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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that the Federal Aviation Administration Authorization Act does not preempt negligence claims against freight brokers arising out of motor vehicle accidents.

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INTRODUCTION

In 1994, Congress determined that "certain aspects of the State regulatory process" should be preempted and enacted a provision regarding the "preemption of state economic regulation of motor carriers." Federal Aviation Administration Authorization Act (FAAAA), Pub. L. No. 103-305, § 601(a)(2), (c), 108 Stat. 1569, 1605 (1994). As later amended, that provision preempts state laws "related to a price, route, or service of any motor carrier … or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1).

At the same time that it enacted the preemption provision, Congress sought to "ensure that its preemption of States' economic authority over motor carriers of property" would "'not restrict' the preexisting and traditional state police power over safety." *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 439 (2002) (quoting 49 U.S.C. § 14501(c)(2)(A)). Accordingly, Congress specified that the preemption provision "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A).

The decision below addresses an issue of first impression in the courts of appeals: whether the FAAAA preempts negligence claims brought against freight brokers by people who have been injured in motor vehicle accidents. The court held, in agreement with a substantial majority of district courts to have addressed the issue, that the FAAAA does not preempt such claims. Adopting a broad reading of the FAAAA's preemption provision, the court concluded that respondent Allen Miller's negligent hiring claim

"related to" Petitioner C.H. Robinson's services as a broker. Nonetheless, the court recognized that FAAAA preemption does not bar Mr. Miller's claim because it falls within the safety exception in section 14501(c)(2)(A).

This Court should not rush in and review the first case on the question presented to reach the courts of appeals, particularly when that decision agrees with the majority of district courts to have considered the issue. Review is additionally unwarranted here because the court of appeals correctly held that Mr. Miller's claim falls within the FAAAA's safety exception. As the court explained, the safety regulatory authority preserved in the safety exception encompasses state common-law tort claims, which are an important part of the state's power to regulate safety. And Mr. Miller's claim—which arises out of C.H. Robinson's negligent hiring of a motor carrier to provide motor vehicle transportation, resulting in a motor vehicle collision—invokes the state's safety regulatory authority "with respect to motor vehicles."

Despite C.H. Robinson's rhetoric, the decision below will not impose "the costs that Congress sought to avoid in enacting the FAAAA." Pet. 4. Although Congress determined that *some* state regulation posed a burden that justified preemption, it determined that safety regulation does *not* impose such a burden. And personal injury claims against freight brokers have proceeded for years, without the consequences that C.H. Robinson claims will ensue from the decision below.

Further, that this case arose in the Ninth Circuit is not a reason to grant review. C.H. Robinson emphasizes that, seven years ago, this Court reversed the

Ninth Circuit in *Northwest, Inc. v. Ginsberg*, 572 U.S. 273 (2014), a case involving preemption under the Airline Deregulation Act (ADA). But *Northwest* did not involve the safety exception, a negligence claim, or the transportation of property by motor vehicles, and it was decided by an entirely different panel than the decision below. C.H. Robinson's suggestion that the Court should consider this case because it reversed the Ninth Circuit in an unrelated case underscores the absence of a meritorious argument for review here. The petition for a writ of certiorari should be denied.

STATEMENT OF THE CASE

A. C.H. Robinson is a freight broker, an intermediary that connects shippers who have goods with motor carriers to move the goods. In 2016, C.H. Robinson selected Kuwar Singh d/b/a RT Service (RT Service) to transport a load of goods. Pet. App. 3a. C.H. Robinson selected RT Service even though the company had a documented history of safety violations: the company had been cited numerous times for violations of hours-of-service regulations and falsified logbooks, and it had received many out-of-service orders—that is, orders placing a vehicle or an employee operating a vehicle out of service because the vehicle or employee poses an imminent hazard to safety. *Id*. at 4a; *see generally* 49 U.S.C. § 521(b)(5)(A)–(B) (describing out-of-service orders and explaining that an "imminent hazard" is a condition that "substantially increases the likelihood of serious injury or death if not discontinued immediately").[1]

