NO. 20-1425

In the Supreme Court of the United States

C.H. ROBINSON WORLDWIDE, INC.,

Petitioner,

v.

ALLEN MILLER,

Respondent.

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

BRIEF OF AMICUS CURIAE INTERESTED FREIGHT MOTOR CARRIERS IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

This Amicus Curiae is made up of the following motor carriers (Amici Carriers) from across the Country:

1. Admiral Merchants Motor Freight
2. Anderson Trucking Service
3. Covenant Transport
4. CRST – A Transportation Solution
5. Dart Transit Company
6. J.B. Hunt Transport, Inc.
7. Stan Koch & Sons Trucking
8. Maverick Transportation
9. Schneider National Carriers
10. Transport Corp of America
11. USA Truck
12. U.S. Xpress

Brokers, on behalf of owners of goods, contract with motor carriers for transportation of goods. Motor carriers, in turn, provide the actual transportation of goods. Brokers serve the market by searching for spot

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[1] Counsel for petitioners and respondents received timely notice of the intent to file this brief, and both parties have consented to its filing. *See* Rule 37.2(a). Pursuant to Rule 37.6, amicus states that no counsel for any party has authored this brief in whole or in part, and no person or entity, other than amicus, its members, or their counsel has made any monetary contributions intended to fund the preparation or submission of this brief.

quotes, and they can efficiently survey the vast motor carrier market to obtain the most efficient transportation rates the market can provide. Amici are motor carriers who work with brokers on a daily basis. Additionally, for the most part, the Amici Carriers also operate brokerages as part of their overall logistics strategy.

Amici have a strong interest in this issue because it raises important and recurring questions concerning the extent to which States may interfere with the price, routes, and services of interstate motor carriers. Amici Carriers serve shippers directly and also rely on the services of other motor carriers in their day-to-day business. The motor carrier industry affects nearly every business in the United States, whether directly or indirectly as well as American consumers. As the district court in this case recognized, FAAAA preemption is necessary so that motor carriers can continue to compete freely and efficiently, with price, routes, and service dictated uniformly by the marketplace instead of through various state regulation. Affirming the principle of federal preemption would also ensure that, consistent with Congress' goals, individuals and businesses continue to enjoy a full range of services at prices determined only by the free market.

INTRODUCTION/ SUMMARY OF ARGUMENT

Consistently, the Federal Aviation Administration Authorization Act of 1994 ("FAAAA") expressly preempts any state "law, regulation, or other provision

having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). The plain language of this express-preemption provision is broad, and it operates to "'prevent States from undermining federal deregulation of interstate trucking' through a 'patchwork' of state regulations." *Cal. Tow Truck Ass'n v. City & Cty. of San Francisco*, 807 F.3d 1008, 1018 (9th Cir. 2015) (citation omitted); *see Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1053 (9th Cir. 2009); *See also Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 373 (2008) (Congress "broadly preempt[ed] state laws . . . to avoid the spectacle of state and local laws reregulating what Congress had sought to deregulate"). This broad preemption serves the FAAAA's "overarching goal": to "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 (2008) (*quoting Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992)).

The backdrop upon which the Court preemption here is to be analyzed is in the context of a claim for broker liability. Although truck accidents and liability of motor carriers are as old as the combustion engine, the concept of seeking to hold a broker liable for the actions of a motor carrier is a relatively new phenomenon. In fact, brokers of non-exempt commodities did not exist prior to deregulation in the 1980s. Broker liability claims include allegations that brokers acted negligently in hiring an unsafe (albeit federally approved and insured) motor carrier or by integrating

the broker's transportation management practices too closely with the motor carrier's operations. Taken to its logical conclusion, the brokerage industry becomes the insurer (or at least a subsidizer) of the transportation industry.

