No. 21-194

In The
Supreme Court of the United States

CALIFORNIA TRUCKING ASSOCIATION, INC.; RAVINDER SINGH; AND THOMAS ODOM,

Petitioners,

v.

ROBERT BONTA, IN HIS OFFICIAL CAPACITY AS THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, ET AL.,

Respondents.

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

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether the Federal Aviation Administration Authorization Act—which expressly preempts state laws related to a price, route, or service of any motor carrier—preempts state worker-classification laws affecting motor carriers' prices and services.

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[*]

The Supremacy Clause is not hard to comprehend. The Constitution, treaties, and laws of the United States are "the supreme Law of the Land * * * any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. In other words, when state and federal law conflict, federal law prevails.

California, however, thinks it is special. It continually enforces laws that conflict with the Constitution or are preempted by federal laws. Even when this Court has repeatedly explained why California cannot enforce laws in a particular area, the State barges ahead and tries to find creative ways to circumvent those rulings. The goal is simple. If it can find enough ways to ignore the Court's decisions, California expects that some of those attempts will avoid review by this Court. In short, the State has taken a shotgun approach to avoiding federal preemption. Unfortunately, California has an accomplice helping it achieve that goal. The Ninth Circuit refuses to uphold the supremacy of federal law.

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[*] No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission. After timely notice, the parties consented to WLF's filing this brief.

and the rule of law. It often appears as *amicus* in important federal preemption cases. *See, e.g.*, *Merck Sharp & Dohme Corp. v. Albrecht*, 139 S. Ct. 1668 (2019); *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47 (2015).

California uses the "ABC test" to classify workers as employees or independent contractors. Some other States have enacted similar worker-classification laws. The Fair Labor Standards Act does not preempt these state laws. But that does not mean that States can apply these laws to all workers. For example, a State cannot decide whether a worker is a federal government employee or an independent contractor. Federal law would preempt that attempted classification.

For a different reason, States similarly cannot pass worker-classification laws for truckers. The Federal Aviation Administration Authorization Act of 1994 expressly preempts state laws that regulate prices, routes, or services of motor carriers. And state worker-classification laws increase the cost of shipping goods and affect the routes that companies choose.

Applying the ABC test in California seriously disrupts trucking nationwide. That, of course, is why Congress sought to preempt such state laws in the FAAAA. It is also why the Supreme Judicial Court of Massachusetts and First Circuit have held that States cannot use the ABC test to classify motor carriers' workers. But California state courts and the Ninth Circuit have—true to form—ignored the FAAAA's plain language and allowed California to use the ABC test to classify motor carriers' workers.

This Court's review is necessary to resolve the split among state and federal courts on the issue, clarify key federalism principles, and vindicate Congress's intent behind the FAAAA's preemption clause.

STATEMENT

In the early 1990s, States had a patchwork of regulations governing the trucking industry. Congress saw this as a major barrier to economic growth. With the tide of deregulation, in 1994 Congress enacted the FAAAA to fix the problem.

The FAAAA expressly preempts any state 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). Congress sought to eliminate the patchwork of state laws regulating the trucking industry by preempting them. Among the laws Congress targeted for preemption was a California statute that discouraged motor carriers from hiring independent contractors. *See* H.R. Rep. No. 103-677, 87 (1994) (Conf. Rep.), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1759.

California's ABC test classifies all workers as employees unless a company can show that (a) the company does not control the worker, (b) the worker "performs work that is outside the usual course of the [company]'s business," and (c) the worker is involved in an occupation normally held by independent contractors. Cal. Lab. Code § 2775(b)(1). Under this test, motor carriers can never classify a driver as an independent contractor because truck drivers' duties are not outside the usual course of motor carriers' businesses.

Nor can motor carriers and truck drivers find refuge in the ABC test's business-to-business exception. For the exception to apply, the truck driver must have all necessary licenses to drive the truck. *See* Cal. Lab. Code § 2776(4). Owner-operator truckers, however, lease their vehicles to motor carriers who maintain the necessary licenses. Because the business-to-business exception does not apply, California's ABC test classifies all truck drivers as employees.

Petitioners are independent owner-operator truck drivers and a trade association for motor carriers. They see the ABC test as a threat to the owner-operator business model because it precludes motor carriers from using independent contractors to transport goods.

