No. 20-1453

IN THE

Supreme Court of the United States

CAL CARTAGE TRANSPORTATION EXPRESS, LLC, ET AL.,

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

BRIEF FOR AMERICAN TRUCKING ASSOCIATIONS, INC., CALIFORNIA TRUCKING ASSOCIATION, AND NATIONAL PRIVATE TRUCK COUNCIL AS AMICI CURIAE SUPPORTING PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Regulations

Other Authorities

INTEREST OF THE AMICI CURIAE*

American Trucking Associations, Inc. (ATA), is the national association of the trucking industry. Its direct membership includes approximately 1,800 trucking companies and in conjunction with 50 affiliated state trucking organizations, it represents over 30,000 motor carriers of every size, type, and class of motor carrier operation. The motor carriers represented by ATA haul a significant portion of the freight transported by truck in the United States and virtually all of them operate in interstate commerce among the States. ATA regularly represents the common interests of the trucking industry in courts throughout the nation, including this Court.

The California Trucking Association (CTA) has over 1,500 members who operate over 350,000 trucks in California. CTA's members transport 85 percent of the shipments that travel on California's highways each day, from self-employed independent contractors (or owner-operators) to large international motor carriers employing thousands of truck drivers. CTA has been serving the businesses that operate trucks in California for over seventy-five years. Over the years that CTA has represented trucking enterprises in California, it has acquired knowledge and information

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* 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, amici state that no counsel for any party has authored this brief in whole or in part, and no person or entity, other than amici, their members, or their counsel has made any monetary contributions intended to fund the preparation or submission of this brief.

about the practices and policies that regulate and affect this industry.

The National Private Truck Council (NPTC) is a trade association representing the interests of approximately 300 companies that operate private truck fleets in furtherance of non-transportation primary businesses. NPTC members include both Fortune 500 companies and small local distribution companies. Its members are heavily represented in the food, retail, chemical, construction and manufacturing industries, but encompass a broad cross-section of American business interests. Some ten percent of NPTC member companies lease independent owner-operator drivers to supplement their driver workforce. In addition, as shippers of goods, NPTC member companies regularly contract with for-hire motor carriers using owner-operator drivers to transport freight to and from production and distribution facilities.

Amici all have members who regularly contract with independent owner-operators, and who regularly conduct operations in the State of California as well as other States. Thus, they have an acute interest both in the preservation of the independent owner-operator model in the trucking industry, and in ensuring that the congressional policy establishing a deregulated trucking industry is not undermined by a patchwork of state-level impediments to the safe and efficient flow of commerce. Moreover, ATA has special familiarity with the issue of preemption under the Federal Aviation Administration Authorization Act (FAAAA), because it actively participated in the formulation of federal motor carrier deregulation and preemption policy in Congress. *See, e.g.*, H.R. Conf. Rep. No. 103-677, at 88 (1994) *reprinted in* 1994 U.S.C.C.A.N. 1715, 1760. Since that time, ATA has

been involved, either as a party or as an amicus, in many of the cases before this Court and other courts interpreting and applying the FAAAA's preemption provision and the materially identical preemption provision of the Airline Deregulation Act, as well as cases before numerous courts concerning the use of independent owner-operators in the trucking industry. And CTA is currently a party to a case in federal court involving substantially the same question, *California Trucking Ass'n v. Bonta*, 996 F.3d 644 (9th Cir. 2021), *pet. for reh'g en banc pending*, and thus has both a special familiarity with these issues and an acute interest in the outcome of this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners have explained in detail the split among the lower courts on whether the preemption provision of the Federal Aviation Administration Authorization Act of 1994 (FAAAA), 49 U.S.C.§ 14501(c), precludes application of California's "ABC" worker classification test to owner-operator truckers. Pet. 13–19. They and other amici further explain the importance of the owner-operator model in the trucking industry—and hence the importance of this Court's resolution of that lower-court split. Pet. 27–30; Br. of National Motor Freight Traffic Association, Inc. (NMFTA), 6–12; Br. of Minnesota Trucking Association (MTA) 3–13. Amici submit this brief to further explain the Congressional policy embodied in the FAAAA favoring a trucking industry shaped by market forces rather than a patchwork of state policy preferences, and how California's worker classification test acutely interferes with that policy by prohibiting

a widely-used, efficient operational model that is embraced in federal law and permitted in every other State. The uncertainty generated by the lower court split, and the interference with Congressional policy, urgently warrant this Court's review.