In the face of this new breed of claims, brokers face a minefield of litigation risks based on the various interpretations of the extent of federal preemption. The lower Courts have struggled with FAAAA preemption, creating a patchwork of conflicting or duplicative rules, and choking the free and uniform flow of interstate commerce in the nationwide marketplace that Congress established under the FAAAA. The question presented by Petitioner C.H. Robinson is ripe for review by this Court and is of acute interest to these Carrier Amici. Motor carriers and the businesses that rely on them face continued uncertainty if there is not an overarching federal regulatory regime defined by strong FAAAA preemption. Motor carriers deliver essential products to American consumers and businesses, including food and medicine and are a critical part of the American economy and lifestyle. Motor carriers and shippers rely on freight brokers such as C.H. Robinson to facilitate the transportation of these products within a federally uniform environment.

Preemption must be consistently applied state to state. As this Court made clear in *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364 (2008), state laws are preempted where "state requirements could easily lead to a patchwork of state service-determining laws, rules and regulations." *Id.* at 373. Decisions such as the Ninth Circuit's create confusion, cause delivery delays (because brokers will exit the market), increase costs to consumers, and will open

the floodgates of litigation as claimants seek to test the boundaries of FAAAA preemption. This decision is contrary to the Transportation Policy contained in 49 U.S.C. § 13101, which makes clear the Government's goals in oversight of the transportation system (promotion of competitive and efficient transportation).[2] Accordingly, the issue presented affects not

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2 §13101. Transportation policy

(a) In General.—To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to oversee the modes of transportation and—

(1) in overseeing those modes—

(A) to recognize and preserve the inherent advantage of each mode of transportation;

(B) to promote safe, adequate, economical, and efficient transportation;

(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;

(E) to cooperate with each State and the officials of each State on transportation matters; and

(F) to encourage fair wages and working conditions in the transportation industry;

(2) in overseeing transportation by motor carrier, to promote competitive and efficient transportation services in order to—

(A) encourage fair competition, and reasonable rates for transportation by motor carriers of property;

(B) promote efficiency in the motor carrier transportation system and to require fair and expeditious decisions when required;

(C) meet the needs of shippers, receivers, passengers, and consumers;

(D) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;

(E) allow the most productive use of equipment and energy resources;

(F) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;

(G) provide and maintain service to small communities and small shippers and intrastate bus services;

(H) provide and maintain commuter bus operations;

(I) improve and maintain a sound, safe, and competitive privately-owned motor carrier system;

(J) promote greater participation by minorities in the motor carrier system;

(K) promote intermodal transportation;

(3) in overseeing transportation by motor carrier of passengers—

(A) to cooperate with the States on transportation matters for the purpose of encouraging the States to exercise intrastate regulatory jurisdiction in accordance with the objectives of this part;

(B) to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this part; and (C) to ensure that Federal reform initiatives enacted by section 31138 and the Bus Regulatory Reform Act of 1982 are not nullified by State regulatory actions; and

only the motor carrier industry, but also consumers by driving up costs for the interstate transportation of the goods.

REASONS FOR GRANTING THE PETITION

The U.S. transportation industry needs clarity, and this Honorable Court should accept the Petition to resolve the uncertainty in the current patchwork of cases and concepts on preemption.

I. THE NINTH CIRCUIT'S DECISION CREATES UNCERTAINTY AND IS CONTRARY TO CONGRESS' GOAL OF DEREGULATING THE TRANSPORTATION INDUSTRY.

This Court has provided instructions as to the proper inquiry under an FAAAA analysis: whether a state law relates to the prices, routes, or services of a motor carrier, and, if so, whether that relationship is merely "tenuous, remote, or peripheral." *Rowe*, 552 U.S. at 375, *See e.g.*, *Ginsberg v. Northwest, Inc.*, 695 F.3d 873 (2012), *rev'd*, 572 U.S. 273 (2014); *American Trucking Associations, Inc., v. City of Los Angeles*, 660 F.3d 384 (2011), *rev'd in part*, 569 U.S. 641 (2013). Instead, the Ninth Circuit—in keeping with its past narrow reading of the FAAAA—interpreted the safety exception too broadly—once again constricting the statute's preemptive scope. The Ninth Circuit's interpretation of the safety exception is in direct contradiction to the many lower court decisions

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(4) in overseeing transportation by water carrier, to encourage and promote service and price competition in the noncontiguous domestic trade.