After California adopted the ABC test, Petitioners filed an amended complaint seeking a declaratory judgment that the FAAAA preempts California's ABC test as applied to motor carriers. In a well-reasoned opinion, the District Court preliminarily enjoined California from enforcing the ABC test against motor carriers. *See* Pet. App. 51a-78a. A divided Ninth Circuit panel reversed. Joining the California courts—and splitting from the First Circuit and Supreme Judicial Court of Massachusetts—the appeals court held that the FAAAA does not preempt states from applying the ABC test to motor carriers. *See id.* at 20a-32a. As the Ninth Circuit declined to hear the case *en banc*, *see id.* at 82a-83a, Petitioners now seek certiorari to resolve the circuit split on an important issue of federal law.

SUMMARY OF ARGUMENT

I.A. Both vertical and horizontal federalism are important to maintaining our republican form of government. FAAAA preemption of state laws does not offend vertical federalism. When the Framers drafted the Constitution, they recognized the need to cede some powers to the federal government. This included the power to regulate interstate commerce. And the FAAAA exercises that core federal power by preempting laws like California's ABC test. Thus, this preemption does not violate vertical federalism principles.

B. As for horizontal federalism, federal preemption of laws like California's ABC test is critical to ensuring that States do not legislate outside their borders. Left to stand, the Ninth Circuit's decision allows California to pass laws that essentially strip the sovereignty of landlocked and smaller States. So rather than weighing against a finding of preemption, federalism principles support holding that the FAAAA preempts California's ABC test.

II. When Congress passed the FAAAA's preemption provision, California treated businesses that used independent contractors as second-class companies. Congress thought this was wrong and sought to preempt such disparate treatment for motor carriers using independent contractors. It did so to promote free enterprise; independent contractors are key to our free-market economy. Without them, the economy will see more state-government control and less competition. More government control and less competition is the opposite of what Congress wanted

when it passed the FAAAA. The Court should grant the petition to vindicate Congress's goals.

III. The Ninth Circuit's decision not to apply the FAAAA's preemption provision as written is no surprise. Both state and federal courts in California continue to ignore this Court's Federal Arbitration Act case law. Rather than put arbitration clauses on equal footing with other contracts, the Ninth Circuit turns cartwheels to avoid federal preemption. It did similar gymnastics to avoid FAAAA preemption here. This Court's review is necessary to remind the Ninth Circuit that it is bound by this Court's decisions.

ARGUMENT

I. ONLY THIS COURT CAN CLARIFY HOW PREEMPTION COMPLEMENTS FEDERALISM.

Petitioners persuasively explain why this Court's review is necessary to resolve a split on the scope of FAAAA preemption among state courts of last resort and federal appellate courts. Pet. 15-23. They also describe why this is an important issue that needs quick resolution. *Id.* at 15-16. But those are not the only reasons to grant certiorari. Review is needed to clarify how federal preemption of state laws complements horizontal federalism while not offending vertical federalism.

At first blush, it may appear that federal laws that preempt state laws raise federalism concerns. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). The mere mention of these federalism concerns, however, has given courts something to latch onto when rejecting federal preemption of state laws. *See,*

e.g., *A.Y. v. Janssen Pharms. Inc.*, 224 A.3d 1, 12 (Pa. Super. 2019) (citation omitted); *Bronco Wine Co. v. Jolly*, 95 P.3d 422, 430 n.12 (Cal. 2004). But express preemption of federal laws does not offend federalism principles.

There are two types of federalism—vertical and horizontal. Vertical federalism concerns how States and the federal government interact. *See* Brianne J. Gorod, *Marijuana Legalization and Horizontal Federalism*, 50 U.C. Davis L. Rev. 595, 599 (2016). Horizontal federalism, on the other hand, involves the States' interactions with each other. *See id.* at 599-600. The FAAAA's express preemption provision respects vertical federalism principles while advancing horizontal federalism.

A. Successful Vertical Federalism Requires Federal Preemption Of Conflicting State Laws.

The most common objection to federal preemption of state laws is that it interferes with the proper balance between the States and the federal government. But this argument does not stand up to scrutiny for express preemption. The FAAAA's express preemption clause is exactly what the Founders envisioned when they gathered in Philadelphia.

"Consistent with" the Supremacy Clause, this Court has "long recognized that state laws that conflict with federal law are without effect." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008) (cleaned up). The Framers adopted the Supremacy Clause to fix one of the Articles of Confederation's problems "by

instructing courts to resolve state-federal conflicts in favor of federal law." David Sloss, *Constitutional Remedies for Statutory Violations*, 89 Iowa L. Rev. 355, 402 (2004). By design, the Supremacy Clause "invalidates" any "interfer[ing]" or "contrary" state law. *Hillsborough Cnty., Fla. v. Automated Med. Lab'ys, Inc.*, 471 U.S. 707, 712 (1985) (cleaned up).

