No. 17-1111

In the Supreme Court of the United States

J.B. HUNT TRANSPORT, INC.,
Petitioner,

v.

GERARDO ORTEGA, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RYDER SYSTEM, INC.'S *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER

Linda Husar
Mara D. Curtis
REED SMITH LLP
355 South Grand Avenue
Suite 2900
Los Angeles, CA 90071-1514
213.457.8000
213.457.8080 (fax)

Raymond A. Cardozo
Counsel of Record
REED SMITH LLP
101 Second Street
Suite 1800
San Francisco, CA 94105
415.543.8700
415.391.8269 (fax)
RCardozo@ReedSmith.com

Counsel for Amicus Curiae Ryder System, Inc.

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND REGULATIONS

RULES

OTHER AUTHORITIES

INTEREST OF *AMICUS CURIAE*[1]

Ryder System, Inc. ("Ryder") is a national transportation and logistics provider. Ryder's business operates under the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), the statute that gives rise to the questions presented in J.B. Hunt's petition for writ of certiorari. Those questions presented are critically important to Ryder, and indeed, to all motor carriers that operate in commerce.

Ryder provides reliable transportation services to customers throughout the United States. It is deeply concerned about the Ninth Circuit's interpretation of the FAAAA, and the impact of that interpretation on Ryder's prices, routes and services, as further described below.

Moreover, Ryder is keenly interested in resolution of the conflicts that have developed among the circuit courts of appeal on the questions presented. As a provider of motor carrier services throughout the United States, Ryder could more efficiently provide lower prices and better routes and services if it were able to apply uniform systems for delivering the services across the multiple states in which it operates. In enacting the FAAAA's preemption provision, Congress recognized that disparate regulatory regimes impede the ability of motor carriers to adopt a standard

---

[1] Pursuant to Rule 37.2, counsel for all parties received timely notice of the intent to file this brief and all parties have consented to its filing. No counsel for a party authored this brief in whole or in part and no person or entity other than *amicus* or its counsel made a monetary contribution to the preparation or submission of this brief.

way of doing business and hence preempted all state laws that relate to a carrier's prices, routes or services. The conflict among the circuit courts on the preemption questions presented impairs Ryder's ability to develop a standard way of doing business across the nation. Ryder therefore urges this Court to grant J.B. Hunt's petition to resolve those circuit splits and to settle the law on the important and recurring questions presented.

SUMMARY OF ARGUMENT

The trucking industry is the engine of our nation's commerce. Every business and every consumer depends on trucking services. In 2012, trucks moved goods worth more than $10 trillion.[2]

Thus, every time a government entity enacts or enforces a law that affects the trucking industry, the impact of that law is felt by hundreds of millions of American consumers and businesses. Laws that facilitate improvements or greater efficiency in trucking industry prices, routes or services have far-reaching impacts throughout the national economy. Conversely, laws that burden those prices, routes or services ripple adversely through our economy.

Recognizing the transportation industry's critical role in all facets of our economy, Congress enacted the Airline Deregulation Act ("ADA") and the FAAAA to allow market forces to drive the most efficient prices, routes and services. The FAAAA seeks to achieve that

---

[2] *Transportation—2012 Commodity Flow Survey*, Bureau of Transportation Statistics and U.S. Census Bureau (Feb. 2015) at Table 1a.

goal by providing that a State or political subdivision "may not enact or enforce a law, regulation or other provision having the force or effect of law related to a price, route or service of any motor carrier." 49 U.S.C. § 14501(c)(1). The federal deregulation of the trucking and airline industries has reduced the cost of moving goods through the economy, lowering the cost of finished products and enabling U.S. businesses to better compete in the global marketplace.

But those goals and gains all depend on correct judicial interpretation of the Congressionally-mandated deregulation, and in particular its preemption of state laws that are related to a motor carrier's prices, routes and services. In its petition for a writ of certiorari, J.B. Hunt details how this Court's precedents establish a broader FAAAA preemption than that which the Ninth Circuit applied in the decision presented for review. J.B. Hunt also articulates the multiple splits among the circuit courts of appeal that have developed on the questions it has presented.