holding the safety exception inapplicable to common law claims against freight brokers. *See, e.g.*, *Ying Ye v. Global Sunrise, Inc.*, Civ. No. 18-1961, 2020 WL 1042047 (N.D.Ill. Mar. 4, 2020); *Loyd v. Salazar*, 416 F. Supp. 3d 1290 (W.D. Okla. 2019); *Creagan v. Wal-Mart Transportation, LLC*, 354 F.Supp. 3d 808 (N.D. Ohio 2018); *Krauss v. IRIS USA, Inc.*, Civ. No. 17—778, 2018 WL 2063839 (E.D. Pa. May 3, 2018); *Volkova v. C.H. Robinson Com.*, Civ. No. 16-1883, 2018 WL 741441 (N.D. Ill. Feb. 7, 2018).

By employing a no-win test to preemption challenges based on purported indirect effects, the Ninth Circuit's decisions have effectively limited the scope of FAAAA preemption to laws that have an artificially concocted effect on prices, routes, or services. That, in turn, insulates laws of general applicability whose effects on carrier prices, routes and services will inevitably be indirect from FAAAA preemption, even if the effects are far greater than "tenuous, remote, or peripheral." But as this Court has explained, "there is little reason why state impairment of the federal scheme should be deemed acceptable so long as it is effected by the particularized application of a general statute." *Morales*, 504 U.S. at 386 (holding that the ADA preempts claims under generally-applicable state consumer protection law). *See also Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 228 (1995) (ADA preempts claims under generally-applicable Illinois Consumer Fraud Act); *Northwest*, 134 S. Ct. at 1433 (ADA preempts claims for breach of generally-applicable common law covenant of good faith and fair dealing).

If the decision below is allowed to go unreviewed, the Ninth Circuit will have effectively carved out a textual exception to the FAAAA, insulating a vast

category of state laws from its preemptive scope and dramatically undercutting Congress's aims in enacting those preemption provisions. This broad stroke interpretation opens the door to what would otherwise be a preempted claim avoiding the reach of the FAAAA preemptive provisions. *See Creagan*, 354 F. Supp. at 814.

The Ninth Circuit's decision will only invite more common law claims against freight brokers who are licensed to select motor carriers to transport products. The patchwork of state negligence doctrines will continue to create uncertainty around conducting business from state to state. This, combined with the unpredictability of jury awards, will continue to be a significant influence in the cost associated with interstate transportation of goods throughout any state within the Ninth Circuit.

The issue is reoccurring as evidenced by the number of lower-court decisions addressing this issue. To allow this issue to continue to be batted around by the lower courts is unnecessary, and having been addressed by the Ninth Circuit and also in districts across the country, this issue is ripe for authoritative resolution. Only with the acceptance of the Petition and the issuance of an opinion from this Court will the matter be resolved.

II. PROPER PREEMPTION ANALYSIS IS NEEDED TO BRING ABOUT CERTAINTY IN THESE CASES.

The FAAAA prohibits state and local governments from "enact[ing] or enforce[ing] a law, regulation or other provision having the force and effect of law related to price, route, or service of any motor carrier . . . with respect to the transportation of property." 49 U.S.C. § 14501(c)(1).

In 1980, Congress deregulated interstate trucking so that the rates and services offered by trucking companies and related entities would be set by the market rather than by government regulation. *See* Motor Carrier Act of 1980, 94 Stat. 793. Later, in 1994, to bolster deregulation, Congress included a provision within the FAAAA, 108 Stat. 1605-06, which expressly provides that state regulation of the trucking industry is preempted:

> a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

49 U.S.C. § 14501(c)(1) (emphasis added). In interpreting this provision, the Supreme Court has determined:

> (1) that [s]tate enforcement actions having a connection with, or reference to carrier rates, routes, or services are preempted; (2) that such preemption may occur even if a state law's effect on rates, routes, or services is only indirect; (2) that, in respect to preemption, it makes no difference whether a state law is consistent or inconsistent with federal regulation; and (4) that preemption occurs at least where state laws have a significant impact related to Congress' deregulatory and preemption-related objectives.