REASONS FOR GRANTING THE PETITION

I. The FAAAA's Preemption Provision Embodies a Congressional Policy of Enabling Trucking Companies to Adopt Nationally Uniform, Market-Driven Business Practices.

As explained in detail below, California's highly restrictive approach to worker classification erects an extraordinary barrier to independent contracting relationships between motor carriers and owner-operators. This approach is radically out of step with the approach of most other States, and as a result threatens to subject the trucking industry to a patchwork of differing state policies governing the way they move freight as they cross from one jurisdiction to the next. But that kind of regulatory patchwork—forcing motor carriers to adapt their operations to the policy preferences of each State they travel through—and the inefficiencies it would impose on the movement of freight in interstate commerce is precisely what Congress sought to prevent when it enacted the FAAAA's preemption provision.

The FAAAA preempts any "law related to a price, route, or service of any motor carrier … with respect to the transportation of property" or any "air carrier … transporting property … by motor vehicle." 49 U.S.C. §§ 14501(c)(1), 41713(b)(4)(A). This broad preemption provision was enacted in 1994 with the

goal of eliminating the patchwork of burdensome state trucking regulations that had previously developed, and to ensure that States would not undo federal deregulation with policies of their own. As this Court has explained, a "state regulatory patchwork is inconsistent with Congress' major legislative effort to leave such decisions, where federally unregulated, to the competitive marketplace." *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 373 (2008). To achieve its goal, Congress expressly incorporated the preemptive language and effect of the Airline Deregulation Act of 1978 (ADA), 49 U.S.C. § 41713(b)(1), as the U.S. Supreme Court had broadly interpreted it in *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992). Accordingly, like the ADA, the FAAAA preempts all laws that significantly affect a price, route, or service of any motor carrier, whether that effect is direct or indirect. *See Rowe*, 552 U.S. at 370. And that preemption is an essential component of the broader federal policy of uniformity in the trucking industry, as evidenced by the FAAAA's legislative history and the structure of federal motor carrier regulation as a whole.

1. Beginning with the Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793, Congress has repeatedly expressed a strong federal policy favoring a trucking industry shaped above all by competitive market forces. At the time it began the process of deregulating the industry, Congress found that "[t]he existing regulatory structure ha[d] tended in certain circumstances to inhibit innovation and growth and ha[d] failed, in some cases, to sufficiently encourage operating efficiencies and competition." H.R. Rep. No. 96-1069 at 10 (1980); *see also, e.g.*, Michael J. Norton, Note, *The Interstate Commerce Commission and the Motor Carrier Industry—Examining the Trend To-*

ward Deregulation, 1975 Utah L. Rev. 709, 709 (reporting that federal motor carrier "regulation ha[d] recently come under attack for causing inefficiencies and wastefulness, and for repressing technological advances in the industry"). Thus, in order to remove obstacles to innovation and encourage efficiency, Congress significantly deregulated the industry at the federal level.

It soon became clear, however, that federal deregulation could not achieve its objectives as long as burdensome and inconsistent state regulation of the trucking industry persisted. As ATA testified regarding the need for national uniformity,

> [a] single shipment may begin in one state and pass through several other states on the way to its destination. The shipper and receiver of the goods may be located in different states. Without uniform federal laws and regulations governing the provision of such services, the potential conflicts and confusion between and among state laws is beyond comprehension.