It is critical that this Court settle the questions presented and eliminate the divisions that have developed among the circuit courts on those questions. As Ryder explains below, the California laws at issue burden motor carriers' routes, services, and prices, in significant ways.

Yet, the Ninth Circuit below held it was bound by its earlier precedent in *Dilts v. Penske Logistics, LLC*, 769 F.3d 637 (9th Cir. 2014), which held that the FAAAA does not preempt the application of California's meal and rest period laws to motor carriers. (Hunt Petition Appx. 3a) *Dilts* has held that to determine whether a state law is "*related to* a price, route or

service of any motor carrier" [49 U.S.C. § 14501(c)(1) (emph. added)], "the proper inquiry is whether the provision directly or indirectly, *binds* the carrier to a particular price, route or service." *Dilts*, 769 F.3d at 647 (emph. added). Thus, the Ninth Circuit's test replaces the broader statutory text "related to" with a narrower and more literalistic inquiry—whether the law "binds" the carrier to a particular, price, route or service. As Ryder explains below, the Ninth Circuit's narrower test erroneously imposes on motor carriers state laws that have a significant impact on the carriers' prices, routes or services.

The Ninth Circuit also interprets "price, route or service" to refer only to "point-to-point" transport. *See Dilts*, 769 F.3d at 649. Ryder demonstrates below that this narrow interpretation of the FAAAA's preemption provision likewise erroneously permits application of state laws that have a significant impact on its prices, routes and services.

And the Ninth Circuit held that the FAAAA does not preempt California's unique application of its minimum wage laws in a way that discourages motor carriers from using incentive-based pay structures. This holding likewise allows for application of a state law that significantly impacts Ryder's prices, routes or services.

Each of the Ninth Circuit's conclusions appear nowhere in this Court's precedents. None are faithful to the FAAAA's text or purpose. And, all conflict with conclusions reached by other circuit courts of appeal.

Perhaps most importantly, each Ninth Circuit conclusion fails to take into account the real-world

consequences of state laws like California's. Because those consequences are what prompted Congress to enact the FAAAA, Ryder illuminates in this *amicus* brief the impact of the California laws at issue on its prices, routes or services.

The Court should grant J.B. Hunt's petition and review the important, impactful, and unsettled questions of law raised therein.

ARGUMENT

I. THE FAAAA PREEMPTS CALIFORNIA'S MEAL AND BREAK LAWS BECAUSE THEY SIGNIFICANTLY IMPACT MOTOR CARRIERS' PRICES, ROUTES, AND SERVICES

In 1994, Congress adopted the FAAAA. 108 Stat. 1605–1606; ICC Termination Act of 1995, 109 Stat. 899. Congress's "overarching goal [was to help] ensure transportation rates, routes, and services that reflect 'maximum reliance on competitive market forces,' thereby stimulating 'efficiency, innovation, and low prices,' as well as 'variety' and 'quality.'" *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 371 (1992) (quoting *Morales v. Trans World Airlines, Inc.,* 504 U.S. 374, 378 (1992)). As this Court explained in *Rowe*, the FAAAA borrowed language from the Airline Deregulation Act of 1978 so that "motor carriers will enjoy 'the identical intrastate preemption of prices, routes and services as that originally contained in' the Airline Deregulation Act." *Rowe*, 552 U.S. at 370, 372.

Congress recognized that disparate regulation of motor carriers was inefficient, costly, and reduced competition and innovation. H.R. Conf. Rep. 103–677,

at 87-88 (1994) ("The sheer diversity of these regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business. . . . Service options will be dictated by the marketplace; and not by an artificial regulatory structure.")).