The Constitution's text shows why FAAAA preemption does not violate vertical federalism principles. The Supremacy Clause's phrase—"any Thing in the Constitution or Laws of any State to the Contrary notwithstanding"—is a *non obstante* provision. In the 18th century, legal drafters used *non obstante* provisions "to specify that they did not want courts distorting the new law to accommodate the old." *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 622 (2011) (plurality) (citations omitted).

The Supremacy Clause's *non obstante* provision "indicates that a court need look no further than 'the ordinary meaning' of federal law, and should not distort federal law to accommodate conflicting state law." *Mensing*, 564 U.S. at 623 (quoting *Wyeth v. Levine*, 555 U.S. 555, 588 (2009) (Thomas, J., concurring) (brackets omitted)). Yet that is what the Ninth Circuit did here when holding that the FAAAA does not preempt applying California's ABC test to motor carriers. It distorted the FAAAA's plain language—that it preempts anything connected with motor carriers' routes and prices—to uphold California's ABC test.

The Ninth Circuit's distortion of the FAAAA placed a thumb on the scale against finding laws of general applicability preempted by federal law. This

was improper. Whether a law targets one industry or applies to all businesses, the inquiry is the same. Does the state law fall within the federal law's express preemption clause? If so, it is preempted.

The distortion of federal law also leads to different tests for preemption across the nation. The First Circuit and Supreme Judicial Court of Massachusetts, for example, used the correct test when holding that the FAAAA preempts applying the ABC test to motor carriers. *See Schwann v. FedEx Ground Package Sys., Inc.*, 813 F.3d 429, 435-36 (1st Cir. 2016); *Chambers v. RDI Logistics, Inc.*, 65 N.E.3d 1, 8 (Mass. 2016). The Constitution does not say that vertical federalism principles apply differently in California than they do in the rest of the country. But that is the practical effect of letting the Ninth Circuit's decision stand.

When a "statute contains an express pre-emption clause," this Court simply "focus[es] on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent." *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 136 S. Ct. 1938, 1946 (2016) (cleaned up). Here, Congress's preemptive intent was to allow motor carriers to operate nationwide without fear of varying state and federal regulations affecting routes and prices.

The structure and history of the Constitution similarly show why FAAAA preemption of California's ABC test does not offend vertical federalism principles. Under the Supremacy Clause, "the relative importance to the State of its own law is not material when there is a conflict with a valid

federal law." *Free v. Bland*, 369 U.S. 663, 666 (1962). After all, "[i]f a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States." *New York v. United States*, 505 U.S. 144, 156 (1992) (citations omitted).

The Constitutional Convention arose in response to the "Balkanization that [] plagued" the States "under the Articles of Confederation." *Hughes v. Oklahoma*, 441 U.S. 322, 325-26 (1979) (citing *H. P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 533-34 (1949)); *see* The Federalist No. 7, 62-63 (Alexander Hamilton) (Clinton Rossiter ed. 1961). To solve that problem, States gave Congress authority to "regulate Commerce * * * among the several States." U.S. Const. art. I, § 8, cl. 3; *see* The Federalist No. 42 at 267-68 (James Madison). The Commerce Clause was so critical to a functioning federal government that it was the first substantive power the new Constitution delegated to Congress.

States disclaimed any ability to regulate interstate commerce. They ceded this power so commerce could flourish. In other words, federal regulation of interstate commerce is baked into our constitutional structure.

The Constitution itself therefore resolves the inherent tension between federal and state power with a straightforward, self-executing rule; federal law trumps conflicting state law. The Tenth Amendment protects state interests by limiting Congress's powers to those delegated in Article I. Here, the FAAAA and California's ABC test conflict. Yet the Ninth Circuit allowed state law to trump

federal law. It did so by broadly construing California's purpose in enacting the ABC test and narrowly construing Congress's interest in preempting similar laws. *See* Pet. App. 24a-27a; *see also id.* at 22a n.11 (unreasonably construing the ABC test to avoid preemption). This it could not do.

