored the standard in 1977, it—like NHTSA—may well reach a different judgment given changed circumstances four years later. Finally, the Court of Appeals read too much into floor action on the 1980 authorization bill, a bill which was not enacted into law. Other contemporaneous events could be read as showing equal congressional hostility to passive restraints.[10]

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[10] For example, an overwhelming majority of the House of Representatives voted in favor of a proposal to ban mandatory passive restraints. 125 Cong. Rec. H12285, H12287 (daily ed. Dec. 19, 1979).

V

The ultimate question before us is whether NHTSA's rescission of Standard 208 was arbitrary and capricious. We conclude, as did the Court of Appeals, that it was. We also conclude, but for somewhat different reasons, that further consideration of the issue by the agency is therefore required. We deal separately with the rescission as it applies to airbags and as it applies to seatbelts.

A

The first and most obvious reason for finding the rescission arbitrary and capricious is that NHTSA apparently gave no consideration whatever to modifying the Standard to require that airbag technology be utilized. Standard 208 sought to achieve automatic crash protection by requiring automobile manufactuers to install either of two passive restraint devices: airbags or automatic seatbelts. There was no suggestion in the long rulemaking process that led to Standard 208 that if only one of these options were feasible, no passive restraint standard should be promulgated. Indeed, the agency's original proposed standard contemplated the installation of inflatable restraints in all cars.[11] Automatic belts were added as a means of complying with the standard because they were believed to be as effective as airbags in achieving the goal of occupant crash protection. 36 Fed. Reg. 12,858, 12,859 (July 8, 1971). At that time, the passive belt approved by the agency could not be detached.[12] Only later, at

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[11] While NHTSA's 1970 passive restraint requirement permitted compliance by means other than the airbag, 35 Fed. Reg. 16,927,(1970), "[t]his rule was [a] de facto air bag mandate since no other technologies were available to comply with the standard." J. Graham & P. Gorham, NHTRSA and Passive Restraints: A Case of Arbitrary and Capricious Deregulation, 35 Admin. L. Rev. 193, 197 (1983). See n. 4, *supra*.

[12] Although the agency suggested that passive restraint systems contain an emergency release mechanism to allow easy extrication of passengers in the event of an accident, the agency cautioned that "[i]n the case of passive belts, it would be required that the release not cause belt separation, and

a manufacturer's behest, did the agency approve of the detachability feature—and only after assurances that the feature would not compromise the safety benefits of the restraint.[13] Although it was then foreseen that 60% of the new cars would contain airbags and 40% would have automatic seatbelts, the ratio between the two was not significant as long as the passive belt would also assure greater passenger safety.

The agency has now determined that the detachable automatic belts will not attain anticipated safety benefits because so many individuals will detach the mechanism. Even if this conclusion were acceptable in its entirety, see *infra* at ——, standing alone it would not justify any more than an amendment of Standard 208 to disallow compliance by means of the one technology which will not provide effective passenger protection. It does not cast doubt on the need for a passive restraint standard or upon the efficacy of airbag technology. In its most recent rule-making, the agency again acknowledged the life-saving potential of the airbag:

> "The agency has no basis at this time for changing its earlier conclusions in 1976 and 1977 that basic airbag technology is sound and has been sufficiently demonstrated to be effective in those vehicles in current use . . . ." NHTSA Final Regulatory Impact Analysis (RIA) at XI-4 (Rec. 264).

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that the system be self-restoring after operation of the release." 36 Fed. Reg. 12,866 (July 8, 1971).

[13] In April 1974, NHTSA adopted the suggestion of an automobile manufacturer that emergency release of passive belts be accomplished by a conventional latch—provided the restraint system was guarded by an ignition interlock and warning buzzer to encourage reattachment of the passive belt. 39 Fed. Reg. 14,593 (April 25, 1974). When the 1974 Amendments prohibited these devices, the agency simply eliminated the interlock and buzzer requirements, but continued to allow compliance by a detachable passive belt.