Hearing Before Subcomm. on Surface Transp. of the S. Comm. on Commerce, Sci., and Transp., 103d Cong., 2d Sess., at 225 (July 20, 1994) (statement of Thomas J. Donohue).

Congress agreed, finding in 1994 that state regulation continued to "impose[] an unreasonable burden on interstate commerce;" "impede[] the free flow of trade, traffic, and transportation of interstate commerce;" and "place[] an unreasonable cost on the American consumers." FAAAA, Pub. L. No. 103-305, tit. VI, § 601(a)(1), 108 Stat. 1569, 1605 (1994). Specifically, Congress concluded that state regulation

"causes significant inefficiencies," "increase[s] costs," and "inhibit[s] … innovation and technology." H.R. Conf. Rep. No. 103-677 at 87. Indeed, despite deregulatory efforts at the federal level, "[t]he sheer diversity of [state] regulatory schemes [remained] a huge problem for national and regional carriers attempting to conduct ***a standard way of doing business***." *Ibid.* (emphasis added).

Therefore, in order to free carriers from this burdensome "patchwork" of state regulation, Congress concluded that "preemption legislation [was] in the public interest as well as necessary to facilitate interstate commerce." H.R. Conf. Rep. No. 103-677 at 87. To achieve its deregulatory goals, Congress adopted the language of the ADA. *Id.* at 83. Like the ADA, the FAAAA preempts any "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); *see also id.* § 41713(b)(1). Further, Congress specifically indicated its intent to incorporate "the broad preemption interpretation adopted by the United States Supreme Court in *Morales*." H.R. Conf. Rep. No. 103-677 at 83; *see Morales v. TransWorld Airlines, Inc.*, 504 U.S. 374, 383 (1992) (these "words … express a broad pre-emptive purpose"). The FAAAA, in short, reflects Congress' concern that "state requirements could easily lead to a patchwork of state service-determining laws, rules, and regulations," which would be "inconsistent with Congress' major legislative effort to leave such decisions, where federally unregulated, ***to the competitive marketplace***." *Rowe*, 552 U.S. at 373 (emphasis added).

2. The FAAAA's preemption provision is part of a comprehensive statutory framework which further reflects congressional intent to ensure that the interstate carriage of property is not burdened by a patchwork of rules. While the FAAAA's preemption provision is broad, it exempts state laws that regulate motor vehicle safety; that limit or control highway routes based on a vehicle's size or weight or the hazardous nature of its cargo; or that impose insurance or financial responsibility requirements. But consistent with the fundamental goal of promoting efficiency in the trucking industry through uniformity, each of these FAAAA carveouts is subject to a separate federal regulatory scheme, each with its own preemptive effect.

For example, the Motor Carrier Safety Act of 1984, Pub. L. No. 98-554, 98 Stat. 2832, instructs the Secretary of Transportation to review state laws and regulations "on commercial motor vehicle safety," and to declare them preempted in a variety of circumstances: if they are more stringent than federal measures but have "no safety benefit;" if they are "incompatible" with federal law; or if they "would cause an unreasonable burden on interstate commerce." 49 U.S.C. § 31141(c)(4). As the U.S. Supreme Court has recognized, the power to review and preempt state safety laws "affords the Secretary … a means to prevent the safety exception [to FAAAA preemption] from overwhelming [Congress'] deregulatory purpose." *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 441 (2002). "Under this authority, the Secretary can invalidate local safety regulations upon finding that their content or multiplicity threatens to

clog the avenues of commerce." *Id.* at 441–42. Much the same is true with respect to the other exceptions.[1]