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[1] The complaint refers both to RT Service and another motor carrier, Rheas Trans, Inc. *See* Pet. App. 3a. Discovery in this case

(footnote continued)

On December 8, 2016, Ronel Singh, a driver for RT Service, was transporting the load in a semi-tractor trailer going eastbound on Interstate 80 near Elko, Nevada. Mr. Singh was driving too fast for the icy and snowy road conditions and was not using the skill and attention necessary to keep the truck on the road. *See* 9th Cir. Excerpts of Record 45. He drove the truck over the median, where it overturned and blocked all westbound lanes. *Id.*

Respondent Allen Miller was driving westbound on Interstate 80 at that time and was unable to avoid the truck after it crossed into his lane. He was pinned under the truck, suffered extensive injuries, and was rendered a quadriplegic. *Id.*; Pet. App. 3a. Because of the severity of his injuries, Mr. Miller will require 24-hour care for the rest of his life.

B. Mr. Miller filed this action, alleging, as relevant here, that C.H. Robinson was negligent in hiring RT Service to transport the load because it knew or should have known about the company's poor safety record and incompetence. 9th Cir. Excerpts of Record 49. C.H. Robinson moved for judgment on the pleadings, arguing that Mr. Miller's claim is preempted under the FAAAA, which preempts state "law[s], regulation[s], or other provision[s] having the force and effect of law related to a price, route, or service of any

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has clarified the relationship between the two entities: Rheas Trans was a motor carrier that received federal operating authority in January 2011. In January 2014, the Federal Motor Carrier Safety Administration (FMCSA) revoked its operating authority. That same month, Rheas Trans's president, Ronel Singh, applied for operating authority for RT Service under his father's name, Kuwar Singh. The following month, C.H. Robinson, which had had a contract with Rheas Trans, signed a contract with RT Service.

motor carrier … or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). Mr. Miller argued that his claim was not related to a broker's prices, routes, or services within the meaning of the preemption provision, but that even it if were, it would not be preempted because of the safety exception in 49 U.S.C. § 14501(c)(2)(A), which exempts from preemption "the safety regulatory authority of a State with respect to motor vehicles." The district court granted C.H. Robinson's motion. Pet. App. 28a–38a.

The court of appeals reversed and remanded. *Id.* at 1a–24a. The court agreed with the district court that Mr. Miller's negligence claim "related to" C.H. Robinson's services and therefore fell within the scope of the preemption provision. *Id.* at 2a. However, the court determined that the district court erred in holding that the safety exception in section 14501(c)(2)(A) did not apply. *Id.* at 3a. The court explained that, in enacting the safety exception, "Congress intended to preserve the States' broad power over safety, a power that includes the ability to regulate conduct [through] … common-law damages awards." *Id.* Moreover, the court explained, Mr. Miller's claim "has the requisite connection with motor vehicles because it arises out of a motor vehicle accident." *Id.* (internal quotation marks omitted). Holding that the claim was not preempted because it fell within the safety exception, the court of appeals reversed and remanded to the district court for further proceedings. *Id.* at 24a.

C.H. Robinson petitioned for panel and en banc rehearing. The court denied the petition without any judge requesting a vote on whether to rehear the matter en banc. *Id.* at 40a.

REASONS FOR DENYING THE WRIT

I. This case presents an issue of first impression in the courts of appeals that does not merit this Court's review.

Although questions about the scope of the FAAAA's preemption provision have been litigated for decades, the issue whether the FAAAA preempts personal injury claims against brokers did not arise until fairly recently. Although some district courts in the past few years have held that the FAAAA preempts such claims, s*ee*, *e.g.*, Pet. 21–22 (citing cases), a substantial majority have held that it does not.[2]

The decision below is the *first* federal court of appeals decision on the issue, and it agreed with the majority of district courts that the FAAAA does not