Given the effectiveness ascribed to airbag technology by the agency, the mandate of the Safety Act to achieve traffic safety would suggest that the logical response to the change in seatbelt technology would be to require the installation of airbags. At the very least this alternative way of achieving the ends of the Act should have been addressed and adequate reasons given for its abandonment. But the agency not only did not require compliance through airbags, it did not even consider the possibility in its 1981 rulemaking. Not one sentence of its rulemaking statement discusses the airbags-only option. Because, as the Court of Appeals stated, "NHTSA's . . . analysis of airbags was nonexistent," 680 F. 2d, at 236, what we said in *Burlington Truck Lines* v. *United States*, *supra*, at 167, is appropos here:

> "There are no findings and no analysis here to justify the choice made, no indication of the basis on which the [agency] exercised its expert discretion. We are not prepared to and the Administrative Procedure Act will not permit us to accept such . . . practice. . . . Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, *expertise*, the strength of modern government, can become a monster which rules with no practical limits on its discretion.' *New York* v. *United States*, 342 U. S. 882, 884 (dissenting opinion)." (footnote omitted)

We have frequently reiterated that an agency must cogently explain why it has exercised its direction in a given manner, *Atchison, T & S.F.R. Co.* v. *Wichita Bd. of Trade*, 412 U.S 800, 806 (1973); *FTC* v. *Sperry & Hutchinson Co.*, 405 U. S. 233, 249 (1972); *NLRB* v. *Metropolitan Ins. Co.*, 380 U. S. 438, 443 (1965); and we reaffirm this principle again today.

The automobile industry has opted for the passive belt over the airbag, but surely it is not enough that the regulated industry has eschewed a given safety device. For nearly a

decade, the automobile industry waged the regulatory equivalent of war against the airbag and lost—the inflatable restraint was incontrovertibly proven effective. The only thing which has changed is that now the automobile industry has decided to employ a belt system which will not meet the safety objectives of Standard 208. This hardly constitutes cause to revoke the standard itself. Indeed, the Safety Act was necessary because the industry was not sufficiently responsive to safety concerns. The Act intended that safety standards not depend on current technology and could be "technology-forcing" in the sense of inducing the development of superior safety design. See *Chrylser Corp.* v. *Dept. of Transp.*, 472 F. 2d 659, 672–673 (CA 6 1972). If, under the statute, the agency should not defer to the industry's failure to develop safer cars, which it surely should not do, *a fortiori* it may not revoke a safety standard which can be ~~met~~ satisfied by current technology simply because the industry has opted for an ineffective seatbelt design.

Although the agency did not address the mandatory airbags option and the Court of Appeals noted that "airbags seem to have none of the problems that NHTSA identified in passive seatbelts," petitioners recite a number of difficulties that they believe would be posed by a mandatory airbag standard. These range from questions concerning the installation of airbags in small cars to that of adverse public reaction. But these are not the agency's reasons for rejecting a mandatory airbag standard. Not having considered the possibility, the agency submitted no reasons at all. The short—and sufficient—answer is that the courts may not accept appellate counsel's *post hoc* rationalizations for agency action. *Burlington Truck Lines*, 371 U. S. at 168. It is well-established that an agency's action must be upheld, if at all, on the basis articulated by the agency itself. *Id.*; *Chenery* v. *SEC*, 332 U. S. 194, 196 (1945); *American Textile Manufacturers Inst.* v. *Donovan*, 452 U. S. 490, 539 (1981).[14]

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[14] The Department of Transportation expresses concern that adoption of

Petitioners also invoke our decision in *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U. S. 519 (1977), as though it were a talisman under which any agency decision is by definition unimpeachable. Specifically, it is submitted that to require an agency to consider an airbags-only alternative is to, in essence, dictate to the the agency the procedures it is to follow. Petitioners both misread *Vermont Yankee* and misconstrue the nature of the remand that is in order. In *Vermont Yankee*, we held that a court may not impose additional procedural requirements upon an agency. We do not require today any specific procedures which NHTSA must follow. Nor do we broadly require an agency to consider all policy alternatives in reaching decision. It is true that a rulemaking "cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable by the mind of man . . . regardless of how uncommon or unknown that alternative might have been." 435 U. S., at 551. But the airbag is more than a policy alternative to the passive restraint standard; it is a technological alternative within the ambit of the existing standard. We hold only that given the judgment made in 1977 that airbags were an effective and cost-beneficial life-saving technology, that judgment may not be reversed without any consideration whatsoever of an airbags-only requirement.

