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

REPLY BRIEF FOR PETITIONERS

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CORPORATE DISCLOSURE STATEMENT

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

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REPLY BRIEF FOR PETITIONERS

The City Attorney of Los Angeles cannot seriously dispute that lower courts are divided on the question presented. Three jurisdictions have held that the Federal Aviation Administration Authorization Act ("FAAAA") preempts generally applicable worker-classification (or substantively identical worker-compensation) state laws because they "relate[ ] to a price, route, or service of any motor carrier." 49 U.S.C. § 14501(c)(1). Four jurisdictions have held the opposite.

And just months ago, after the Ninth Circuit rejected the First Circuit's ruling on this question as "contrary to our precedent," *Cal. Trucking Ass'n v. Bonta*, 996 F.3d 644, 663 (9th Cir. 2021), Judge Bennett expressly recognized the "circuit split," *id.* at 671 (Bennett, J., dissenting).

Unable to reconcile the conflict in the lower courts, the City raises jurisdictional objections in an effort to manufacture a vehicle problem. But this Court has jurisdiction for two independent reasons.

First, the decision below arose from a writ proceeding—a separate, original proceeding that is now final. This Court has jurisdiction to review state court determinations arising from writ proceedings on the basis that they are final orders. *Atl. Richfield Co. v. Christian*, 140 S. Ct. 1335, 1349 (2020); *Bandini Petroleum Co. v. Superior Court*, 284 U.S. 8, 14 (1931).

Second, the decision below definitively resolved whether the FAAAA preempts California's ABC test. Thus, this Court has jurisdiction under the second *Cox Broadcasting* exception because the federal question

was finally decided and will survive regardless of the course of future proceedings in this case.

This case is a perfect vehicle for this Court's review. The question of preemption was squarely decided below, and there is nothing theoretical about the dispute: The City is actively attempting to enforce the ABC test against petitioners, and if the City is successful, petitioners face injunctions and penalties that would alter their business model. The record is also developed: The trial court made factual findings about the ABC test's impact on a specific set of companies based on company documents. *See, e.g.*, Pet. App. 54a ("As the evidence shows," petitioners' "cost[s]" "nearly triple[d]" when not using independent owner-operators).

The lower court's decision also has immense practical importance for both motor carriers and truck drivers, as eight amici representing more than 9,500 members have explained in urging this Court to grant review. These small businesses and individual drivers are now confronted with the very patchwork of inconsistent state regulation that Congress sought to avoid, and are put to the choice of radically restructuring their business model or leaving the market entirely. This Court's review is urgently needed to resolve the acknowledged circuit split and restore the national uniformity the FAAAA requires.

I. THE DECISION BELOW IS A FINAL JUDGMENT OVER WHICH THIS COURT HAS JURISDICTION.

This Court has jurisdiction under 28 U.S.C. § 1257(a). The decision below is a final judgment for two independent reasons.

A. The Decision Below Is A Final Judgment Because It Ends A Separate And Original Writ Proceeding.

The writ of peremptory mandate issued by the California Court of Appeal is a final judgment under 28 U.S.C. § 1257(a). A state court writ proceeding is generally a "separate lawsuit" from the underlying action and a "self-contained case, not an interlocutory appeal." *Atl. Richfield*, 140 S. Ct. at 1349. When the state court issues a writ, that judgment is final and falls within this Court's "jurisdiction," even if the underlying case could "proceed to trial." *Id.* (recognizing jurisdiction to review state court "writ of supervisory control"); *see also Fisher v. Dist. Court*, 424 U.S. 382, 385 n.7 (1976) (same); Stephen Shapiro et al., *Supreme Court Practice* § 3.8 (11th ed. 2019) (a state court judgment that "conclusively determine[s] the right of the applicant to [a] writ" of mandamus is "final").

The Court's usual treatment of writ proceedings applies to writs issued under California law. In California, a "writ proceeding in the Court of Appeal is an original proceeding, and not an appeal." *Tabarrejo v. Superior Court*, 182 Cal. Rptr. 3d 30, 40 (Cal. Ct. App. 2014). Indeed, California has a separate statutory framework for interlocutory appeals—and that framework does not include writs. Cal. Civ. Proc. Code § 904.1. Writ petitions are separate and distinct from the "underlying" action. *Curle v. Superior Court*, 16 P.3d 166, 168 (Cal. 2001). Even the *parties* in a writ proceeding—where the trial court is the respondent—are different from the parties in the underlying action. Cal. Rules of Court, Rule 8.486(a)(2).

