No. 20-1453

IN THE
Supreme Court of the United States

CAL CARTAGE TRANSPORTATION EXPRESS, LLC; CCX2931, LLC; K&R TRANSPORTATION CALIFORNIA, LLC; KRT2931, LLC; CMI TRANSPORTATION, LLC; CM2931, LLC,

Petitioners,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA; SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondents.

On Petition For A Writ Of Certiorari To The California Court of Appeal

SUPPLEMENTAL BRIEF FOR PETITIONERS

Christopher D. Dusseault
Michele L. Maryott
Dhananjay S. Manthripragada
Thomas F. Cochrane
Brian Yang
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000

Joshua S. Lipshutz
Counsel of Record
Thomas H. Dupree Jr.
Aaron Smith
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500
JLipshutz@gibsondunn.com

Christopher C. McNatt, Jr.
SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, LLP
2 North Lake Avenue, Suite 560
Pasadena, CA 91101
(626) 345-5020

Counsel for Petitioners

CORPORATE DISCLOSURE STATEMENT

The Rule 29.6 corporate disclosure statement included in the petition for a writ of certiorari remains accurate.

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SUPPLEMENTAL BRIEF FOR PETITIONERS

Two weeks after petitioners filed their petition for a writ of certiorari, the Ninth Circuit deepened the circuit split and made this Court's review all the more urgent.

In *California Trucking Association v. Bonta* ("*CTA*"), Nos. 20-55106 & 20-55107, — F.3d —, 2021 WL 1656283 (9th Cir. Apr. 28, 2021), the Ninth Circuit held that the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), 49 U.S.C. § 14501(c)(1), does *not* preempt California's ABC test for worker classification. The court reasoned that the FAAAA does not preempt "a generally applicable labor law that affects a motor carrier's relationship with its workforce and does not bind, compel, or otherwise freeze into place the prices, routes, or services of motor carriers." *CTA*, 2021 WL 1656283, at *1.

In reaching this conclusion, the panel majority expressly disagreed with First Circuit jurisprudence as "contrary to our precedent." *CTA*, 2021 WL 1656283, at *12. Indeed, the dissent faulted the majority for "creat[ing] a circuit split." *Id.* at *18 (Bennett, J., dissenting).

The Ninth Circuit's decision in *CTA* confirms that the circuit split is worsening and underscores the need for this Court to resolve the question. Congress enacted the FAAAA to ensure national uniformity in the laws governing the prices or services of interstate motor carriers. Yet the same law—the ABC test, which has been adopted by states across the country—is currently preempted by the FAAAA in some jurisdictions but not in others. Review is warranted.

ARGUMENT

1. The Ninth Circuit's *CTA* decision deepens the circuit split.

In *CTA*, a trucking industry trade group argued that California's ABC test, as applied to motor carriers, is preempted by the FAAAA. The FAAAA preempts any state law "related to a price, route, or service of any motor carrier." 49 U.S.C. § 14501(c)(1). The district court sided with the trade group and preliminarily enjoined state officials from enforcing the ABC test against motor carriers, explaining that the test affects motor carriers' services and prices because it "prevents motor carriers from exercising their freedom to choose between using independent contractors or employees." *Cal. Trucking Ass'n v. Becerra*, 433 F. Supp. 3d 1154, 1165 (S.D. Cal. 2020).

A split panel of the Ninth Circuit reversed, holding that the FAAAA does *not* preempt the ABC test. The panel majority reasoned that a "generally applicable law" that "affect[s] a motor carrier's relationship with its workforce"—like a worker-classification law—is "not significantly related to rates, routes or services," and therefore is not preempted. *CTA*, 2021 WL 1656283, at *7. The panel majority explained that a "generally applicable law" may be preempted only if it directly "*compels* a motor carrier to a certain result in its relationship with *consumers*." *Id.* (emphases added). Applying this logic, the panel majority held that California's ABC test is not preempted because it "is a generally applicable labor law that impacts the relationship between a motor carrier and its workforce, and does not bind, compel, or otherwise freeze into place a particular price, route, or service of a motor carrier at the level of its customers." *Id.* at *13.