B

Although the issue is closer, we also find that the agency

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an airbags-only requirement would have required a new notice of proposed rulemaking. Even if this were so, and we need not decide the question, it would not constitute sufficient cause to rescind the passive restraint requirement. The Department also asserts that it was reasonable to withdraw the requirement as written to avoid forcing manufacturers from spending resources to comply with an ineffective safety initiative. We think that it would have been permissible for the agency to temporarily suspend the passive restraint requirement or to delay its implementation date while an airbags mandate was studied. But, as we explain in text, that option had to be considered before the passive restraint requirement could be revoked.

was too quick to dismiss the safety benefits of automatic seatbelts. NHTSA's critical finding was that, in light of the industry's plans to install readily detachable passive belts, it could not could not reliably predict "even a 5 percentage point increase as the minimum level of expected usage increase." 46 Fed. Reg. 53,421–23. The Court of Appeals rejected this finding because there is "not one iota" of evidence that Modified Standard 208 will fail to increase nationwide seatbelt use by at least 13 percentage points, the level of increased usage necessary for the standard to justify its cost. Given the lack of probative evidence, the Court held that "only a well-justified refusal to seek more evidence could render rescission non-arbitrary." 680 F. 2d, at 232.

Petitioners object to this conclusion. In their view, "substantial uncertainty" that a regulation will accomplish its intended purpose is sufficient reason, without more, to rescind a regulation. We agree with petitioners that just as an agency reasonably may decline to issue a safety standard if it is uncertain about its efficacy, an agency may also revoke a standard on the basis of serious uncertainties if supported by the record and reasonably explained. Rescission of the passive restraint requirement would not be arbitrary and capricious simply because there was no evidence in direct support of the agency's conclusion. It is not infrequent that the available data does not settle a regulatory issue and the agency must then exercise its judgment in moving from the facts and probabilities on the record to a policy conclusion. Recognizing that policymaking in a complex society must account for uncertainty, however, does not imply that it is sufficient for an agency to merely recite the terms "substantial uncertainty" as a justification for its actions. The agency must explain the evidence which is available, and must offer a "rational connection between the facts found and the choice made." *Burlington Truck Lines, Inc.* v. *United States*, *supra*, at 168. Generally, one aspect of that explanation

would be a justification for rescinding the regulation before engaging in a search for further evidence.

In this case, the agency's explanation for rescission of the passive restraint requirement is *not* sufficient to enable us to conclude that the rescission was the product of reasoned decisionmaking. To reach this conclusion, we do not upset the agency's view of the facts, but we do appreciate the limitations of this record in supporting the agency's decision. We start with the accepted ground that if used, seatbelts unquestionably would save many thousands of lives and would prevent tens of thousands of crippling injuries. Unlike recent regulatory decisions we have reviewed, *Industrial Union Department* v. *American Petroleum Institute*, 448 U. S. 607 (1980); *American Textile Manufactuers Inst., Inc.* v. *Donovan*, 452 U. S. 490 (1981), the safety benefits of wearing seatbelts are not in doubt and it is not challenged that that were those benefits to accrue, the monetary costs of implementing the standard would be easily justified. We move next to the fact that there is no direct evidence in support of the agency's finding that detachable automatic belts cannot be predicted to yield a substantial increase in usage. The empirical evidence on the record, consisting of surveys of drivers of automobiles equipped with passive belts, reveals more than a doubling of the usage rate experienced with manual belts.[15] Much of the agency's rulemaking statement—and much of the controversy in this case—centers on