This Court has granted certiorari and exercised jurisdiction over decisions arising from California writ proceedings. In *Bandini*, this Court held that a "proceeding for a writ of prohibition" in California appellate courts is "a distinct suit, and the judgment finally disposing of it is a final judgment." 284 U.S. at 14; *see Madruga v. Superior Court*, 346 U.S. 556, 557 n.1 (1954) (same); *Rescue Army v. Municipal Court*, 331 U.S. 549, 565 (1947) (same); *see also Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1778 (2017) (reviewing California court's decision on a petition "for a writ of mandate"). And in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 138 S. Ct. 1061 (2018), this Court granted certiorari and decided a case arising from a California writ proceeding despite the same type of jurisdictional objection raised here. In *Cyan*, the U.S. Solicitor General explained that "[u]nder California law," a petition for a "writ of mandate and/or prohibition" "initiate[s] an original proceeding" that, when acted upon by the California courts, "establish[es] finality." U.S. Amicus Br. Supporting Cert. 20, *Cyan*, 138 S. Ct. 1061.[1]

There can be no serious question that the Court of Appeal's decision is a final judgment. After the trial court held that the FAAAA preempted the ABC test, the City petitioned the Court of Appeal for a "[w]rit of [m]andate," Pet. for Writ of Mandate at 55, No. B304240 (Cal. Ct. App. Feb. 18, 2020), and the Court of Appeal granted the writ, ending the proceeding, Pet. App. 23a.

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[1] In *Cyan*, this Court reviewed a California Court of Appeal judgment after the California Supreme Court denied review. 138 S. Ct. at 1068.

The City mistakenly suggests (Opp. 19 n.9) that this Court *sub silentio* reversed course in *Southland Corp. v. Keating*, 465 U.S. 1 (1984). In *Southland*, this Court reviewed a denial of a petition to compel arbitration, which under California law is reviewable through an ordinary "appeal[ ]"—not a petition for writ of mandate. *Id.* at 4-5; *see* Cal. Civ. Proc. Code § 1294(a) (authorizing "appeal[s] from" such orders). The other party (respondent-plaintiff) had filed the writ petition on a different issue that could not be reviewed by this Court because it did not turn "*on federal grounds*." *Southland*, 465 U.S. at 9 (emphasis in original); *see* 28 U.S.C. § 1257(a). *Southland* did not remotely purport to overrule this Court's well-settled rule that writ proceedings typically end in final judgments, as the more recent decision in *Cyan* makes clear.

The City also suggests that writs of prohibition should be treated differently from writs of mandate because the former concern the lower court's jurisdiction, whereas the latter concern a party's compliance with legal requirements. Opp. 19 n.9; *see* Cal. Civ. Proc. Code §§ 1102, 1085(a). But this Court rejected the argument that it may only "review[ ] supervisory writ proceedings that are limited to jurisdictional questions." *Atl. Richfield*, 140 S. Ct. at 1349. As then-Justice Rehnquist explained, in California a "petition for a writ *of mandamus* and/or prohibition [is] a distinct lawsuit," and when that petition is "fully and finally determined" by the California courts, "this Court would in all probability have jurisdiction." *Bd. of Educ. of City of L.A. v.*

Superior Court, 448 U.S. 1343, 1346 (1980) (Rehnquist, J., in chambers) (emphasis added).[2]

B. Alternatively, The Decision Below Is A Final Judgment Because It Finally Determines The Federal Issue.

This Court also has jurisdiction because the Court of Appeal "finally determined the federal issue present" even though "there are further proceedings in the lower state courts to come." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 477 (1975).

The second *Cox Broadcasting* category involves cases in which the federal issue "will survive and require decision regardless of the outcome of future state-court proceedings." 420 U.S. at 480. Here, applying California's ABC test to the City's worker-misclassification claims would be conclusive as to at least some independent owner-operators, which necessarily means that the federal preemption issue "will survive." *Id.* Contrary to the City's suggestion that a motor carrier could contract with another business to drive trucks and thus meet California's business-to-business exemption to the ABC test (Opp. 21), some allegedly misclassified drivers have not tried to form businesses and therefore cannot comply with the exemption. *See* Pet. App. 63a-65a; Am. Trucking Ass'ns Amicus Br. 19-21; Western States Trucking Ass'n Amicus Br. 10-12. Indeed, the trial court reasoned that a "motor carrier's core transportation-related services *cannot be* performed by independent contractors" who have not met particular burdensome requirements. Pet. App. 46a

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[2] In California, a "writ of mandamus may be denominated a writ of mandate." Cal. Civ. Proc. Code § 1084.