A. To Implement The FAAAA's Efficiency Goal, The Department Of Transportation Has Promulgated Uniform National Standards That Ensure Drivers Breaks, While Retaining Flexibility That Minimizes The Impact On Prices, Routes And Services

The Federal Motor Carrier Safety Administration ("FMCSA") of the U.S. Department of Transportation ("DOT") has promulgated regulations governing hours of service ("HOS") for commercial motor vehicle operators, which it began doing in the late 1930s under the Motor Carrier Act of 1935 to maximize safe transport. *Owner-Operator Indep. Drivers Ass'n, Inc. v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 193 (D.C. Cir. 2007). Interstate drivers' hours of service are now regulated comprehensively by the FMCSA pursuant to Congress's continuing mandate. *See* 49 U.S.C. §§ 31136(a), 31502(b).

Within the purview of the HOS regulations promulgated by FMCSA are highway safety, driver health, operational and scheduling flexibility, and nationwide uniformity of regulations. The parameters of the uniformly applicable HOS afford commercial drivers discretion as to when to drive and when to take breaks as business and other circumstances require. Under the HOS regulations,

> [t]he . . . rule requires that if more than 8 consecutive hours on duty . . . have passed since the last off-duty (or sleeper-berth) period of at least half an hour, a driver must take a break of at least 30 minutes before driving. For example, if the driver started driving immediately after coming on duty, he or she could drive for 8 consecutive hours, take a half-hour break, and then drive another 3 hours, for a total of 11 hours. Alternatively, this driver could drive for 3 hours, take a half-hour break, and then drive another 8 hours, for a total of 11 hours. In other words, this driver could take the required break anywhere between the 3rd and 8th hour after coming on duty.

Hours of Service of Drivers Final Rule, 75 Fed. Reg. 81134, 81136 & 81145 (Dec. 27, 2011) (codified at 49 C.F.R. pts. 385, 386, 390, et al.), available at http://www.gpo.gov/fdsys/pkg/FR-2011-12-27/pdf/2011-32696.pdf.

Thus, the HOS regulations permit drivers to take multiple breaks during their workday, but the regulations only mandate that a driver take one off-duty, 30-minute break, during an 8-hour period, which the driver is permitted to schedule when and as needed. *Id.*

B. The Ninth Circuit's Non-Preemption Rule Imposes The Kind Of State Law Burden On Motor Carrier Prices, Routes And Services That The FAAAA Proscribes

i. The California Laws Significantly Burden Motor Carrier Prices, Routes Or Services

While the above federal standards were developed to address the appropriate meal and rest period rules needed to meet the needs of motor carrier drivers, California's meal, rest and minimum wage laws were developed for all workers in every occupation. Those state laws require employers to provide a 30-minute meal period for every work period of more than five hours and a second 30-minute meal period for every work period of more than ten hours. Cal. Labor Code § 512(a). Those laws further regulate the timing of the breaks by requiring drivers to be permitted to take their meal periods no later than the end of fifth and tenth hour of work, respectively. California also requires every employer to permit all employees to take rest periods at the rate of ten minutes per four hours worked (or major fraction thereof), in the middle of the work period if possible, and prohibits employers from requiring an employee to do any work during meal or rest periods mandated by the applicable order of the state Industrial Welfare Commission. Cal. Labor Code § 226.7; California Industrial Welfare Commission ("IWC") Order 9-2001(12).

California's break laws also mandate that employees must be "relieved of all duty" during the required 30-minute meal periods unless the nature of the work prevents the employee from being relieved of

all duty, and the circumstances that qualify for this exception are narrowly defined and generally very difficult to satisfy. IWC Order 9-2001(11-12). Moreover, even when this or other limited exceptions apply, the employee must agree in writing to waive the requirement. *Id.*

California law also provides that even if a motor carrier pays an average hourly rate of pay that is above the minimum wage, the motor carrier nonetheless violates the state's minimum wage laws if it does not pay a driver a minimum wage for every hour that a driver works. Cal. Labor Code § 226.2; *Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314, 323-324 (2005). This California rule provides motor carriers a disincentive against using activity-based pay systems (e.g. pay by mile driven and stops) that reward greater efficiency and productivity by paying more for certain productive activities—driving and deliveries—than for non-productive activities.