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[15] Between 1975 and 1980, Volkswagen sold approximately 350,000 Rabbits equipped with detachable passive seatbelts that were guarded by an ignition inrerlock. General Motors sold 8,000 1978 and 1979 Chevettes with a similar system, but eliminated the ignition interlock on the 13,000 Chevettes sold in 1980. NHTSA found that belt usage in the Rabbits averaged 34% for manual belts and 84% for passive belts. Regulatory Impact Analysis (RIA) at IV-52, App. 108. For the 1978–1979 Chevettes, NHTSA calculated 34% usage of manual belts and 71% for passive belts. On 1980 Chevettes, the agency found these figures to be 31% for manual belts and 70% for passive belts. *Id.*

the conclusions that should be drawn from these studies. The agency maintained that the doubling of seatbelt usage in these studies could not be extrapolated to an across-the-board mandatory standard because the passive seatbelts were guarded by ignition interlocks and purchasers of the tested cars are somewhat atypical.[16] Respondents insist these studies demonstrate that Modified standard 208 will substantially increase seat belt usage. We believe that it is within the agency's discretion to pass upon the generalizability of these field studies. This is precisely the type of issue which rests within the expertise of NHTSA, and upon which a reviewing court must be most hesitant to intrude.

But accepting the agency's view of the field tests on passive restraints indicates only that there is no reliable real-world experience that usage rates will substantially increase. To be sure, NHTSA opines that "it cannot reliably predict even a 5 percentage point increase as the minimum level of increased usage." Notice 25 at (104a). But this and other statements that passive belts will not yield substantial increases in seatbelt usage apparently take no account of the critical difference between detachable automatic belts and current manual belts. A detached passive belt does require an affirmative act to reconnect it, but—unlike a manual seat belt—the passive belt, once reattached, will continue to function automatically unless again disconnected. Thus, inertia—a factor which the agency's own studies have found significant in explaining the current low usage rates for seatbelts[17]—works in *favor* of, not *against*, use of the protec-

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[16] "NHTSA believes that the usage of automatic belts in Rabbits and Chevettes would have been substantially lower if the automatic belts in those cars were not equipped with a use-inducing device inhibiting detachment . . ." Notice 25 at (102a).

[17] NHTSA commissioned a number of surveys of public attitudes in an effort to better understand why people were not using manual belts and todetermine how they would react to passive restraints. The surveys re-

tive device. Since 20 to 50% of motorists currently wear seatbelts on some occasions, there would seem to be grounds to believe that seatbelt use by occasional users will be substantially increased by the detachable passive belts. Whether this is in fact the case is a matter for the agency to decide, but it must bring its expertise to bear on the question.

The agency, of course, is correct to look at the costs as well as the benefits of Standard 208. The agency's conclusion that the incremental costs of the requirements were no longer reasonable was predicated on its prediction that the safety benefits of the regulation might be minimal. Specifically, the agency's fears that the public may resent to pay more for the automatic belt systems depends is expressly dependent on the assumption that detachable automatic belts will not produce more than "negligible safety benefits." When the agency reexamines its findings as to the likely increase in seat belt usage, it must also reconsider its judgment of the monetary and other costs of the Standard. In reaching its judgment, NHTSA should bear in mind that Congress intended safety to be the preeminent factor under the Motor Vehicle Safety Act:

> "The Commitee intends that safety shall be the overriding consideration in the issuance of standards under this bill. The Committee recognizes . . . that the Secretary will necessarily consider reasonableness of cost, feasibility and adequate leadtime." S. Rep. No. 1301 at 6.

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veal that while 20% to 40% of the public is opposed to wearing manual belts, the larger proportion of the population does not wear belts because they forgot or found manual belts inconvenient or bothersome. RIA at IV-25; App. 81. In another survey, 38% of the surveyed group responded that they would welcome automatic belts, and 25% would "tolerate" them. See RIA at IV-37. App. 93. NHTSA did not comment upon these attitude surveys in its explanation accompanying the rescission of the passive restraint requirement.

> "In establishing standards the Secretary must conform to the requirement that the standard be practicable. This would require consideration of all relevant factors, including technological abiity to achieve the goal of a particular standard as well as consideration of economic factors. Motor vehicle safety is the paramount purpose of this bill and each standard must be related thereto." H. Rep. No. 1776 at 16.