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[2] *See*, *e.g.*, *Reyes v. Martinez*, 2021 WL 2177252 (W.D. Tex. May 28, 2021); *Popal v. Reliable Cargo Delivery*, 2021 WL 1100097 (W.D. Tex. Mar. 10, 2021); *Grant v. Lowe's Home Ctrs., LLC*, 2021 WL 288372 (D.S.C. Jan. 28, 2021); *Mendoza v. BSB Transp., Inc.*, 2020 WL 6270743 (E.D. Mo. Oct. 26, 2020); *Ciotola v. Star Transp. & Trucking, LLC*, 481 F. Supp. 3d 375 (M.D. Pa. 2020); *Skowron v. C.H. Robinson Co*., 2020 WL 4736070 (D. Mass. Aug. 14, 2020); *Uhrhan v. B&B Cargo, Inc*., 2020 WL 4501104 (E.D. Mo. Aug. 5, 2020); *Lopez v. Amazon Logistics, Inc.*, 2020 WL 2065624 (N.D. Tex. Apr. 28, 2020); *Gilley v. C.H. Robinson Worldwide, Inc.*, 2019 WL 1410902 (S.D. W. Va. Mar. 28, 2019); *Huffman v. Evans Transp. Servs., Inc.*, 2019 WL 4142685 (S.D. Tex. Aug. 28, 2019); *Scott v. Milosevic*, 372 F. Supp. 3d 758 (N.D. Iowa 2019); *Nyswaner v. C.H. Robinson Worldwide, Inc.*, 353 F. Supp. 3d 892 (D. Ariz. 2019); *Finley v. Dyer*, 2018 WL 5284616 (N.D. Miss. Oct. 24, 2018); *Mann v. C. H. Robinson Worldwide, Inc.*, 2017 WL 3191516 (W.D. Va. July 27, 2017); *Morales v. Redco Transp. Ltd.*, 2015 WL 9274068 (S.D. Tex. Dec. 21, 2015); *Montes de Oca v. El Paso-Los Angeles Limousine Exp., Inc.*, 2015 WL 1250139 (C.D. Cal. Mar. 17, 2015); *Owens v. Anthony*, 2011 WL 6056409 (M.D. Tenn. Dec. 6, 2011).

preempt negligence claims against brokers arising out of motor vehicle accidents. This Court should not grant review of this first appellate decision. Instead, it should let the issue percolate in the lower courts. As district court decisions are appealed, one of two things will happen: Either the other courts of appeals will agree with the Ninth Circuit, and the case law on this issue will be uniform; or other courts of appeals will disagree, and this Court can consider at that time whether the issue therefore requires the Court's consideration. Either way, this Court's review would be premature now, when only one court of appeals has addressed the issue.

Despite C.H. Robinson's rhetoric, *see* Pet. 23 (asserting that motor vehicle accident victims are "seek[ing] to expand from their beachhead in the Ninth Circuit"), the fact that parties may cite the decision below in other cases—or that courts may find the decision's reasoning convincing—does not support review. That is part of the percolation process. Likewise exaggerated is C.H. Robinson's claims about the costs the decision below will impose. *See*, *e.g.*, *id.* at 12. Personal injury claims have been proceeding against brokers for years without having the effect on consumers that C.H. Robinson now prophesies. And C.H. Robinson has described the litigation pending against it as "routine" and stated to shareholders that it does not expect any pending or threatened litigation against it "to have a material adverse effect on [its] consolidated financial position, results of operations, or cash flows." C.H. Robinson, *Annual Report 2020* (Feb. 19, 2021), at 19, available at https://s21.q4cdn.com/950981335/files/doc_financials/2020/ar/CHRW-2020-Annual-Report-10-K.pdf.