(emphasis added). For them, the "only defense is federal preemption." Pet. 29; *see* Pet. App. 46a, 63a-65a. When a party seeking this Court's review has "no defense other than [the] federal claim," the decision below is final. *Cox Broad.*, 420 U.S. at 479.

The City speculates that future proceedings may involve "additional federal questions" because petitioners unsuccessfully argued that federal Truth-in-Leasing regulations preempted "certain claims." Opp. 23.[3] But there is no reason to believe a later appeal would raise this issue other than the City's guesswork. Nor does the decision below pose concerns of additional federal questions the way that "eminent domain" cases do, where a state court may rule on only one of two necessary and "integral" federal questions—i.e., whether there was both a taking and just compensation. *N. Dakota Bd. of Pharm. v. Snyder's Drug Stores*, 414 U.S. 156, 164 (1973). The FAAAA preemption issue is wholly independent, and dispositive of the *entire* misclassification issue. The Truth-in-Leasing argument, in contrast, was asserted in connection with only a limited subset of drivers, and it does not implicate the worker-classification question. Even if the Truth-in-Leasing argument were asserted again, it would not "foreclose or make unnecessary decision on the federal question" decided below. *Cox Broad.*, 420 U.S. at 480.

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[3] Specifically, the City claims that petitioners misclassified drivers and thus violated eight California employee-specific laws, including one that requires reimbursing employees for business expenses. Compl. ¶ 52, No. BC-689320 (L.A. Super. Ct. Jan. 8, 2018). The Truth-in-Leasing argument applied only to the business expenses issue. Opp. App. 25.

Moreover, denying jurisdiction would "result in a completely unnecessary waste of time and energy." *Cox Broad.*, 420 U.S. at 479. The City previously agreed that the "effect of delaying resolution to the parties and the court below alone justifies [appellate] review": "If the wrong [worker-classification] standard governs until final judgment, a significant and unnecessary waste of resources . . . is likely." Pet. for Writ of Mandate at 14-15. Under this Court's "pragmatic approach" to finality, *Cox Broad.*, 420 U.S. at 486, there is no reason "to subject [the parties] to long and complex litigation which may all be for naught," *Mercantile Nat'l Bank v. Langdeau*, 371 U.S. 555, 558 (1963).

Finally, leaving "unreviewed" a state court's "pre-emption analysis" that "sanctions direct state regulation" of motor carriers' workforce "might seriously erode federal policy." *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 178-80 (1988) (state court judgment that federal law does not preempt state "workers' compensation safety requirements" was final, "even if" petitioner could prevail in subsequent proceedings under state law). Unlike cases that do not address the interplay between federal and state governments, *see Jefferson v. City of Tarrant*, 522 U.S. 75 (1997), a "pre-empt[ion]" issue "significan[tly]" risks eroding federal policy because it implicates "federal-state relations." *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Ware*, 414 U.S. 117, 119 (1973).

II. THE DECISION BELOW DEEPENS A RECOGNIZED SPLIT AND CONTRADICTS THIS COURT'S PRECEDENT.

The City argues that lower courts are in harmony on the question presented. The courts themselves see

it differently, and some have expressly noted the conflict and confusion on the issue. And there is no way to reconcile the California Court of Appeal's FAAAA analysis with this Court's precedent.

A. The Courts Are Openly Split.

Lower courts are split over the FAAAA's preemptive effect on generally applicable worker-classification (or substantively identical worker-compensation) state laws. Pet. 14-18. The First Circuit, Massachusetts Supreme Judicial Court, and Rhode Island Supreme Court have found preemption, even where the laws' effects on prices, routes, or services are indirect. Pet. 15-17. The California courts, and the Ninth, Seventh, and Third Circuits, have found no preemption. Pet. 14-15.

The City claims that these decisions reach different results because each state's ABC test is "fundamentally different." Opp. 30. Not even the court below thought that. It acknowledged that Massachusetts' ABC test "contains the same language as California's ABC test." Pet. App. 13a n.10. The City points to California's business-to-business exemption to the ABC test as a distinction, but the decision below held that the ABC test *on its own* was not preempted. *Id.* at 4a. The business-to-business exemption only "further supported" the lower court's conclusion as to the ABC test. *Id.* at 18a.