The agency also failed to articulate a basis for not requiring nondetachable belts under Standard 208. It is argued that the current concern of the agency with the easy detachability of the currently favored design would be readily solved by a continuous passive belt, which allows the occupant to "spool out" the belt and create the necessary slack for easy extrication from the car. The agency did not separately consider the continuous belt option, but treated it together with the ignition interlock device in a category it titled "option of use-compelling features." The agency was concerned that use-compelling devices would "complicate extrication of an occupant from the car." "To require that passive belts contain use-compelling features," the agency observed, "could be counterproductive [given] . . . widespread, latent and irrational fear in many members of the public that they could be trapped by the seat belt after a crash." In addition, based on the experience with the ignition interlock, the agency feared that use-compelling features might trigger adverse public reaction.

By failing to analyze the continuous seatbelts in its own right, the agency has failed to offer the rational connection between facts and judgment required to pass muster under the arbitrary and capricious standard. We agree with the Court of Appeals that NHTSA did not suggest that the emergency release mechanisms used in nondetachable belts are any less effective for emergency egress than the buckle release system used in detachable belts. In 1978, when General Motors obtained the agency's approval to install a con-

tinuous passive belt, it assured the agency that nondetachable belts with spool releases were as safe asd detachable belts with buckle releases. 43 Fed. Reg. 21,912, 21,913–14 (1978). NHTSA was satisfied that this belt design assured easy extricability: "the agency does not believe that the use of [such] release mechanisms will cause serious occupant egress problems . . ." 43 Fed. Reg. 52,493, 52,494 (1978). While the agency is entitled to change its view on the acceptability of continuous passive belts, it is obligated to explain its reasons for doing so.

The agency also failed to offer any explanation, of why a continuous passive belt would engender the same adverse public reaction as the ignition interlock, and, as the court of appeals concluded, "every indication in the record points the other way." —— F. 2d at ——.[18] We see no basis for equating the two devices: the continous belt, unlike the ignition interlock, does not interfere with the operation of the car. More importantly, it is the agency's responsibility, not this Court's, to explain its decision.

There are problems w/ the continuous belt apart from "egress."

V

"An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis . . ." *Greater Boston Television Corp.* v. *FCC*, 444 F. 2d 841, 852 (CA DC), cert. denied, 403 U. S. 923 (1971). We do not accept all of the reasoning of the court of appeals but we do conclude that the agency has failed to supply the requisite "reasoned analysis" in this case. Accordingly, we vacate the judgment of the court of appeals and remand the case to that court with directions to remand the matter to the

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[18] The Court of Appeals noted previous agency statements distinguishing interlocks from passive restraints. 42 Fed. Reg. at 34,290; 36 Fed. Reg. at 8296 (1971); RIA at II-4, App. 30.

NHTSA for further consideration consistent with this opinion.[19]

So ordered.

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[19] Petitioners construe the court of appeals's order of August 4, 1982 as setting an implementation date for Standard 208, in violation of *Vermont Yankee*'s injunction against setting such time constraints. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U. S., at 544–545. Respondents maintain that the court of appeals simply stayed the effectiveness date of Standard 208, which not having been validly rescinded, would have required mandatory passive restraints for new cars after September 1, 1982. We need not choose between these views because the agency had sufficient justification to suspend, although not to rescind, Standard 208, pending the further consideration required by the court of appeals, and now, by us.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 6, 1983

MEMORANDUM TO THE CONFERENCE

Re: 82-354, 82-355 and 82-398 -

Motor Vehicle Manufacturers Ass'n v.
State Farm Mutual Automobile Insurance Co.

Consumer Alert v. State Farm Mutual
Automobile Insurance Co.

U. S. Dept. of Transportation v.
State Farm Mutual Automobile Insurance Co.

My vote in Conference was to agree with the Court of Appeals insofar as it held that NHTSA should have, but did not, explain why Standard 208 was revoked as to airbags as well as seatbelts. Since I inherited this case from Bill, I take it that the Chief and Bill read the Conference action as affording at least a reasonable chance of producing a court on the above basis.

The proposed opinion that I am now circulating first disagrees with the Court of Appeals to some extent with respect to its approach to the case. It then faults the NHTSA for not dealing with the airbags issue in revoking the Standard 208. The draft then goes farther than the Conference vote would seem to support by finding NHTSA's explanation for revoking the seatbelt standard to be inadequate in certain respects. These are much closer calls than the airbags issue, but if the case is to go back for further explanation in any event, perhaps NHTSA should give some attention to these matters also. I doubt that it would find it too difficult to cover its tracks based on the present record.