Rowe v. New Hampshire Motor Transport Ass'n, 552 U.S. 370, 370-71 (2008) (*citing Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992)) (internal citations and punctuation omitted). Therefore, under *Rowe*, FAAAA preemption is broad in scope, and occurs even if the state law's effect on "rates, routes, or services is only indirect." *Id.* Although the outer limits of FAAAA preemption have not been articulated, the Court has recognized that some state laws, such as those that affect trucking in only a tenuous, remote, or peripheral manner, such as those forbidding gambling, are not preempted. *Id.* at 371. Importantly, the FAAAA preempts not only state statutes and administrative regulations governing the trucking industry but also state-law private causes of action which come within its terms. *See, e.g.*, *Smith v. Comair, Inc.*, 134 F.3d 254 (4th Cir. 1998); *Deerskin Trading Post, Inc. v. United Parcel Service of America, Inc.*, 972 F. Supp. 665, 672 (N.D. Ga. 1997); *Ameriswiss Technology, LLC v. Midway Line of Illinois, Inc.*, 2012 U.S. Dist. Lexis 138880, 14 n.6 (D.N.H. Sept. 27, 2012) (noting "state common law counts as an 'other provision having the force and effect of law.'").

Some courts have avoided FAAAA preemption and permitted personal injury claims that affect the routes, prices, and services to proceed by focusing on the "safety exception in § 14501(c)(2)(A): "[FAAAA preemption] shall not restrict the safety regulatory authority of a State with respect to motor vehicles . . . ." However, this Court's opinion in *City of Columbus v. Ours Garage and Wrecker Service, Inc.*, 586 U.S. 424 (2002) forecloses this expansive interpretation of the "safety exception." In *City of Columbus*, the Court noted "the safety exception of §14501(c)(2)(A), however,

does not borrow language from §14501(c)(1). It simply states that preemption 'shall not restrict the safety regulatory authority of a State.'" *Id.* This Court went on to say that the safety exception "shields from preemption only 'safety regulatory authority.'" *Id.*

The language used in the FAAAA's preemption provision makes it clear that common-law negligence claims fall within the preemptive scope of 14501(c)(1) but not the safety exception of 14501(c)(2). *See Russello v United States*, 464 U.S. 16, 23 (1983). 14501(c)(1) provides that a State may not "enact or enforce a law, regulation, or other provision having the force and effect of law," and common law claims are "other provisions with the force of law" that are thus subject to FAAAA preemption. *See Lopez v. Amazon Logistics, Inc.*, 458 F. Supp. 3d 505, 512 (N.D. Tex. 2020) *See also Northwest, Inc. v. Ginsberg*, 572 U.S. 273, 281-82, 134 S. Ct. 1422, 188 L. Ed. 2d 538 (2014) (holding that state common law rules fall within the analogous Airline Deregulation Act preemption provision because state common-law rules are routinely called "provisions" and "clearly have the force and effect of law"').

In contrast, the safety exception carved out for the states must be grounded in a state's "regulatory authority," a narrower channel of authority. In common parlance, states do not exercise "regulatory authority" through private civil actions sounding in tort. 49 U.S.C. 14501(c)(2)(A); *see also City of Columbus v. Ours Garage & Wrecker Serv.,* 536 U.S. 424, 122 S. Ct. 2226 (2002). Because Congress presumably intended the different terms in 14501(c)(1) and 14501(c)(2) to have different meanings, the safety exception in the latter cannot be read to exempt tort actions from the preemptive scope of the former.

For the foregoing reasons, the court of appeals incorrectly interpreted the safety exception by finding "the safety regulatory authority of the state with respect to motor vehicles" to allow for common-law claims against a freight broker. As discussed above and in great detail by C.H. Robinson, this holding cannot be reconciled with the general policy of the FAAAA.

Accordingly, the Petition seeks a proper analysis of preemption under FAAAA. Since *Rowe*[3], Courts across the country have struggled with FAAAA preemption, in the process creating a patchwork of holdings—exactly what this Court and Congress were trying to prevent. It is submitted that a proper preemption analysis would first analyze whether the state law affects a broker's price, routes, and service. Once the initial preemption analysis identifies the state action as preemptive, the court should next determine whether the "safety exception" applies. Here is a summary of how the courts have analyzed what is essentially the exact same preemption scenario in light of a broker liability framework. As one can see, order is needed.