The procedural posture of this case provides an additional reason why review by this Court would be premature. This Court "generally await[s] final judgment in the lower courts before exercising [its] certiorari jurisdiction." *Virginia Military Inst. v. United States*, 508 U.S. 946 (1993) (Scalia, J., respecting the denial of the petition for writ of certiorari). Here, however, the "Court of Appeals vacated the judgment that had been entered in favor of petitioner[], and remanded the case to the District Court" for further proceedings. *Id.* Because the district court decided the case on a motion for judgment on the pleadings, the court considered no defenses other than preemption and held no trial. On remand, C.H. Robinson will retain any other legal defenses that it may have, and the trier of fact may decide in favor of either party. If C.H. Robinson ultimately prevails, review on the question presented will not be necessary (or appropriate). And if Mr. Miller ultimately prevails, the factual record will provide context in which to understand the preemption issue. In either event, if C.H. Robinson is correct that the question presented is "plainly recurring," Pet. 24, there will be appropriate future vehicles to allow this Court to resolve the issue after entry of a final decision. In the meantime, the Court should allow Mr. Miller's case to run its course.

C.H. Robinson repeatedly notes that, years ago, this Court reversed a Ninth Circuit decision involving ADA preemption and reversed in part a Ninth Circuit decision involving FAAAA preemption. *See Northwest*, 572 U.S. 273 (reversing *Ginsberg v. Nw., Inc.*, 695 F.3d 873 (9th Cir. 2012)); *American Trucking Ass'ns, Inc. v. City of Los Angeles*, 569 U.S. 641 (2013) (reversing in part *American Trucking Ass'ns, Inc. v. City of Los Angeles*, 660 F.3d 384 (9th Cir. 2011)). C.H. Robinson

suggests that, because the Court granted review in those cases, it should grant review here, and that because the Ninth Circuit got those cases at least partially wrong, it must also be wrong here. The Ninth Circuit's decisions in those cases are irrelevant here, however, and this Court's reversal of those decisions speaks neither to the correctness of the decision below nor to the cert.-worthiness of this case. Neither *Northwest* nor *American Trucking Associations* involved negligence claims or claims against freight brokers; *Northwest* did not involve the safety exception; and the parts of the Ninth Circuit's decision in *American Trucking Associations* that involved the exception were not among those reversed by this Court. Moreover, the decision below did not rely on the Ninth Circuit's decisions in either *Northwest* or *American Trucking Associations*. And none of the judges on the Ninth Circuit panels in those two cases were on the panel below. Indeed, none of the judges on those panels are even active Ninth Circuit judges today. In short, that the case arose in the Ninth Circuit is not a reason to grant review of the first court of appeals decision to address the question presented.

II. The court of appeals correctly held that the FAAAA does not preempt Mr. Miller's claim.

Review is particularly unwarranted here because the court of appeals correctly held that the safety exception applies to Mr. Miller's claims. As the court explained, the "'safety regulatory authority of a State' encompasses common-law tort claims," which are an "important component of the States' power over safety." Pet. App. 14a–15a. Moreover, negligence claims against brokers arising out of motor vehicle accidents have "the requisite 'connection with' motor

vehicles." *Id.* at 24a. C.H. Robinson's arguments to the contrary rely on a cramped reading of the statutory text and ignore both this Court's precedents and relevant aspects of the broader statutory context.

A. The court of appeals correctly concluded that the "safety regulatory authority of a State" encompasses common-law claims.

1. C.H. Robinson first argues that the safety exception does not apply to common-law claims. According to C.H. Robinson, the phrase "safety regulatory authority of a State" in the exception refers only to state legislative and administrative enactments. Pet. 13. This Court has stated, however, that "state 'regulation can be … effectively exerted through an award of damages.'" *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (quoting *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959), and holding that a statute that preempted "the entire field of regulating locomotive equipment to the exclusion of state regulation" preempted "state common-law duties and standards of care" (internal quotation marks and citation omitted)); *see also Desiano v. Warner-Lambert & Co.*, 467 F.3d 85, 86 (2d Cir. 2006) ("Historically, common law liability has formed the bedrock of state regulation."). "[T]he obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy." *Kurns*, 565 U.S. at 637 (quoting *Garmon*, 359 U.S. at 247).