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[1] State regulation of routes based on vehicle size and weight must conform to federal guidelines under a separate statutory scheme. *See* Surface Transportation Assistance Act of 1982 (STAA), Pub. L. No. 97-424, 96 Stat. 2097 (1983), 49 U.S.C. §§ 31111, 31113, 31114. *See also Nat'l Freight, Inc. v. Larson*, 760 F.2d 499, 506-07 (3d Cir. 1985) ("[o]ne of the main purposes of Congress in passing the STAA was to enhance interstate commerce" and "improve the productivity of truckers by establishing more uniform weight and length limits on federal roads across the country"); *United States v. Connecticut*, 566 F. Supp. 571, 576 (D. Conn. 1983) ("it is manifest that the STAA reflects a congressional interest in establishing uniform regulations governing the size, weight, and arrangements of trucks used in interstate commerce"), *aff'd mem.*, 742 F.2d 1443 (2d Cir. 1983), *aff'd mem.*, 465 U.S. 1014 (1984). The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Pub. L. No. 101-615, 104 Stat. 3244, authorizes the Secretary to establish standards and guidelines for state laws governing the routing of hazardous materials, which may be enforced only if they comply with those standards. 49 U.S.C. §§ 5112, 5125(c); *id.* § 5125(d) (allowing affected parties to petition the Secretary to determine whether a state hazmat regulation is enforceable); *see also* HMTUSA § 2, 104 Stat. at 3245 (finding that state and local laws were "creating the potential for … confounding … carriers which attempt to comply with [their] multiple and conflicting … requirements"); S. Rep. No. 93-1192 at 37 (1974) (noting that the prior version of the statute was intended "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation"); *Colo. Pub. Utils. Comm'n v. Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991) ("uniformity was the linchpin in the design of the [HMTUSA] statute"). And Congress created the Uniform Carrier Registration System (UCRS) to act as a clearinghouse and depository for, *inter alia*, proof of insurance and financial responsibility so that interstate motor carriers would not be subject to

Thus, in each category where Congress specifically exempted state laws from preemption under the FAAAA, it did so with the understanding that a separate federal regulatory structure would act as a preemptive check on any burdensome state regulation and thereby provide the necessary degree of uniformity. *See, e.g.*, *Ours Garage*, 536 U.S. at 441. Even where States have retained a role within Congress' structure, they have done so within limits and subject to federal preemption: the overall scheme reflects Congress' decision to leave no loose ends that would allow States unfettered discretion to impose their idiosyncratic policy preferences on any aspect of the industry.

3. The Court has explained that "Congress' overarching goal" in enacting the ADA and 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). And Congress' "overarching deregulatory purpose" means that "***States may not seek to impose their own public***

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the varying requirements of individual States. *See* Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, §§ 4301-08, 114 Stat. 1144, 1761–74 (2005). The UCRS replaces and improves upon the former "Single-State Registration System," which required interstate motor carriers to register with one State and provided that "such single State registration [would] be deemed to satisfy the registration requirements of all other States." *See Yellow Transp., Inc. v. Michigan*, 537 U.S. 36, 40 (2002) (internal quotation marks omitted, alteration in original).

policies … on the operation of a … carrier." *Am. Airlines v. Wolens*, 513 U.S. 219, 229 n.5 (1995) (emphasis added, internal 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) 5 (trucking carried 80.4% of the nation's 2019 freight bill, and 72.5% of tonnage). The national uniformity 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 as a whole. California's classification test, by effectively prohibiting motor carriers from contracting with independent owner-operators to provide services—a widespread business practice that carriers may adopt in every other State—impermissibly undermines that federal policy.

II. This Court's Review Is Necessary to Ensure That a Patchwork of State Policy Preferences Does Not Prevent Motor Carriers from Contracting with Independent Owner-Operators.