When people invoke federalism, they usually mean vertical federalism. And vertical federalism concerns are what most courts cite when they refuse to find a state law is preempted by federal law. These concerns, however, are misplaced. Vertical federalism does not mean that States retained the powers they had under the Articles of Confederation. Rather, it means that the States retained the powers not ceded to the federal government. Because the States gave Congress the power to regulate interstate commerce, holding that the FAAAA preempts California's ABC test does not violate vertical federalism principles.

B. Preemption Helps Horizontal Federalism.

Horizontal federalism is the other side of the federalism coin. It involves how the States interact with each other. Recently, this type of federalism has received more attention—although this Court has declined to mediate disputes between States that raise these issues. This case is an attractive vehicle for the Court to address these issues.

The Framers thought all States were disposed "to aggrandize themselves at the expense of their neighbors." The Federalist No. 6 at 60 (Alexander Hamilton) (quotation omitted). They were afraid this would lead to factions—the ultimate poison for the

Union; the "most common and durable source" of factions is economic inequality. The Federalist No. 10 at 79 (James Madison).

Maintaining States' sovereignty was the solution to the problem. Each State retained its "ordinary course of affairs, concern[ing] the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State." The Federalist No. 45 at 293 (James Madison); *see Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 543 (2013). Sovereignty necessarily includes prohibiting encroachment of state power across borders. Otherwise, state sovereignty disappears.

Factions quickly form if state borders are merely nominal. So the Court has zealously guarded them: "Laws have no force of themselves beyond the jurisdiction of the State which enacts them." *Huntington v. Attrill*, 146 U.S. 657, 669 (1892); *see also New York Life Ins. Co. v. Head*, 234 U.S. 149, 160-61 (1914).

Properly limiting States' jurisdiction "confin[es] each state to its proper sphere of authority—in a federalist system." Katherine Florey, *State Courts, State Territory, State Power: Reflections on the Extraterritoriality Principle in Choice of Law and Legislation*, 84 Notre Dame L. Rev. 1057, 1093 (2009). This is necessary because when "the burden of state regulation falls on" other States, typical "political restraints" are ineffective. *S. Pac. Co. v. Arizona ex rel. Sullivan*, 325 U.S. 761, 767-68 n.2 (1945) (collecting cases).

California's ABC test extends well beyond the State's borders. Even when employers are "based in" another State and "the administrative aspects of the employment relationship" are centered in another State, California applies its ABC test. *Gulf Offshore Logistics, LLC v. Superior Ct. of Ventura Cnty.*, 272 Cal. Rptr. 3d 356, 362 (Cal. App. 2020). In *Gulf Offshore Logistics*, this meant applying the ABC test to a Louisiana company whose workers performed work both inside and outside California.

California's ABC test thus legislates outside its borders. Motor carriers, of course, operate nationwide. They transport goods from the Arctic Ocean in Alaska to California's Pacific coast and then on to the Atlantic Ocean. Under the Ninth Circuit's decision, spending even a few minutes traversing the highways in California means that the motor carrier must hire the driver as an employee.

Most other States have declined to adopt the ABC test—for good reason. Yet companies that operate in these other jurisdictions are essentially bound by California's ABC test. It is impractical to say that drivers are independent contractors from the time they leave Maine until they enter California but then become employees the second that they enter California. Exactly how would such independent-contractor agreements and employment agreements be crafted? And how would they be enforced?

These are all questions that lack simple, straightforward answers. Companies and truckers will not navigate these issues to maintain the preferred independent-contractor model for only part of a journey. Rather, the companies and truckers will

decide that the only option for those truckers venturing into California's is to hire them as employees. So even if this may not appear to be an extraterritorial application of California's law, the practical effect is the same.

"[W]hile an individual state may make policy choices for its own state, a state may not impose those policy choices on the other states." Margaret Meriwether Cordray, *The Limits of State Sovereignty and the Issue of Multiple Punitive Damages Awards*, 78 Ore. L. Rev. 275, 292 (1999) (citing *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568-73 (1996)). But that is what California is doing here. It is imposing its worker-classification views on motor carriers throughout the nation. This violates the principles of horizontal federalism that are key to maintaining our federal form of government. As described above, FAAAA preemption of the ABC test does not violate vertical federalism principles. This means that, taken together, both vertical and horizontal federalism principles support preemption here.

Some courts, however, have been unable to grasp this interaction of horizontal and vertical federalism principles. This Court is the only one that can speak authoritatively on why lower courts are wrong to rely on federalism concerns when declining to find state laws preempted by the FAAAA. This case is an attractive vehicle for doing so.