The panel majority acknowledged that it was parting ways with other courts that have held that the ABC test *is* preempted. The majority recognized, for example, that the First Circuit held the ABC test preempted "because interfering with the [motor carrier's] decision whether to use an employee or an independent contractor could prevent a motor carrier from using its preferred methods of providing delivery services, raise the motor carrier's costs, and impact routes." *CTA*, 2021 WL 1656283, at *12 (citing *Schwann v. FedEx Ground Package Sys., Inc.*, 813 F.3d 429, 438-39 (1st Cir. 2016)). Yet the panel majority rejected the First Circuit's ruling as "contrary to our precedent" because, according to the Ninth Circuit's divergent view of FAAAA preemption, "such indirect consequences have 'only a tenuous, remote, or peripheral connection to rates, routes or services.'" *Id.* (quoting *Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 643 (9th Cir. 2014)).

Judge Bennett dissented. He explained that he would have upheld the preliminary injunction because the ABC test "determines the *means* of providing [motor carriers'] services, thereby significantly impacting them—which is enough to trigger [FAAAA] preemption." *CTA*, 2021 WL 1656283, at *17 (Bennett, J., dissenting). He criticized the majority for "understat[ing] or ignor[ing]" the "persuasive value" of opinions holding that ABC tests "are or should be preempted." *Id.* at *17-18. By "brush[ing]" such decisions aside and adopting a narrow reading of the FAAAA that contradicts "binding precedent from the Supreme Court," Judge Bennett explained, the panel majority "undermines the balance of state and federal power contemplated by the [FAAAA] and in doing so, unnecessarily creates a circuit split." *Id.* at *18.

2. The Ninth Circuit has now fully aligned itself with the California courts, the Seventh Circuit, and the Third Circuit, all of which hold that the FAAAA does not preempt worker-classification laws that affect motor carriers' prices, routes, or services by discouraging the use of independent contractors. Pet. 14-15; *see* Pet. App. 16a-22a; *Costello v. BeavEx, Inc.*, 810 F.3d 1045 (7th Cir. 2016); *Bedoya v. Am. Eagle Express, Inc.*, 914 F.3d 812 (3d Cir. 2019).

In contrast, the First Circuit and the Massachusetts Supreme Judicial Court have reached the opposite conclusion, holding that generally applicable worker-classification laws that indirectly affect prices, routes, or services *are* preempted. Pet. 15-17; *see Schwann*, 813 F.3d at 437-40; *Chambers v. RDI Logistics, Inc.*, 65 N.E.3d 1, 9 (Mass. 2016). Similarly, the Rhode Island Supreme Court has held that generally applicable worker-compensation laws that indirectly affect prices, routes, or services are preempted. Pet. 17; *see Brindle v. R.I. Dep't of Labor & Training*, 211 A.3d 930, 935, 938 (R.I. 2019).

3. This case is an ideal vehicle for resolving the circuit split, as the question of preemption is cleanly presented and was fully adjudicated by the California courts. In this enforcement action, the People of the State of California are seeking to punish several motor carriers for using independent owner-operator truck drivers, Pet. App. 33a-34a—the very practice that courts in other jurisdictions have found to be protected by the FAAAA. There is nothing theoretical or academic about the question presented, and there are no questions about standing or ripeness. To the contrary, if this petition is denied and the People are allowed to enforce the ABC test against these motor carrier petitioners, then petitioners will be found to

have misclassified truck drivers as independent contractors.

The Court should not delay in resolving this issue. Motor carriers operate businesses that are quintessentially interstate in nature. They need this Court's guidance on the scope of federal preemption so they can plan efficient and effective operations nationwide. Pet. 27. Every day the split persists, motor carriers' "standard way of doing business" is disrupted, imposing all the "significant inefficiencies [and] increased costs" Congress sought to avoid. H.R. Conf. Rep. No. 103-677, at 87 (1994). This Court should grant review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Joshua S. Lipshutz
Counsel of Record
Thomas H. Dupree Jr.
Aaron Smith
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500
JLipshutz@gibsondunn.com

Christopher C. McNatt, Jr.
SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, LLP
2 North Lake Avenue, Suite 560
Pasadena, CA 91101
(626) 345-5020

Christopher D. Dusseault
Michele L. Maryott
Dhananjay S. Manthripragada
Thomas F. Cochrane
Brian Yang
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000

Counsel for Petitioners

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