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[3] *Rowe* is the seminal case on FAAAA preemption in the trucking context. There, the Supreme Court examined a Maine statute that prohibited licensed tobacco retailers to employ a delivery service unless that service followed particular delivery procedures designed to control the distribution of tobacco products in the interest of public health and safety. *Rowe*, 552 U.S. at 371. The Court found that these requirements had a significant and adverse impact on Congress' goals in enacting the FAAAA preemption provision.

1. Some Courts Have Held That State Law Negligence Claims DO NOT Affect Prices, Routes, and Services

- *Mann v. C.H. Robinson*, 2017 U.S. Dist. LEXIS 117503, 2017 WL 3191516 (W.D. Va. July 27, 2017)—determining that the FAAAA does not preempt a personal injury claim against a broker alleging negligent hiring of a carrier,
- *Gilley v. C.H. Robinson Worldwide, Inc.*, No. 1:18-00536, 2019 U.S. Dist. LEXIS 52549 (S.D. W. Va. Mar. 28, 2019)—plaintiffs' negligent selection claim stems from a personal-injury, wrongful-death action, and this claim does not "relate to" CHR's broker services. Its effect on broker services in "too tenuous, remote, or peripheral manner" to fall within the purview of the statutory preemption provision.
- *Nyswaner v. C.H. Robinson Worldwide, Inc.*, 353 F. Supp. 3d 892 (D. Ariz. 2019)—Allowing plaintiff's negligent hiring claim to proceed would not create a patchwork of state regulations as Robinson alleges. Rather, it would only require that Robinson conform to the general duty of care when it hires trucking companies to deliver goods.
- *Ciotola v. Star Transp. & Trucking, LLC*, 2020 US Dist. LEXIS 152963, 30 (M.D. Pa. 2020). Pennsylvania common law does not "directly reference prices, routes, or services of a broker."

2. Other Courts Have Held That State Law Negligence Claims DO Affect Price, Routes, and Service

- *Wise Recycling, LLC v. M2 Logistics*, 943 F. Supp. 2d 700 (N.D. Tex. 2013) The Court found that the Airline Deregulation Act jurisprudence, combined with the persuasive authority of *Huntington* and *Chatelaine*, properly suggest that 49 U.S.C. § 14501 preempts all state law claims except for ordinary breach of contract claims.
- *Mammoth Mfg. v. C.H. Robinson Worldwide, Inc.*, No. CIV-16-1009-HE, 2017 U.S. Dist. LEXIS 38411 (W.D. Okla. Mar. 17, 2017). State court dismissed negligence claims on the basis of federal preemption relying on 49 USC 14501. District Court dismissed fraud claims against the Broker (CH Robinson) because the statutory language adopted by Congress, which noted that the statute precluded claims which were "related to" to the services of the broker or that broker "with respect to the transportation of property."
- *Volkova v. C.H. Robinson Co.*, No. 16 C 1883, 2018 U.S. Dist. LEXIS 19877 (N.D. Ill. Feb. 7, 2018)—The court held that a negligent hiring claim against a freight broker for personal injuries sustained in a motor vehicle accident was preempted by the FAAAA. The court found that allegations of negligent hiring by the freight broker speak to the "core service" provided by a freight broker—the hiring of a motor carrier to haul freight—and thus were preempted by the FAAAA.