II. REVIEW IS NEEDED TO VINDICATE CONGRESS'S POLICY DECISION TO PROMOTE FREE ENTERPRISE.

As explained above, Congress included a preemption clause in the FAAAA because California was discriminating against companies using independent contractors instead of employees. *See* H.R. Rep. No. 103-677 at 87, 1994 U.S.C.C.A.N. at 1759. Those companies using independent contractors thus faced an uphill battle to compete against companies using employees to perform the same job—driving trucks. If this sounds familiar, it should. California is once again trying to discriminate against motor carriers who use independent contractors. This directly conflicts with Congress's goal in preempting state laws affecting trucking prices or routes. This Court's review is needed to vindicate Congress's intent.

It is no surprise that Congress wanted to stamp out California's discrimination against companies using independent contractors. "[T]here is a strong relationship between independent contracting, entrepreneurship, and small business formation." Jeffrey A. Eisenach, *The Role of Independent Contractors in the U.S. Economy* 36 (Dec. 2010), https://bit.ly/3v68vwF. According to the Bureau of Labor Statistics, many independent contractors hire employees—normally fewer than five. *See id.* (citation omitted).

In the trucking industry, an independent contractor might buy several trucks and then hire other drivers and a mechanic to care for the equipment. These "entrepreneurial small businesses

are critical to our economy." Steven H. Hobbs, *Toward A Theory of Law and Entrepreneurship*, 26 Cap. U. L. Rev. 241, 297 (1997). Congress knew this when it passed the FAAAA's preemption provision and sought to encourage independent contractors and promote the entrepreneurial spirit. California doesn't care. And for other industries, that is its choice. (It is also a reason that companies are fleeing the State.) But for motor carriers, the FAAAA requires that California not interfere with entrepreneurs working as independent contractors.

The independent contractor is key to free enterprise. Over 15 million Americans choose to work as independent contractors. *See* Yuki Noguchi, *1 In 10 Workers Is An Independent Contractor, Labor Department Says* (June 7, 2018), https://n.pr/3oEbom3. This large chunk of the American workforce does not want to become employees. Rather, people want to retain their independence.

According to the Bureau of Labor Statistics, over 82% of independent contractors prefer their status to that of employees. Eisenach, *supra* at i. Only 9% of independent contractors would prefer classification as employees. *Id.* This is unsurprising because, according to Pew Research Center, 39% more independent contractors than employees are satisfied with their jobs. *See id.* at i-ii.

Independent contractors enjoy many advantages over employees. The biggest of these—particularly in the trucking industry—is the ability to choose their own schedule. If you are an employee, the motor carrier can make you drive routes that provide little at-home time. Or they can keep you local and

give you only short routes that do not take you more than fifty miles from your home. Lack of control does not benefit workers. The trucker with a family may want the local routes so he can go to his daughter's graduation. Alternatively, the same trucker may need longer routes to provide for his family or visit his far-flung relatives.

If these workers were independent contractors, they could decline routes that did not fit their needs. This flexibility in scheduling promotes free enterprise; truckers can start their own businesses and live the American dream. This is what Congress sought to promote by preempting state laws affecting trucking routes and prices. Yet the Ninth Circuit's decision ignores Congress's intent. Rather, it focuses on whether Congress predicted California adopting the ABC test. *See* Pet. App. 31a. This turns the proper analysis on its head.

Competition is also central to a free-enterprise system. *See N.C. State Bd. of Dental Exam'rs v. FTC*, 574 U.S. 494, 504 (2015) (citing *FTC v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 225 (2013)). And Congress wanted to promote competition in the trucking industry when it preempted state laws that affect trucking routes or prices. The best way to do that was to allow for independent contractors to compete for business.

Such competition, which the FAAAA sought to promote, helps both the drivers and companies. For drivers, they are not locked in to working for a single company. The motor carriers can bid on their services and the driver can haul loads for the company that makes the best offer. This may mean more money per

mile, a better route, or other valuable consideration. Again, this is impossible if the driver is classified as an employee.

For the motor carriers, they can easily pivot from an independent contractor that has a normal fifty-three-foot trailer to an independent contractor that uses a flatbed trailer that can accommodate wider loads. In other words, the motor carrier need not carry the fixed costs associated with having equipment able to move goods it transports once per year. Rather, it can use the competitive marketplace of independent contractors to fulfill these needs.