California's laws thus create numerous obstacles that impede the ability of national transportation and logistics providers, like Ryder, to provide their services with the nationwide uniformity Congress mandated when it enacted the FAAAA. Unlike the FAAAA, and other federal laws and regulations relating to meal and rest breaks that have been developed explicitly for the motor carrier industry, California's meal and rest period laws were enacted generally for all businesses operating in California. While those laws might make sense for certain business that operate exclusively within the state only and that do not engage in transport, those laws are not attentive to the particular needs of, nor the federal laws governing, the motor

carrier industry. California's laws dictate that Ryder's drivers are prohibited from working at particular times and must comply with rest period rules, unique to California, and which significantly interfere with Ryder's ability to meet delivery and other supply chain deadlines, and can actually create unsafe conditions for drivers who must find ways to take breaks at times when traffic, parking or other driving conditions make it difficult to do so.

Ryder provides truck rental, leasing and maintenance services, and supply chain logistics that include dedicated fleets and drivers, transportation management, and distribution services for customers across the nation. Ryder's customers include retailers, defense and aerospace contractors, foodservice companies, manufacturers, and high tech companies, to name just a few. Ryder's drivers transport products within and across state lines, ranging from wine to compressed gases to consumer packaged and perishable goods, including fresh and frozen food, from distribution centers and warehouses owned by customers to Big Box stores. Precision is essential in scheduling deliveries; Ryder's customers, and the ultimate consumers, depend on it.

Thus, Ryder has developed routes, services and prices that respond to the market's demands, which are essential to maximizing efficiency and keeping transportation costs low. California's laws significantly impact those routes, services and prices and prevent national carriers like Ryder from utilizing a standard way of doing business nationally.

Routes: California's meal and rest period laws affect Ryder's routes because they require its drivers to pull over and stop working in order to take a specific number and type of break at certain defined intervals and for specified periods of time throughout their workday. Routes are thus impacted because drivers must now go out of their way—sometimes driving great distances—to search for a place to pull over and take a break each and every time California law requires a duty-free break. Finding a safe and legal place to park commercial motor vehicles is already a difficult challenge for truckers nationwide.[3] The problem in California is particularly acute because the state's highways carry more commercial vehicle truck traffic than any other state in the U.S., and California also ranks first in the nation as having the biggest shortage in overall commercial vehicle parking.[4]

---

[3] *See, e.g., Too Many Trucks, Too Little Parking: New Rules Mandate Breaks But Few Spots Are Being Built; Driver Death Casts Glare On Shortage*, January 21, 2015, The Wall Street Journal.

[4] *See, e.g.,* Caroline J. Rodier et al., Univ. of Cal. Berkeley, *Commercial Vehicle Parking in California: Exploratory Evaluation of the Problem and Solutions*, California PATH Research Report UCB-ITS-PRR-2010 (Mar. 2010). In this study, this University of California author estimates that demand for commercial vehicle parking exceeds capacity at all public rest areas and at 88 percent of private truck stops on the 34 corridors in California with the highest volume of truck traffic.

See also Ready Fleet, *Truck Parking Shortages Continue* (April 19, 2017) ("A California survey on truckers along I-5 showed how 70% of drivers would stop at a truck stop on the way, but truck stops are always full.") (available at https://ready-fleet.com/trucking/truck-parking/truck-parking-shortage/ [visited Feb. 20, 2018].)

Stopping for a 10 minute rest break in the middle of every 4 hour (or major fraction thereof) work period is thus a challenge. Ryder's drivers, like all commercial drivers, cannot legally pull over at any spot they choose. Numerous restrictions prevent them from parking in non-designated areas. Drivers cannot simply exit onto any seemingly convenient street and park at will. They must also comply with the many motor vehicle safety laws and regulations applicable to the area in which they are traveling, such as state and local restrictions on idling time (no more than 5 minutes for trucks, even though drivers frequently need to idle to cool and heat cabs), as one example.

California's laws mandate that drivers stop working and pull over when the state of California says it is time to take a break, regardless of whether the driver needs a break at that time, or whether it is safe to do so. This significantly affects Ryder's routes.