- *Ga. Nut Co. v. C.H. Robinson Co.*, No. 17 C 3018, 2018 U.S. Dist. LEXIS 71806 (N.D. Ill. Apr. 30, 2018)—The court found that negligent hiring and supervision claims brought against a freight broker were preempted by the FAAAA. The court concluded that the enforcement of Illinois common law negligence claims against a freight broker would have "a direct and substantial impact on the way in which freight brokers hire and oversee transportation companies" and would hinder the objective of the FAAAA.
- *Loyd v. Salazar*, 416 F. Supp. 3d 1290 (W.D. Okla. 2019)—This Court found that the negligence claim implicated price, routes, and service.
- *Gillum v. High Standard, LLC*, Civil Action No. SA-19-CV-1378-XR, 2020 U.S. Dist. LEXIS 14820 (W.D. Tex. Jan. 27, 2020)—This court found that the claim directly implicated how the defendant broker performed its central function of hiring motor carriers" and would "have a significant economic impact" on Defendant's services and is not tenuous, remote, or peripheral.
- *Ying Ye v. Glob. Sunrise, Inc.,* No. 1:18-CV-01961, 2020 U.S. Dist. LEXIS 37142 (N.D. Ill. Mar. 4, 2020) GlobalTranz is not alleged to directly own, operate, or maintain motor vehicles. Plaintiff's expansive reading of the safety regulatory exception seeks "an unwarranted extension of the exception to encompass a safety regulation concerning motor carriers rather than one concerning motor vehicles.

- *Zamorano v. Zyna, LLC*, 2020 US Dist LEXIS 82289 (W.D. Tex. 2020). Plaintiffs' claims completely preempted.
- *Creagan v. Wal-Mart Transportation, LLC*, 354 F.Supp. 3d 808 (N.D. Ohio 2018): negligent hiring of a broker relates to broker service.

3. Some Courts that Have Held that State Law Negligence Claims Affect Price, Routes, and Service, BUT the Safety Exception Applies.

- *Owens v Anthony*, 2011 U.S. Dist. LEXIS 139961, 2011 WL 6056409 (M.D. Tenn. 2011)—Court found that the negligence issues presented here involve highway safety which has been expressly exempted from the preemption statute.
- *Morales v. Redco Transp., Ltd.*, No. 5:14-cv-129, 2015 U.S. Dist. LEXIS 169801 (S.D. Tex. Dec. 21, 2015)—The Court concluded that the Plaintiffs' personal injury claims were part of a state's safety regulatory authority and are exempted from FAAAA preemption by 49 U.S.C. §14501(c)(2)(A).
- *Mann v. C. H. Robinson Worldwide, Inc.*, Civil Action No. 7:16-cv-00102, 2017 U.S. Dist. LEXIS 117503 (W.D. Va. July 27, 2017)—The court also concludes that, even if the state's negligent hiring claim had a sufficient impact on the price, route, or service of a broker to satisfy Paragraph (1) (dicta), it would not be preempted because it would fall within the general "safety regulatory" exception of paragraph (2)(A) of the preemption provision.

- *Finley v. Dyer*, No. 3:18-CV-78-DMB-JMV, 2018 U.S. Dist. LEXIS 182482 (N.D. Miss. Oct. 24, 2018)—This court found that there was no serious dispute that common law claims arising from the negligent procurement of a trailer represent a valid exercise of the state's police power to regulate safety and implicate the safety exception.
- *Gilley v. C.H. Robinson Worldwide, Inc.,* No. 1:18-00536, 2019 U.S. Dist. LEXIS 52549 (S.D. W. Va. Mar. 28, 2019)—The court concluded that, even if that state's negligent hiring claims had a sufficient impact on the price, route, or service of a broker to satisfy Paragraph (1) (dicta), it would not be preempted because it would fall within the general "safety regulatory exception of paragraph (2)(A) of the preemption provision.
- *Uhrhan v. B&B Cargo*, No. 4:17-cv-02720-JAR, 2020 U.S. Dist. LEXIS 139572 (E.D. Mo. Aug. 5, 2020)—The Court found that even though negligent brokering relate to the services of TQL and falls within the scope of 49 U.S.C. § 14501(c)(1). However, this Court went on to find that the negligent brokering claims fell within the scope of the safety regulation exception, and thus, were not preempted by the FAAAA. *See also Mendoza v. BSB Transport*, 2020 US Dist. Lexis 198548 (E.D. MO 2020).
- *Popal v. Reliable Cargo Delivery, Inc.*, No. PE:20-CV-00039-DC-DF, 2021 U.S. Dist. LEXIS 57212 (W.D. Tex. Jan. 20, 2021)—This Court found that Because selection of a carrier is

inherently in "respect to" the transportation of property, the negligent hiring claim was preempted under FAAAA. However, the Court went on to find that when Congress expressly exempted the "safety regulatory authority of a State" from preemption under the FAAAA, Congress implicitly meant for state common law claims to similarly be exempt from preemption and found that the safety exception applied.