C.H. Robinson notes that Congress has sometimes used the phrase "regulatory authority" "to refer to either federal or state administrative agencies." Pet. 13 (citing 15 U.S.C. § 7201(1), 16 U.S.C. § 824i(a), (b), 42 U.S.C. § 16431(a)(1), & 49 U.S.C. § 14702(a)). As the

court of appeals explained, however, "[n]one of the statutes C.H. Robinson identifies supplies a general definition for the term 'regulatory authority.'" Pet. App. 19a. Moreover, the statutes C.H. Robinson cites undercut its "own argument that 'the safety regulatory authority of a State' refers to the power to enact *legislation* and regulations since each refers only to an administrative body." *Id*. C.H. Robinson responds that the term "regulatory authority" can also refer to "Congress's power to enact legislation." Pet. 14. This response, however, simply underscores that the term is not always limited to administrative bodies.

In the context of the FAAAA's safety exception, nothing in the term "safety regulatory authority of a State" excludes the states' power to regulate through common-law claims. In fact, as the court of appeals pointed out, interpreting the term "safety regulatory authority" to exclude that power would have odd results. State-law damages actions can be established by state legislatures, as well as through common law. *See* Pet. App. 17a (discussing states that have codified their common law). C.H. Robinson's argument would thus read the FAAAA to allow some damages claims related to safety but not others, depending on the state. "It seems unlikely that Congress would have made the availability of this exception dependent on codification, particularly in light of the FAAAA's goal of uniformity." *Id.*

2. C.H. Robinson quotes the statement in *Ours Garage* that the safety exception was intended to protect "the preexisting and traditional state police power over safety," *Ours Garage*, 536 U.S. at 439, states that the power to enact legislation is the "core of the State's police power," Pet. 14, and suggests that, therefore,

the exception does not apply to common-law claims, *id*. But although the cases C.H. Robinson cites recognize that states' broad authority to enact legislation is "*a* 'police power,'" *Bond v. United States*, 572 U.S. 844, 854 (2014) (emphasis added) (citation omitted), they do not limit police powers to the power to enact legislation. To the contrary, this Court has repeatedly recognized that the preemption of state common law implicates the "historic police powers of the States." *See*, *e.g.*, *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (citation omitted). Indeed, in discussing the police powers of the states, *Ours Garage* quoted *Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996), in which this Court relied on a presumption against preemption of "the historic police powers of the States" in holding that common-law claims were not preempted. *See Ours Garage*, 536 U.S. at 438 (quoting *Medtronic*, 518 U.S. at 485).

C.H. Robinson also argues that the phrase "safety regulatory authority of a State" should be read to exclude common law because the second and third clauses in section 14501(c)(2)(A) apply to authorities that "can realistically be established only by a state legislature or (more likely) an administrative agency." Pet. 15. Those other clauses specify that the FAAAA's preemption provision does not apply to "the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo" or "the authority of a State to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization." 49 U.S.C. § 14501(c)(2)(A). Given that the second and third clauses address very specific topics, however, whereas the first clause applies broadly to a state's

"safety regulatory authority," the second two clauses are plainly meant to be far more limited than the first clause and cannot be read to limit the first clause's scope. *See Lopez*, 458 F. Supp. 3d at 515 (explaining that the structure of section 14501(c)(2)(A) "supports a broad interpretation of a state's 'safety regulatory authority,'" because, while the second and third clauses "list specific types of laws or regulations," the first is "relatively open-ended and focuses … on state authority as it relates to a certain goal—safety"). Moreover, the interpretive canon C.H. Robinson invokes is also inapplicable for the additional reason that the three exceptions in section 14501(c)(2) "are too few and too disparate to qualify as a string of statutory terms or items in a list." *Graham Cty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 289 (2010) (internal quotation marks and citations omitted).