In addition, Ryder's drivers' routes are not static but change daily. Thus, the burden of scheduling breaks is further complicated by the need to continually adjust the schedule.

California's laws force Ryder's engineers, who strive to find the optimal route for each transport (i.e., the route that covers the shortest distance, requires the least amount of fuel, and takes the shortest amount of time). Those engineers already design routes that meet federal HOS and break requirements. To add the burden of California's different regulatory regime adds to the engineers burden in designing routes and necessarily requires them to select sub-optimal routes that will allow for vehicles maneuvering off and on the road to comply with state law.

Services: California's laws affect Ryder's services and prices by requiring that Ryder either reduce its services by scheduling fewer deliveries per day or increase its operating costs, which will inevitably be reflected in the rates its customers must pay. By regulating mandatory break times at specified times and intervals, California's laws deny Ryder's drivers the operational and scheduling flexibility that federal law permits, and require Ryder to re-schedule its services around each of the required breaks. This directly affects the type and manner of services Ryder can provide. It also necessarily requires that Ryder either increase its workforce and investment in equipment at great expense to Ryder and Ryder's customers, or reduce the amount and level of timely, coordinated, and efficient transportation and logistics-related service Ryder can offer its customers.

Ryder's services are also significantly affected because under the operative federal laws and regulations, Ryder can confidently schedule a delivery window, knowing the drivers have some control over their schedule and can stop for meal and rest breaks along the way when and as needed, within the uniform—but more flexible—parameters established by the Department of Transportation. If traffic or weather conditions threaten on-time delivery, for example, a driver can postpone a break temporarily to ensure that the appointment is not missed and customer service requirements are met. Similarly, if dock congestion creates a delay during a delivery, the driver can take advantage of the wait time to take a break or have a meal, so that when the unloading is finished, the driver can go on to the next stop without being required by law to take a mandated break that is not needed. But

under the more onerous requirements of California's laws, those reasonable options are frequently unavailable to Ryder's drivers.

Prices: Changing or extending routes, adding drivers, and purchasing more equipment necessarily either increases the prices Ryder will have to charge for its services, or limits the scope of services Ryder can offer its customers. Complying with the laws costs Ryder more in wages, more in vehicle maintenance expenses, more in fuel, and inevitably impacts the prices Ryder charges its customers (and thus burdens the ultimate consumers and businesses). These are facts.

In addition to increased costs for a greater workforce and more investment in equipment, Ryder will also incur significant expenses for: increased mileage and related fuel expense associated with drivers traveling to and returning from the California-required breaks; decreased fuel efficiency and resulting increases in fuel costs due to more frequent starting and stopping of vehicles; increased equipment costs due to wear and tear on vehicles resulting from start-and-stop driving; and administrative costs incurred to monitor the drivers' compliance with California's break laws.

Activity-Based Pay. The above impacts on prices, routes and services caused by California's laws is compounded by its minimum wage rule precluding consideration of the average hourly rate earned for all hours worked. Outside of California, Ryder uses a piece rate system that compensates drivers more for the productive activities of driving and deliveries. Drivers are paid more per mile driven, and less for non-

productive activities. This incentivizes drivers to be as efficient as possible, to complete routes with dispatch and to make more deliveries. Because the California rule reduces the incentive of drivers to minimize their time devoted to non-productive activities, it alters the routes taken by Ryder's drivers and inhibits Ryder's ability to effectively provide services to its customers.

ii. District Courts Within the Ninth Circuit Correctly Have Recognized The Burden That The California Laws Impose On Prices, Routes Or Services, But The Ninth Circuit Has Impeded The Statutorily-Mandated Preemption

Although the Ninth Circuit has given short shrift to the burden that California's laws place on prices, routes or services, the district courts that the Ninth Circuit supervises correctly have recognized the *obviously significant* burden that the California laws impose on prices, routes or services. As one such district court has explained,

> ***[f]ive separate times***…drivers must pull their trucks off the road, find a place to park, and then rest or eat without any job-related duties. Not only must the drivers stop hauling cargo for a total of ninety minutes throughout the day, they also are forced to travel only on routes that have access to five different locations where they can find a place to park their truck throughout the workday. Common sense dictates that an eighteen-wheeled vehicle cannot simply park on the side of any given road. Consequently, these required meal and rest breaks certainly add a layer of complexity to a motor carrier's schedule

> planning, undoubtedly limit the number of routes available, and absolutely reduce the total time a driver can possibly be on the road actually hauling cargo. This impact strikes the Court as significant.