- *Morrison v. JSK Transp., Ltd.*, No. 20-CV-01053-JPG, 2021 U.S. Dist. LEXIS 43094 (S.D. Ill. Mar. 8, 2021)—the Court agreed with the Ninth Circuit that "negligence claims against brokers that arise out of motor vehicle accidents" have "the requisite 'connection with' motor vehicles" to fall under the safety exception and found that the claim was not preempted and the safety exception applied.

4. Other Courts that Have Held that State Law Negligence Claims Affect Price, Routes, and Service, and the Safety Exception DOES NOT Apply, Resulting in Preemption.

- *Volkova v. C.H. Robinson Co.*, No. 16 C 1883, 2018 U.S. Dist. LEXIS 19877 (N.D. Ill. Feb. 7, 2018)—The court held that there is no exception to FAAAA preemption for cases involving personal injuries
- *Ga. Nut Co. v. C.H. Robinson Co.*, No. 17 C 3018, 2018 U.S. Dist. LEXIS 71806 (N.D. Ill. Apr. 30, 2018)
- *Loyd v. Salazar*, 416 F. Supp. 3d 1290 (W.D. Okla. 2019)—This Court read the safety excep-

tion to include a negligence claim would be an unwarranted extension of the exception to encompass a safety regulation concerning motor carriers rather than one concerning motor vehicles.

- *Gillum v. High Standard, LLC*, Civil Action No. SA-19-CV-1378-XR, 2020 U.S. Dist. LEXIS 14820 (W.D. Tex. Jan. 27, 2020)—Court held that the allegations "go to the core of what it means to be a careful freight broker" and, as found that they were preempted.
- *Ying Ye v. Glob. Sunrise, Inc.*, No. 1:18-CV-01961, 2020 U.S. Dist. LEXIS 37142 (N.D. Ill. Mar. 4, 2020) Plaintiff's expansive reading of the safety regulatory exception seeks "an unwarranted extension of the exception to encompass a safety regulation concerning motor carriers rather than one concerning motor vehicles.
- *Krauss v. IRIS USA, Inc.*, No. 17-778, 2018 WL 2063839 (E.D. Pa. May 3, 2018)—Court found that Plaintiff's allegations went to the core of what it meant to be a broker. That is the allegations go to "the heart of the services" that C.H. Robinson provides. Given that the claim related to C.H. Robinson's core service as a broker, the Court concluded that it was preempted.
- *Creagan v. Wal-Mart Transportation, LLC*, 354 F.Supp. 3d 808 (N.D. Ohio 2018): applying the safety exception would swallow the purpose of preemption.

Thus, the cases are literally all over the map. *Zamorano v. Zyna, LLC,* 2020 US Dist LEXIS 82289 (W.D. Tex. 2020) (courts sharply divided). Even within the states of Pennsylvania and Illinois, the decisions are as conflicting as the opinions of the panel of the Ninth Circuit.

	Safety Exception Applies	Safety Exception Does Not Apply
Does Not Affect Price Routes and Service		Nyswaner v. CH Robinson Mann v. CH Robinson Gilley v. CH Robinson Citola v. Star
Affects Price Routes and Service	Popal v. Reliable Cargo Delivery, Inc., Morrison v. JSK Transp., Ltd Uhrhan v. B&B Cargo Owens v. Anthony Morales v. Redco Transp., Ltd. Finley v. Dyer	Wise Recycling, LLC v. M2 Logistics Ga. Nut Co. v. C.H. Robinson Co. Mammoth Mfg. v. C.H. Robinson Worldwide, Inc Ying Ye v. Glob. Sunrise, Inc. Volkova v. C.H. Robinson Co Loyd v. Salazar Gillum v. High Standard, LLC Krause v. Iris Creagan v. Wal-Mart Zamorano v. Zyna

III. CONGRESS HAS CREATED A FEDERAL-STATE PARTNERSHIP TO REGULATE THE SAFETY OF DRIVERS AND CARRIERS.

Congress has passed the Federal Motor Carrier Safety Regulations ("FMCSR") which many states have incorporated into state regulations, allowing states to enforce the federal law, conduct inspections with compliance with federal law, and ensure that trucks meet a uniform national standard for safe operation.