In the trucking industry, the use of "owner-operators"—independent individuals who contract their services and lease their motor vehicle equipment to trucking companies pursuant to 49 U.S.C. § 14102 and related regulations set forth at 49 C.F.R. § 376—is widespread and economically crucial. Their role in

trucking operations has a history essentially as long as the industry itself. *See* Ex Parte No. MC 43 (Sub-No. 12), *Leasing Rules Modifications*, 47 Fed. Reg. 53858, 53860 (Nov. 30, 1982) ("Prior to the Motor Carrier Act of 1935, motor carriers regularly performed authorized operations in non-owned vehicles. To a large extent, ownership of these vehicles was vested in the persons who drove them, commonly referred to as owner-operators."). Nearly seventy years ago, the Court noted the trucking industry's extensive use of leased equipment and drivers supplied by owner-operators. *Am. Trucking Ass'ns, Inc. v. United States*, 344 U.S. 298, 303 (1953) ("Carriers … have increasingly turned to owner-operator truckers to satisfy their need for equipment as their service demands."). Given that long history, and the crucial role that owner-operators play in efficiently allocating freight capacity and other resources, *see* NMFTA Br. 6–10, MTA Br. 10–13, California's idiosyncratic policy decision to eliminate the independent owner-operator model represents a massive disruption to Congress' intent in the FAAAA to allow "national and regional carriers … to conduct a standard way of doing business." H.R. Conf. Rep. No. 103-677 at 87.

A. California's Worker Classification Test Erects Extreme Barriers to Independent Contracting Relationships Between Motor Carriers and Owner-Operators.

That disruption is all the more stark in light of how far California's approach to worker classification in the trucking industry is out of step with the norm. To amici's knowledge, no other State has erected as extreme a barrier to independent contracting relationships between owner-operators and motor carriers as California has—with the exception of Massachusetts,

whose similar barrier was preempted under the FAAAA. *Schwann v. FedEx Ground Package Sys., Inc.*, 813 F.3d 429, 437 (1st Cir. 2016). To be sure, California is by no means the only State to use *some* kind of ABC test for *some* worker classification purposes. But nowhere else does a State's worker classification law so strongly compel motor carriers to provide services exclusively with employee drivers, for a number of reasons.

1. First, the ABC test adopted by the California Supreme Court in *Dynamex Operations W. v. Sup. Ct.*, 416 P.3d 1 (Cal. 2018), and initially codified by the California legislature in 2019 in Assembly Bill 5 (AB5) (replaced in 2020 by Assembly Bill 2257), is far more restrictive than the prevailing form of the test as historically implemented elsewhere. Specifically, while the "B" prong of California's ABC test can only be satisfied if the service performed is "outside the usual course of the hiring entity's business," Cal. Lab. Code § 2775(b)(1)(B), in most jurisdictions that prong can be satisfied "by establishing *either* (1) that the work provided is outside the usual course of the business for which the work is performed, *or* (2) that the work performed is outside all the places of business of the hiring entity." *Dynamex*, 416 P.3d at 34 n.23. *See, e.g.*, Alaska Stat. § 23.20.525(a)(8); Conn. Gen. Stat. § 31-222(a)(1)(B); Del. Code Ann. tit. 19 § 3302(10)(K); Haw. Rev. Stat. § 383-6; 820 Ill. Comp. Stat. 405/212; La. Rev. Stat. Ann. § 23:1472(12)(E); Md. Code Ann., Lab. & Empl. § 8-205(a); Neb. Rev. Stat. § 48-604(5); Nev. Rev. Stat. § 612.085; N.H. Rev. Stat. Ann. § 282-A:9(III); N.J. Stat. Ann. § 43:21-19(i)(6); N.M. Stat. § 51-1-42(F)(5); 21 Vt. Stat. Ann. § 1301(6)(B); Wash. Rev. Code § 50.04.140(1); W. Va. Code § 21A-1A-16(7).