Allowing companies to use independent contractors therefore furthers free-enterprise principles. That is one reason Congress preempted laws like California's ABC test. Because the Ninth Circuit ignored Congress's intent in passing the FAAAA's preemption provision, this Court should grant review to vindicate that policy decision.

III. REVIEW IS NEEDED TO REMIND THE NINTH CIRCUIT THAT THIS COURT'S DECISIONS ARE BINDING.

The Ninth Circuit's decision flouted this Court's preemption law. If this Court wants lower courts to faithfully apply its precedent, it should grant the petition and, once again, remind the Ninth Circuit that it is not a rubber stamp for the California legislature.

The list of areas where the Ninth Circuit refuses to properly apply this Court's decisions is long. One worrying for the business community and

workers is arbitration cases. The FAA provides that a contractual arbitration clause is "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. This "broad principle of enforc[ing]" arbitration provisions "withdraws the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 684 (1996) (cleaned up).

A. The Ninth Circuit refuses to apply the FAA as written. In *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407 (2019), this Court reversed the Ninth Circuit's decision circumventing the FAA. There, the Ninth Circuit found ambiguity in an arbitration provision. Applying California's rule of interpreting contracts against the drafter, the Ninth Circuit held that the ambiguity allowed for class arbitration.

Reversing the Ninth Circuit, the Court explained that "requiring class arbitration on the basis of a doctrine that does not help to determine the meaning that the two parties gave to the words" was "inconsistent with the foundational FAA principle that arbitration is a matter of consent." *Lamps Plus*, 139 S. Ct. at 1418 (cleaned up). In other words, the Ninth Circuit tried to apply a general rule of California contract interpretation while ignoring the FAA's preemption provision. That it could not do.

It is important for the Ninth Circuit to uphold the supremacy of federal law and to strike down laws that conflict with the Constitution or federal laws. Without proper oversight, California would sweep aside the Constitution and United States Code and

legislate how it pleases. Applying the ABC test to motor carriers is just another example of that trend. This Court should intervene and force the Ninth Circuit to do extra work when it refuses to follow the Court's precedent. Maybe then the Ninth Circuit will get the message and start faithfully applying this Court's decisions.

B. California continues to build barriers to companies enforcing arbitration agreements. In *DIRECTV*, the Court reversed a California Court of Appeal decision holding a class-arbitration waiver unenforceable under state law. The Court held that the FAA preempted California's class-arbitration bar. *DIRECTV*, 577 U.S. at 58 (citation omitted).

As the Court explained, the California Court of Appeal's "view that state law retains independent force even after it has been authoritatively invalidated by this Court" is wrong. *DIRECTV*, 577 U.S. at 57. Rather, state courts must follow this Court's commands.

The California Court of Appeal's decision in *DIRECTV* followed the Supreme Court of California's decision in *Discover Bank v. Superior Ct. of L.A. Cnty.*, 113 P.3d 1100 (Cal. 2005). There, the court held that the FAA did not preempt a California law barring class-arbitration waivers. *Id.* at 1110-17. The decision stood for six years until this Court abrogated it in *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).

As the Court explained when abrogating *Discover Bank*, a state law's generality cannot save one "that stand[s] as an obstacle to the

accomplishment of the FAA's objectives." *AT&T*, 563 U.S. at 343 (citations omitted). Otherwise, that loophole would destroy the FAA. *See id.* (citing *Am. Tel. & Tel. Co. v. Cen. Off. Tele., Inc.*, 524 U.S. 214, 227-28 (1998)). Yet that is what the Ninth Circuit's decision does here. It destroys the FAAAA's goal of uniform regulation of motor carriers. If States can enforce laws like the ABC test, there is no limit to the laws of general applicability that can dictate trucking routes and prices.

C. This Court's FAA case law therefore does not always protect California litigants. They are unsure whether courts will enforce their arbitration agreements as written. Rather, they must constantly worry that they give up something in return for an arbitration clause only to have that arbitration clause ignored by a California state or federal court.

The same danger is true of this case and California's refusal to comply with this Court's FAAAA case law. This Court has held that "a connection with" a motor carrier's prices or routes is enough to hold that the FAAAA preempts a state law. *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008) (cleaned up). Yet California is now imposing the ABC test on motor carriers despite its connection with prices and routes.

This Court should not let California continue to ignore binding decisions. If this Court refuses to correct decisions that conflict with well-settled precedent, many more judges and policy makers will feel emboldened to treat the Court's decisions as advisory. Thus, review is appropriate to remind the

Ninth Circuit that it must follow this Court's decisions.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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