The Supreme Court has explained that "Congress' overarching goal" in enacting the FAAAA preemption provisions was to "help assure 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*, 552 U.S. at 371 (*quoting Morales*, 504 U.S. at 378). Congress' "overarching deregulatory purpose" means that "States may not seek to impose their own public policies . . . on the operation of a . . . carrier." *Am. Airlines v. Wolens*, 513 US 219, 229 n.5 (1995) (quotation marks omitted). This federal policy permits motor carriers to implement efficient, standard business practices nationwide, and those standard practices—along with the timely, efficient, and cost-effective delivery of goods and raw materials they enable—in turn are essential not only to carriers themselves but also to the customers who rely on them for shipments and, by extension, to the national economy as a whole. *See* ATA, American Trucking Trends (2020) (trucking industry generated $791.7 billion in revenue in 2019, for 80.4% of the total U.S. Freight bill while moving 11.84 billion tons of freight. 7.95 million people held trucking-related

jobs in 2019.). Trucking is the backbone of the nation's freight system. "The flexibility of the motor carrier industry has allowed trucking to serve nearly every freight transport market, meeting shipper demands with high levels of service." Evaluation of U.S. Commercial Motor Carrier Industry Challenges and Opportunities (2003). As a result of deregulation, the trucking industry has continued to grow and become more responsive to the needs of shippers, which directly impacts the consumer. *Id.*

The national standardization favored by Congress helps ensure that disruptions or price increases caused by a patchwork of state laws and regulations do not have a cumulative effect that will ultimately be borne by consumers and the economy. It also continues to support the goals of Congress to support the trucking industry and its continued growth to better serve the public and private sector. This holding creates more uncertainty for brokers and motor carriers which destabilizes that federal policy and exposes brokers and motor carriers to more common-law claims.

The consequences of this holding cannot be understated. It would seemingly undermine those efficiencies that brokers have put in place to allow them to select authorized motor carriers to move freight. The imposition of a state-by-state "duty of care" beyond that which is required under the federal regulations further complicates the role that brokers play and the trickle down of this complication directly affects motor carrier's ability to move freight. The heightened duty of care on brokers takes a broker from an intermediary between shipper and carrier to a safety department. Some lower courts have imposed a legal duty on a broker to drill down into the safety

records of motor carriers with whom they contract and drivers whom the carriers hire. It is commercially unreasonable and in practice unworkable for brokers (in what is typically only a matter of minutes) to thoroughly drill down into and evaluate the minutiae of a motor carrier's and its drivers' safety records beyond the FMCSA-published safety ratings, notwithstanding third-party services claiming to provide such security.

This case is the perfect opportunity for addressing and resolving the question presented. This Court has the opportunity to clarify once and for all that the federal motor carrier and broker regulatory scheme established by Congress in the Motor Carrier Act vests in the FMCSA—not brokers, shippers or other users of transportation—the duty to qualify and register applicants as fit for operating as interstate motor carriers. 49 U.S.C. §§ 13901, 13902(a). That goes to say, it is the FMCSA,[4] not brokers or shippers, that is the party charged with making the final decisions as to whether that the motor carrier applicant is willing, capable and competent to comply with "the applicable regulations" and "the safety fitness requirements established by" the FMCSA. *Id.*

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[4] The scope of this brief is limited to FAAAA preemption, but these cases also raise issues of field preemption and conflict preemption where the FMCSA is the agency invested with responsibility for motor carrier licensing and safety.

CONCLUSION

The clear arguments for preemption of common law claims against brokers is clear, and the holding from the lower court is incorrect. The question presented is of extreme importance. Further review is warranted, and this Court should grant C.H. Robinson's Petition for Writ of Certiorari.

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