Parker v. Dean Transp. Inc., 2013 WL 7083269 *9 (C.D. Cal. Oct. 2, 2013). Yet, the Ninth Circuit has precluded the district courts that it supervises from following this correct appreciation of the real-world consequences of California's laws.

Other real-world considerations the Ninth Circuit failed to consider include the fact that motor carrier drivers, like other professional drivers, must comply with numerous other state and local laws and ordinances, in determining when and where to stop for their breaks. See, e.g., 49 C.F.R. § 392.14 (Dec. 25, 1968; amended July 28, 1995) (imposing a duty on commercial motor vehicle operators to use "extreme caution" when hazardous weather conditions exist); 49 C.F.R. §§ 397.7 (Dec. 12, 1994); 397.69 (Oct. 12, 1994) (restricting the parking of and authorizing local restrictions on the routing of vehicles carrying hazardous materials); Cal. Veh. Code § 21718(a) (prohibiting stopping on the freeway except under limited circumstances, such as when a vehicle becomes disabled); Cal. Veh. Code §§ 22500, 22502 (restricting locations at which vehicles may be parked); Cal. Veh. Code §§ 22505, 22507.5 (authorizing state authorities to prohibit the stopping or parking of vehicles exceeding six feet in height in areas that would be "dangerous to those using the highway"); Cal. Veh. Code § 35701 (permitting local authorities to impose

weight restrictions upon the parking –or use – of commercial vehicles on designated roadways).

Nor did the Ninth Circuit address the fact that many motor carrier drivers cross state lines. For certain routes, it may be more efficient to stop and eat or rest in a neighboring state, but the need to comply with California's more demanding meal and rest laws will require the carrier to alter its route to a less efficient one. Similarly, a driver that is being paid by the mile and stop for the portion of the trip that is outside California, will necessarily be impacted by a change in the way he or she is paid to comply with California's unique interpretation of the minimum wage requirement.

The value proposition involved with outsourcing transportation and supply chain logistics is to maximize efficiencies in supply chain management, including distribution and routing, bringing value to the customer. Every mandated change to a driver's route will inevitably impact the time frames within which Ryder's drivers can deliver, whether they can provide the same delivery services at all, the wages Ryder pays its drivers, and the prices Ryder charges its customers. California's meal and rest period laws also impact many of Ryder's contracts that require the performance of specific logistic or transportation tasks and bind Ryder to terms that are substantially tied to Ryder's ability to schedule its distribution operations unhindered by route restrictions and mandated break schedules. If California can adopt its own particular laws mandating when and how often Ryder's drivers must pull over to take a break, so too can other states.

Such a patchwork of state regulation is precisely what the FAAAA prohibits.

II. THE NINTH CIRCUIT'S NON-PREEMPTION HOLDING CANNOT BE RECONCILED WITH THE STATUTORY TEXT OR THIS COURT'S PRECEDENTS

J.B. Hunt's petition demonstrates that the Ninth Circuit has adopted an unreasonably narrow reading of the "related to" text in the FAAAA's preemption clause and that the Ninth Circuit's approach has deepened multiple circuit splits that are in need of settling:

- The narrow "binds to" preemption rule that the Ninth and Eleventh Circuits have applied conflicts with the broader tests applied in the First and Seventh Circuits. *See* J.B. Hunt Petition 13-15; *compare Dilts*, 769 F.3d at 646 & *Amerijet International, Inc. v. Miami-Dade County Florida*, 627 F. App'x 744 (11th Cir. 2005) *with Massachusetts Delivery Association v. Coakley*, 769 F.3d 11 (1st Cir. 2014) & *United Airlines, Inc. v. Mesa Airlines, Inc.*, 219 F.3d 605 (7th Cir. 2000).