Cheers,

Byron

men 06/06/83

MEMORANDUM TO JUSTICE POWELL

From: Mark

Re: Motor Vehicle Manufs. Ass'n v. State Farm, No. 82-354

Justice White's opinion has circulated -- and, as in numerous cases he has been assigned this year, he has taken an approach different from the Conference vote.

This memo will be brief, because I think a prompt decision on your part may be indicated. TM and JPS already have joined, and I would predict that WJB may follow suit. Yes

As you may recall, the NHTSA rule in this case called for either airbags or passive seatbelts. The agency determined that 99% of all manufacturers would comply by using detachable passive seatbelts. It further found that the detachable feature made it unlikely that seatbelt usage would increase significantly. Therefore, the entire rule was rescinded.

BRW holds that the agency erred in three ways:

(i) refusing to consider changing the requirement to airbags only. BRW makes a fairly persuasive -- and, importantly, fairly narrow -- argument that because the airbag feature already was in the rule, the agency at least should have explained why it threw that feature out as well.

(ii) failing to explain why a continuous spool belt -- which is not detachable, but which can be "spooled" out in cases of emergency -- was not an acceptable alternative to detachable belts. Such a spool belt exists and the agency has held that it

complies with the standard. For this reason, BRW makes a good argument that the agency should have stated why such a belt would not resolve the problems with detachable belts.

(iii) failing to explain why seat belt usage will not increase with detachable belts. Here I strongly disagree with BRW. I think the agency made a rational judgment that a detachable passive restraint may not be used that much more often than a regular seat belt. Little evidence was offered, but then little exists.

I think this holding on the part of BRW is dangerous. The first two of BRW's holdings are narrow, because they tell the agency only that there were issues that should not have been ignored completely. The third holding, in contrast, tells the agency that its explanation was not good enough -- even though the agency said more on the subject than had been said when the detachable belt was approved in the first place.

At this point, I would recommend that you join an opinion that upheld the agency's finding that detachable belts would not produce sufficient benefits but that remanded for an explanation on airbags and continuous spool belts. This differs from your original vote to reverse. The reason I would join BRW on the airbags and spool belt issues is that these were not mere hypothetical alternatives. Rather, they were features of the original rule. It seems fair to ask the agency to explain why it should not simply have eliminated that portion of the rule -- "detachable" belts -- that it found troublesome, rather than eliminating the entire rule. It may well be that the agency has an

explanation; some arguments were advanced in the briefs. But BRW is correct that the agency utterly failed to address these in its original decision.

At this point, BRW may still be receptive to a suggested change along these lines. There were not five votes for the views of this opinion. (TM originally was the only vote to affirm. The fact that he joined within hours -- along with JPS -- is evidence of the breadth of this opinion.) But as of now, it is unclear whether HAB or SOC will join BRW; I think they are more concerned about the airbag issue. If you were willing to go along, this would assure BRW of a Court (for TM, JPS, and/or WJB necessarily would join the airbags discussion). This is an instance in which I think this movement on your part could result in preventing a substantially worse outcome.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 6, 1983

Re: 82-354; 82-355; 82-398 - Motor Vehicle Manufacturers Assn. v. State Farm Mutual Automobile Insurance Co., et al.

Dear Byron:

Please join me.

Respectfully,

John

Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 6, 1983

Re: No. 82-354,355 and 398-Motor Vehicle Manufacturers Association of the US v. State Farm Mutual Automobile Ins; Consumer Alert v. State Farm Mutual Automobile Ins. and United States Dept. of Transportation v. State Farm Mutual Automobile Ins.

Dear Byron:

Please join me.

Sincerely,

T.M.

Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 6, 1983

No. 82-354 Motor Vehicle Manufacturers Assoc. v. State Farm
No. 82-355 Consumer Alert v. State Farm
No. 82-398 U. S. Dept. of Transportation v. State Farm

Dear Byron,

For the present, I will await any further writing in this case.

Sincerely,

Sandra

Justice White

Copies to the Conference