C.H. Robinson's argument that the safety exception excludes common-law claims because it does not include the preemption provision's reference to "other provisions" is similarly unavailing. The safety exception does not parallel the language of the preemption provision, but "omit[]" the term "other provisions," *Russello v. United States*, 464 U.S. 16, 23 (1982) (citation omitted); it uses a wholly different formulation: While the preemption provision preempts "a law, regulation, or other provision having the force and effect of law," the exception broadly refers to the state's "regulatory authority" in describing the matters not preempted. As this Court explained in *Ours Garage*, 536 U.S. at 435–36, the presumption "that the presence of a phrase in one provision and its absence in another reveals Congress' design … grows weaker with each difference in the formulation of the provisions under

inspection." Thus, this Court "rejected a similar argument in *Ours Garage*," Pet. App. 20a, making clear that the fact that the safety exception uses different language than the preemption provision does not mean that it applies to a narrower set of state authority. *See Ours Garage*, 536 U.S. at 433–35 (rejecting the argument that the inclusion of a reference to political subdivisions of a state in the preemption provision but not in the safety exception meant "that Congress intended to limit the exception to States alone"). Moreover, despite C.H. Robinson's insistence to the contrary, the formulation used in the safety exception is not narrower than that in the preemption provision. Rather, it encompasses all of a state's "safety regulatory authority"—an authority that includes the state's authority to regulate through the development and enforcement of state common law.

Far from undercutting the court of appeals' decision, the broader statutory context supports the court's conclusion that the "'safety regulatory authority of a State' encompasses common-law tort claims." Pet. App. 14a. The safety exception is not the only place in the FAAAA where Congress used the term "regulatory": In the Act's "findings," Congress declared that "certain aspects of the State *regulatory* process should be preempted." FAAAA § 601(a)(2) (emphasis added). Although C.H. Robinson ignores Congress's use of "regulatory" in this provision, its argument for preemption rests on the notion that common-law claims are among the "aspects of the State regulatory process" that Congress sought to preempt in the FAAAA. After all, if the FAAAA does not preempt any common-law claims, then it is irrelevant whether such claims fall within the safety exception. There can be no sound basis, however, for

holding that common-law claims are an aspect of the state's "regulatory process" for purposes of describing what is preempted, but fall outside the state's "regulatory authority" for purposes of describing what is *not* preempted. Congress's use of the term "regulatory" to describe both what it sought to preempt and what it sought to save from preemption underscores that the preemption provision and safety exception work in tandem: If the FAAAA preempts some common-law claims (as all parties here agree it does), then the safety exception saves some common-law claims from preemption.

3. C.H. Robinson's additional criticisms of the court of appeals' holding that the safety exception applies to state common-law claims likewise fail. Accusing the court of "elid[ing]" the safety exception's text, C.H. Robinson suggests that the court's approach conflicts with this Court's statement in *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251 (2013), that "'the best evidence of Congress' pre-emptive intent' is 'statutory language.'" Pet. 16, 17 (citing *Dan's City*, 569 U.S. at 260). The court of appeals specifically considered the text of the safety exception, however, and found that the text on its own did not answer the question whether it included common-law claims. Pet. App. 14a. Accordingly, the court used other tools of statutory interpretation, including those used by this Court in *Ours Garage*, and concluded that "[t]he 'safety regulatory authority of a State' encompasses common-law tort claims." *Id.* C.H. Robinson's unhappiness with the results of the court of appeals' reasoned analysis does not make the court's interpretation "impossible to square with this Court's precedents." Pet. 16.

C.H. Robinson also criticizes the court of appeals for stating that it was appropriate to interpret the safety exception broadly. This Court has explained, however, that "when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily accept the reading that disfavors pre-emption." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008) (internal quotation marks and citation omitted). And this Court has already rejected the argument that the safety exception should be given "the narrowest possible construction." *Ours Garage*, 536 U.S. at 440.

Finally, C.H. Robinson harps on the fact that the court of appeals found "additional support for [its] conclusion," Pet. App. 15a—a conclusion also supported by a "number of other considerations," *id.* at 17a—in *American Trucking Associations*, in which this Court described the FAAAA as drawing a line "between a government's exercise of regulatory authority and its own contract-based participation in a market." 569 U.S. at 649. C.H. Robinson states that it is "little wonder that the Court described the governmental action there as 'regulatory authority,'" since it involved a positive law enactment by an administrative agency. Pet. 18. But *American Trucking Associations* did not just describe the action at issue there as "regulatory authority"; it described the FAAAA as *generally* drawing a line between the "exercise of regulatory authority" and its own participation in the market. *American Trucking Ass'ns*, 569 U.S. at 649. As the court of appeals explained, "if the preemption provision targets 'a government's exercise of regulatory authority,' and that provision encompasses common-law claims, then surely 'the safety regulatory authority of a State' also

includes at least some common-law claims." Pet. App. 17a (internal citations omitted).