This difference is crucial in the trucking context. As the trial court below found, "it is plain that a motor carrier's core transportation-related services cannot be performed by independent contractors" in a way that would satisfy California's narrow B prong. Pet. App. 46a. *See also id.* (noting that "[n]either party argues otherwise" that owner-operators can satisfy California's B prong). The ABC test as commonly articulated simply does not constitute the kind of bar in the owner-operator context that California's version does.[2]

2. Second, while California has adopted the ABC test for purposes of the State's employment laws generally, *see* Cal. Lab. Code § 2775(b)(1), other States that have adopted an ABC test have typically done so for narrow purposes. In particular, the ABC test has been most widely adopted to provide state administrative agencies with criteria governing unemployment insurance (UI) programs, rather than the full range of state wage and hour laws. *See* U.S. Dep't of Labor, Comparison of State Unemployment Insurance Laws (2019) at 1–4 ("[m]any of the states provide criteria commonly called the 'ABC' test" to determine whether a worker is an employee for unemployment insurance purposes), *available at* https://oui.doleta.gov/unemploy/pdf/uilawcompar/2019/complete.pdf. *See also, e.g.*, *Carpet Remnant Warehouse, Inc. v. N.J. Dep't of*

[2] Indeed, some States have gone further and rejected the "B" prong altogether, instead embracing an "AC" test that looks just to the "control or direction" and "independently established trade" criteria in rendering a determination. *See, e.g.*, Colo. Rev. Stat. § 8-70-115; Ga. Code Ann. § 34-8-35(f)(1); Idaho Code Ann. § 72-1316(4); Pa. Stat. Ann. tit. 43, § 753(l)(2)(B); Or. Rev. Stat. § 670.600(2); S.D. Codified Laws § 61-1-11; Utah Code Ann. § 35A-4-204(3).

Labor, 593 A.2d 1177, 1184 (N.J. 1991) (noting that "[a] minority of states adopted the federal [common-law] definition of employee" for unemployment insurance purposes, but "a majority of states … use the ABC test").

Beyond this, a handful of States have adopted ABC tests to govern worker classification outside the administrative-program context in which they historically arose. For example, some States have adopted some form of ABC test in establishing penalties for misclassification, but limited to certain specific industries where it presumably deemed independent contracting to be especially problematic. *See, e.g.*, Md. Code Ann., Lab. & Empl. §§ 3-902 *et seq.* (enacting penalties for misclassification, determined by narrow ABC test, in the construction and landscaping industries); N.J. Stat. Ann. § 34:20-4 (adopting traditional ABC test for broad employment law purposes in construction industry); N.Y. Lab. Law § 861-c(1)(a) (narrow ABC test for construction industry); Pa. Stat. Ann. tit. 43 § 933.3(a)(1) (modified ABC test for construction industry). Others have adopted the traditional form of the ABC test (whose "B" prong can be satisfied not only if the worker performs services outside the hiring entities usual course of business, but also if the services are performed outside its places of business) for various wage and hour purposes. *See, e.g.*, 820 Ill. Comp. Stat. 115/2; 21 Vt. Stat. Ann. § 341. But to amici's knowledge, with the (preempted) exception of Massachusetts, no other State has done what California has done: imposed the impossible-to-satisfy version of the ABC test on the trucking industry for the full range of state employment law, making it effectively impossible for motor carriers to contract with independent owner-operators.

3. In fact, a majority of States have explicitly clarified their embrace of independent owner-operators in the trucking industry by enacting express statutory provisions excluding them from the default test for employment, much as California did for a wide range of other occupations when it enacted AB5. *See* Cal. Lab. Code §§ 2777–84. These statutory owner-operator exceptions have the same virtues the California Supreme Court saw in the ABC test: they provide "an easily and consistently applied standard," compared to a multifactor test that "often leaves both businesses and workers in the dark with respect to basic questions." *Dynamex*, 416 P.3d at 33. The difference, of course, is that these exceptions consistently *promote* the independent owner-operator model rather than prohibit it.[3]