The Ninth Circuit—construing the same law as did the court in this case, but in the context of a motion for preliminary injunction brought by motor carriers against whom the ABC test has not yet been enforced—likewise explained that Massachusetts' ABC test "is identical to . . . the California ABC test." *Cal. Trucking Ass'n*, 996 F.3d at 663. The Ninth

Circuit then held the ABC test not preempted, rejected any suggestion that the business-to-business exemption mattered, *id.* at 651 n.5, and acknowledged that First Circuit FAAAA jurisprudence is "contrary to our precedent," *id.* at 663; *see id.* at 671 (Bennett, J., dissenting) (acknowledging the "circuit split").

Other courts have similarly recognized the disagreements among the circuits over the question presented here. *See, e.g.*, *Lupian v. Joseph Cory Holdings*, 240 F. Supp. 3d 309, 314 (D.N.J. 2017) (recognizing the "split between the First Circuit and the Seventh [Circuit] . . . concerning the limit of federal preemption over state wage laws"). The City attempts to reconcile these decisions by arguing that Prong B of the Illinois ABC test contains two clauses rather than one: A worker is an independent contractor if he performs work (1) as in Massachusetts and California, outside the usual course of the employer's business; or (2) outside all of the employer's places of business. Opp. 31. But the Seventh Circuit's analysis did not mention (much less turn on) the B prong's second clause. As the court explained, a delivery company's workers "do not perform work outside the usual course of [the company's] business"—the B prong's first clause—so the company's workers were employees. *Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1050 (7th Cir. 2016). The Seventh Circuit confirmed that the Illinois "ABC test" it held *not* preempted is "substantially similar" to the "Massachusetts law" the First Circuit held *was* preempted. *Id.* at 1053.

This Court's review is warranted to resolve the irreconcilable "tension with[in] the case law" on this question, *Echavarria v. Williams Sonoma, Inc.*, 2016 WL 1047225, at *8 (D.N.J. Mar. 16, 2016), and smooth

out the now-entrenched "patchwork" of state law that the FAAAA is designed to avoid, *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 373 (2008).

B. The Decision Below Is Inconsistent With This Court's Precedent.

This Court has interpreted the FAAAA as protecting the transportation industries from state regulation. The FAAAA (1) does not distinguish between generally applicable and targeted laws; (2) preempts state laws with even indirect effects on prices, routes, or services; and (3) preempts state laws that merely discourage (but do not make impossible) particular actions. *See Rowe*, 552 U.S. at 371-73; *Northwest, Inc. v. Ginsberg*, 572 U.S. 273, 276 (2014); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 385-86 (1992).

The California Court of Appeal rejected every one of this Court's three rules above governing FAAAA interpretation, yet the City refuses to admit it. The court held:

- That "generally applicable" laws are reviewed under a different, more deferential standard. Pet. App. 4a, 14a, 16a & n.12. But treating "generally applicable" laws any differently would "creat[e] an utterly irrational loophole." *Morales*, 504 U.S. at 386.
- That a generally applicable law is not preempted if it does not "have a direct effect" on prices, routes, or services. Pet. App. 16a n.12. But a state law may be preempted "even if . . . the effect is only indirect." *Morales*, 504 U.S. at 386; *see also*

Dan's City Used Cars, Inc. v. Pelkey, 569 U.S. 251, 260 (2013).

- That there is no preemption so long as the state law stops short of prohibiting the activity. Pet. App. 14a, 21a. But the FAAAA does not only preempt state laws that "force [motor carriers] to adopt or change" their prices, routes, or services. *Ginsberg*, 572 U.S. at 279.

The City brushes aside the Court of Appeal's defiance of this Court's rulings on the basis that this Court was offering nothing more than "helpful"—but optional—advice that might guide a totality-of-the-circumstances analysis. Opp. 32. Not so. The Court of Appeal violated three basic interpretive rules that govern the FAAAA.

The City finally asserts that petitioners' reading of this Court's precedent would preempt state law that "has the effect of causing carriers to make decisions that differ from those they would make in the absence of the law." Opp. 33. Just so: The FAAAA preempts state law whose "effect . . . is that carriers will have to offer . . . services that differ significantly from those that, in the absence of the regulation, the market might dictate." *Rowe*, 552 U.S. at 372.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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