B. The court of appeals correctly held that negligence claims against brokers stemming from motor vehicle accidents invoke the state's regulatory authority "with respect to motor vehicles."

C.H. Robinson's argument that negligence claims against brokers do not operate "with respect to motor vehicles" fares no better. C.H. Robinson asserts that because a motor vehicle is a "vehicle … used on a highway in transportation," 49 U.S.C. § 13102(16), and freight brokers do not themselves drive vehicles, claims against freight brokers do not operate "with respect to motor vehicles." Pet. 18–19. The job of brokers, however, is to arrange for the provision of *motor vehicle* transportation. *See* 49 U.S.C. § 13102(2) (explaining that brokers sell, offer for sale, negotiate for, or hold themselves out as selling, providing, or arranging for "transportation by motor carrier for compensation"); *id.* § 13102(14) (explaining that a motor carrier is a "person providing motor vehicle transportation for compensation"). Where a claim alleges that a broker was negligent in selecting a motor carrier to provide motor vehicle transportation, resulting in a motor vehicle collision, that claim "concern[s]" the safety of motor vehicles, *Dan's City*, 569 U.S. at 261, and therefore invokes the state's safety regulatory authority "with respect to motor vehicles" for the purposes of the safety exception.

C. Mr. Miller's claim is not "related to" broker prices, routes, and services.

Although the court of appeals correctly held that the safety exception applies to Mr. Miller's claim, the

court should not have had to reach that issue, because it should have held that the claim does not fall within the scope of the FAAAA's preemption provision in the first place. The Ninth Circuit adopted a broad interpretation of the preemption provision in section 14501(c)(1) and held that Mr. Miller's claim is "'related to' broker services." Pet. App. 8a. But although the term "related to" is broad, that breadth "does not mean the sky is the limit." *Dan's City*, 569 U.S. at 260. In particular, this Court has cautioned that section "14501(c)(1) does not preempt state laws affecting carrier prices, routes, and services 'in only a 'tenuous, remote, or peripheral ... manner.'" *Id.* (quoting *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 371 (2008)).

"[A] negligent hiring claim … does not have anything more than a 'tenuous, remote, or peripheral' connection to the 'price, route, or service' of a broker." *Mann*, 2017 WL 3191516, at *7. The "common-law duty of ordinary care does not mention or target a motor carrier's prices, routes, or services," it "is part of the backdrop of laws that all businesses must follow," and it "does not place a significant financial impact on a broker or motor carrier's prices, routes, or services." *Ciotola*, 481 F. Supp. 3d at 388, 390. Because a negligent hiring claim is only tenuously connected to broker prices, routes, or services, the court of appeals should have held that the FAAAA's preemption provision does not apply to such claims. Regardless, however, the court of appeals correctly determined that, if negligent hiring claims by motor accident victims relate to broker prices, routes, or services, they are nonetheless not preempted because they fall within the safety exception. Further review by this Court of that decision is unnecessary.

III. The decision below is fully consistent with the FAAAA's policy purposes.

Contrary to C.H. Robinson's claims, the decision below is consistent with the "general policy of the FAAAA." Pet. 19. As this Court has explained, in enacting the FAAAA, "Congress resolved to displace '*certain* aspects of the State regulatory process.'" *Dan's City*, 569 U.S. at 263 (quoting FAAAA § 601(a)(2) (emphasis in *Dan's City*)). But it also specifically sought to preserve certain other aspects of the regulatory process, including "the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). Stated differently, although Congress believed that *some* state regulation "imposed an unreasonable burden on interstate commerce" that justified preempting such regulation, FAAAA § 601(a)(1)(A), Congress did not believe that *safety* regulation imposed such a burden. Instead of seeking to eliminate state safety laws, Congress specifically sought to preserve them.