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[3] That clarity can be particularly important in the trucking industry, where federal law makes motor carriers just as responsible for the safety performance of independent owner-operators as they are for employee drivers, and charge the carrier with ensuring the owner-operator's adherence to the federal motor carrier safety regulations. 49 U.S.C. § 14102(a)(2); 49 C.F.R § 376.12(c)(1). While such government-mandated supervision does not, properly understood, constitute the kind of "control" indicative of an employment relationship, it is sometimes nevertheless so construed. *Compare, e.g.*, *N. Am. Van Lines, Inc. v. NLRB*, 869 F.2d 596, 599 (D.C. Cir. 1989) ("employer efforts to ensure the worker's compliance with government regulations, even when those efforts restrict the manner and means of performance, do not weigh in favor of employee status") *with W. Ports Transp., Inc. v. Emp. Sec.*, 41 P.3d 510, 517 (Wash. Ct. App. 2002) ("federally mandated controls" can be considered as evidence of an employment relationship). The statutory exceptions many States have enacted ensure that the owner-operator model is protected against such misapplication of an abstract standard.

States have taken different approaches in formulating their exceptions. For some, the exception is categorical. For example, in both its workers' compensation and UI statutes, Missouri excludes from the definition of "employee" any "individual who is the owner … and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier." Mo. Rev. Stat. §§ 287.020(1), 288.035. Other States condition their exception on specifically enumerated, objective criteria that are tailored to the practicalities of motor carrier/owner-operator relationships. For example, Virginia's UI statute recognizes that "[i]n the trucking industry, an owner-operator or lessee of a vehicle which is licensed and registered as a truck, tractor, or truck-tractor … is an independent contractor, not an employee, while performing services in the operation of his truck," provided that "[t]he individual owns the equipment or holds it under a bona fide lease;" "is responsible for the maintenance of the equipment;" "bears the principal burdens of the operating costs;" "is responsible for supplying … personal services to operate the equipment;" is compensated "based on factors related to the work performed … and not on the basis of … time expended;" "generally determines the details and means of performing the services" while taking into account "regulatory requirements, operating procedures of the carrier and specifications of the shipper;" and "enters into a contract that specifies the relationship to be that of an independent contractor." Va. Code Ann. § 60.2-212.1. *See also* Ala. Code § 25-5-1(4); Colo. Rev. Stat. § 8-40-301(5); Fla. Stat. § 440.02(15)(d)(4); Ga. Code Ann. § 34-8-35(n)(17); *id.* § 34-9-1(2); *id.* § 40-2-87(19); 820 Ill. Comp. Stat. 405/212.1; Ind. Code Ann. § 22-3-6-1(b)(8); *id.* § 22-4-8-3.5; Iowa Code § 85.61(11)(c)(3); Kan. Stat. Ann. § 44-503c; *id.* § 44-703(i)(4)(Y); La.

Rev. Stat. Ann. § 23:1021(10); Me. Rev. Stat. Ann. tit. 26, § 1043(11)(F)(33); Md. Code Ann., Lab. & Empl. § 8-206(f)(2); *id.* § 9-218; Minn. Stat. § 176.043; *id.* § 268.035(25b); Neb. Rev. Stat. § 48-604(6)(q); N.J. Stat. Ann. § 43:21-19(i)(7)(X); N.D. Cent. Code § 65-01-03; Ohio Rev. Code Ann. § 4111.03(D)(3)(i); *id.* § 4123.01(A)(1)(d); *id.* § 4141.01(B)(2)(m); Okla. Stat. tit. 40, § 1-208.1; *id.* § 2.18(b)(9); Or. Rev. Stat. § 656.027(15); *id.* § 657.047(1)(b); S.C. Code Ann. § 42-1-360(9); S.D. Codified Laws § 62-1-10; *id.* § 62-1-11; Tenn. Code Ann. § 50-6-106(1)(A); *id.* § 50-7-207(e)(1); Tex. Lab. Code Ann. § 406.122(c); Utah Code Ann. § 34A-2-104(5)(d); Wash. Rev. Code § 51.08.180; Wyo. Stat. Ann. § 27-3-108(a)(x); *id.* § 27-14-102(a)(vii)(O).