- The "point-to-point transport" interpretation of "routes" and "services" applied by the Ninth and Third Circuits conflicts with the broader interpretation of those terms in the First, Second, Fifth, Seventh and Eleventh Circuit. *See* J.B. Hunt Petition at 16-19; *compare Dilts*, 769 F.3d at 649 & *TajMahal Travel, Inc. v. Delta Airlines, Inc.*, 164 F.3d 186, 192, 194 (3rd Cir. 1998), *with DiFiore v. Am. Airlines, Inc.*, 646 F.3d 81, 88 (1st Cir. 2011); *Air Transp. Assn. v.*

Cuomo, 520 F.3d 218, 223 (2d Cir. 2008) (per curiam); *Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1433 (7th Cir. 1996); *Hodges v. Delta Airlines, Inc.*, 44 F.3d 334, 336-338 (5th Cir. 1995) (en banc); *Branche v. Airtan Airways, Inc.*, 342 F.3d 1248, 1257 (11th Cir. 2003).

- The Ninth Circuit's conclusion that California's interpretation of its minimum wage law to impair an employer's ability to use an activity-based pay system conflicts with the First Circuit's conclusion that the FAAAA preempted a Massachusetts law that had impaired a carrier's ability to contract to obtain driving services under an activity-based pay system. *See* J.B. Hunt Petition at 19-22; *compare* Hunt Petition App. 3a *with Schwann v. FedEx Ground Package System, Inc.*, 813 F.3d 429 (1st Cir. 2016).

Suffice it to add here an on-point observation of the First Circuit that explains why the California laws at issue cannot be deemed outside the reach of the FAAAA on the ground that those state laws impact a carrier's prices, routes or services in ways that are merely "tenuous, remote or peripheral." As the First Circuit stated in *DiFiore*: "When the Supreme Court invoked the rubric ('tenuous, remote, or peripheral'), it used as examples limitations on gambling, prostitution, or smoking in public places — state regulation comparatively remote to the transportation function." *DiFiore*, 646 F.3d at 89 (citing *Morales*, 504 U.S. at 390; *Rowe*, 552 U.S. at 371, 375).

But, California's meal and rest period laws are in no way "remote to the transportation function." Those laws impact the transportation industry significantly and contravene Congress's deregulatory mandate by forcing Ryder to offer different services than what the market would otherwise dictate. The Ninth Circuit has again "disregard[ed] real-world consequences and [failed to] give dispositive effect to the form of a clear intrusion into a federally regulated industry" [*Northwest, Inc. v. Ginsberg*, 134 S. Ct. 1422, 1430 (2014)] based on the kind of overly narrow interpretation of Congress's deregulatory mandate that this Court repeatedly has rejected. *See e.g., id.* (reversing the Ninth Circuit's narrow reading of "relates to" and "services" and holding that a state law claim over an airline's frequent flyer program *was* preempted); *American Trucking Associations, Inc. v. City of Los Angeles*, 569 U.S. 641, 133 S. Ct. 2096 (2013) (reversing Ninth Circuit's holding that a concession agreement's provision regarding parking and placards at the Port of Los Angeles was not preempted by the FAAAA).

Given the burdens on prices, routes or services that Ryder details above and the recurring nature of the nationally significant questions J.B. Hunt has presented, one cannot understate the importance of granting certiorari to resolve the split among the circuit courts on those questions.

CONCLUSION

This Court should grant J.B. Hunt's petition for a writ of certiorari and review the important questions presented, which have profound implications for the transportation industry and for the hundreds of millions of consumers and businesses who rely on that industry every day.

DATED this the 9th day of March, 2018.

Respectfully submitted,

Raymond A. Cardozo
Counsel of Record
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
415.543.8700
415.391.8269 (fax)
RCardozo@ReedSmith.com

Linda Husar
Mara D. Curtis
REED SMITH LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071-1514
213.457.8000
213.457.8080 (fax)

Counsel for Amicus Curiae
Ryder System, Inc.