As this Court explained in interpreting the safety exception in *Ours Garage*, Congress's "declarations of deregulatory purpose … do not justify interpreting through a deregulatory prism 'aspects of the State regulatory process' that Congress determined should *not* be preempted." 536 U.S. at 440 (emphasis in original). The court of appeals' conclusion that the FAAAA does not preempt claims that Congress saved from preemption "is in full accord with Congress' purpose in enacting" the FAAAA. *Dan's City*, 569 U.S. at 263.

Claims such as Mr. Miller's are part of the "traditional state police power over safety" that Congress sought to preserve in the safety exception. *Ours Garage*, 536 U.S. at 339. Indeed, such claims help

demonstrate why the safety exception was necessary. Although "competitive market forces" may further "efficiency, innovation, and low prices" in the market for airline services, *Rowe*, 552 U.S. at 371 (citation omitted), those forces do not promote safety in the broker/motor carrier market. To the contrary, if brokers were immunized against liability for negligently hiring unsafe motor carriers, brokers would have no incentive to choose motor carriers that operate safely. Instead, there would be a race to the bottom, in which motor carriers would be incentivized to cut safety corners to compete for brokers' business. This race to the bottom would come at the expense of people who drive on America's highways—people like Mr. Miller, who are not part of the marketplace for motor carrier services and do not affect that marketplace, but who pay a heavy price when brokers like C.H. Robinson fail to exercise reasonable care.

Under C.H. Robinson's interpretation of the FAAAA, freight brokers would not be able to be held liable for their selection of motor carriers even if they hire a motor carrier that lacks federal operating authority, either because the motor carrier never had such authority or because the FMCSA revoked it. Freight brokers also would not be able to be held liable when they hire a motor carrier that they know is a "reincarnated" motor carrier that has shut down and re-opened with a new identity "to avoid compliance, or mask or otherwise conceal non-compliance, or a history of non-compliance, with statutory or regulatory requirements." 49 C.F.R. § 385.1005; *see generally* U.S. Gov't Accountability Off., GAO-12-364, *Motor Carrier Safety: New Applicant Reviews Should Expand to Identify Freight Carriers Evading Detection*

17 (2012) (explaining that new applicants with attributes of companies that have reincarnated to evade detection by FMCSA were "three times more likely than all other new applicant carriers to later be involved in a severe crash—one in which there was a fatality or injury").

C.H. Robinson's interpretation of the FAAAA, if adopted, could have implications for safety on America's roads that extend far beyond whether brokers can be held liable for their negligence. If the safety exception does not apply to common-law claims, then it does not apply to negligence claims against motor carriers and drivers, as well as those against brokers. Immunizing motor carriers from liability when their negligent conduct causes physical injury or death, however, would remove incentives for motor carriers to operate safely, with potentially devastating consequences. Congress could not possibly have intended such consequences when it preempted economic regulation of motor carriers—and preserved the safety regulatory authority of the state. The decision below respects both Congress's intent to deregulate motor carrier prices, routes, and services and its intent to preserve states' power to regulate safety; C.H. Robinson's arguments about the FAAAA's policy provide no grounds for review here.

IV. The Court should not require the Solicitor General to file a brief here, where no basis for review is present.

In a tacit acknowledgement that the petition presents no basis for review, C.H. Robinson urges the Court to invite the Solicitor General to file a brief expressing the views of the United States. This Court,

however, does not need a brief from the Solicitor General to see that none of the "considerations governing review on certiorari" are present in this case. S. Ct. R. 10. The decision below does not conflict with any decision from another circuit or state court of last resort; it does not depart from the accepted and usual course of judicial proceedings; it does not conflict with decision of this Court; and it does not present an important question of federal law that should be settled by this Court. *See id.*

The decision below is well-reasoned, addresses an issue of first impression in the courts of appeals, and correctly holds, in agreement with the majority of district courts, that the FAAAA does not preempt negligence claims against freight brokers arising out of motor vehicle accidents. The Court should deny the petition.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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