Whatever the precise form of the exception, each represents the decision of the respective state legislature to ensure that its general worker classification tests do not overly inhibit the ability of motor carriers and owner-operators to enter into independent contracting arrangements. Especially given this widespread embrace of the independent owner-operator model, AB5 profoundly interferes with the ability of motor carriers to "conduct a standard way of doing business" throughout the nation, as Congress intended when it enacted the FAAAA. H.R. Conf. Rep. No. 103-677 at 87. And because owner-operators regularly engage in long-haul, interstate transportation, even motor carriers and owner-operators based outside California will have to take into account California's policy preferences—rather than market demands—when they move freight to, from, or through California. That interference makes this Court's review particularly urgent.

B. AB 5's "Business-to-Business" Exception Does Not Allow Motor Carriers to Rely on the Market-Driven, Nationally Uniform Business Practices That Congress Enacted the FAAAA to Protect.

The decision below suggests that California's worker classification scheme "is not one that prohibits motor carriers from using independent contractors (and therefore, does not have an impermissible effect on prices, routes, or services)," because it includes a "business-to-business" exemption. Pet. App. 18a. That provision defines a "bona fide business-to-business contracting relationship" in terms of twelve criteria, each of which must be met to trigger the exemption. Cal. Lab. Code § 2776(a)(1)–(12). If the service provider is acting as a sole proprietor or business entity, and all twelve criteria are met, the ABC test does not apply, and the worker's classification status is instead evaluated under California's pre-AB5 standard (the so-called "*Borello*" standard, articulated by the California Supreme Court in *S.G. Borello & Sons v. Dep't of Indus. Relations*, 769 P.2d 399 (Cal. 1989)). *Id*.

In amici's view, this business-to-business exemption no more allows motor carriers to contract with independent owner-operators than California's ABC test itself does. But even if the court below were correct that the exemption renders California's classification scheme something short of an outright ban on independent owner-operators, it would still represent a massive interference with the Congressional policy embodied in the FAAAA's preemption provision, by conditioning its applicability on a long list of criteria that carriers and owner-operators would in many cases have no other incentive to meet.

For example, the exception only applies if the "service provider maintains a business location … that is separate from the business or work location of the contracting business," Cal. Lab. Code § 2276(a)(5), the "service provider can contract with other businesses to provide the same or similar services," *id.* at (a)(6), and the "service provider advertises and holds itself out to the public as available to provide the same or similar services," *id.* at (a)(8). And the exemption does not apply if the service provider "is providing services … to the customers of the contracting business." *Id.* at (a)(2).

But arbitrary conditions like these are antithetical to "Congress' major legislative effort to leave such decisions, where federally unregulated, to the competitive marketplace." *Rowe*, 552 U.S. at 373. Rather, they represent California "seek[ing] to impose [its] own public policies … on the operation of a … carrier," contrary to Congress' "overarching deregulatory purpose." *Wolens*, 513 U.S. at 229 n.5. Requiring owner-operators to maintain business locations that they do not need, or to run advertisements and cultivate customers that are unnecessary for their businesses to thrive, would force them "to offer … services that the market does not now provide (and which [they] would prefer not to offer)," substantially relating to their services in violation of the FAAAA. *Rowe*, 552 U.S. at 372. At the same time, it would *preclude* them from providing services to the customers of the motor carriers they contract with. And by introducing artificial costs, it would "ensure transportation rates, routes, and services" do *not* "reflect maximum reliance on competitive market forces, thereby stimulating efficiency, innovation, and low prices." *id.* at 371.

Accordingly, even if owner-operators could in principle somehow satisfy all twelve of the business-to-business exception's criteria, California's classification law would nevertheless impermissibly relate to motor carrier operations in precisely the manner Congress sought to preclude.

CONCLUSION

For the foregoing reasons, and those stated in the petition for writ of certiorari, the petition should be granted.

Respectfully submitted.

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