No. 21-194

IN THE

Supreme Court of the United States

CALIFORNIA TRUCKING ASSOCIATION, *et al.*,

Petitioners,

v.

ROB 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 OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

PAUL D. CULLEN, JR.
Counsel of Record
CHARLES R. STINSON
THE CULLEN LAW FIRM, PLLC
1101 30th Street, NW, Suite 300
Washington, DC 20007
(202) 944-8600
pxc@cullenlaw.com

Counsel for Amicus Curiae

307224

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

Table of Contents

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

STATUTES & REGULATIONS

Page

OTHER AUTHORITIES

Cited Authorities

Page

INTEREST OF THE *AMICUS CURIAE*[1]

The Owner-Operator Independent Drivers Association ("OOIDA") is the largest international trade association representing the interests of the truck drivers whose classification is at issue in this litigation: independent owner-operators, small business motor carriers, and professional truck drivers. OOIDA's more than 150,000 members are professional drivers and small businessmen and women located in all 50 states and Canada who collectively own and operate more than 200,000 individual heavy-duty trucks. Single-truck motor carriers represent nearly half of the active motor carriers operating in the United States. OOIDA actively promotes the views of professional drivers and small business truckers through its interaction with state and federal government agencies, legislatures, courts, other trade associations, and private businesses to advance an equitable and safe environment for commercial drivers. OOIDA's mission includes the promotion and protection of the interests of independent truckers, whether they are owner-operators, small-business motor carriers, or professional truck drivers, on any issue that might touch on their economic well-being, their working conditions, or the safe operation of their motor vehicles on the nation's highways.

---

1. Counsel of record for Petitioner and Respondents were provided proper notice under Supreme Court Rule 37.2(a) and have provided written consent to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no such counsel made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

In addition to its affirmative, strategic litigation, OOIDA routinely participates as *amicus curiae* before federal Circuit Courts of Appeals and the United States Supreme Court to advocate for the lawful classification of drivers, the right to pursue independent owner-operator and smallbusiness motor carrier opportunities, the right to freely participate in interstate commerce, and the ability to enforce truckers' rights in court.

AB 5 establishes a three-part test, each part of which must be satisfied to overcome a presumption that the worker is an employee. Cal. Lab. Code § 2775 (b)(1)(A)-(C). Section 2775(b)(1)(B), "Prong B" of the ABC test, requiring a finding that "[t]he person performs work that is outside the usual course of the hiring entity's business," precludes a finding that a truck driver is an independent contractor because both independent owner-operators and motor carriers are in the business of transporting freight. This law threatens to abolish, therefore, the business model relied upon by OOIDA members for their livelihoods.

Earlier in this action, OOIDA filed two amicus briefs in the Ninth Circuit[2] and a motion to intervene pending the remand of this case to the district court.[3] In an unrelated

2. Brief *Amicus Curiae* by the Owner-Operator Independent Drivers Association, Inc. in Support of California Trucking Association and Affirmance (9th Cir. Dkt. 54 May 13, 2020); Brief of the Owner-Operator Independent Drivers Association, Inc. as *Amicus Curiae* in Support of Plaintiffs-Appellees' Petition for Rehearing En Banc (9th Cir. Dkt. 106 June 7, 2021) ("OOIDA Rehearing Amicus Brief")

3. Notice of Motion and Motion for Leave to Intervene (S.D. Cal. Dkt. 122 Apr. 19, 2021) and Memorandum of Points and

matter but concurrent with the filing of this brief, OOIDA and several of its members have filed a petition for certiorari in a dormant Commerce Clause challenge to the 35% increase in truck tolls on the Indiana Toll Road.

SUMMARY OF THE ARGUMENT

Owner-operator independent contractor truck drivers have been a significant part of the trucking industry for decades. When Congress deregulated the trucking industry, it preserved and strengthened the rules to ensure the continuance and strength of this business model. Because of the size of California's economy, businesses from across the country rely upon trucks to haul freight in, out, and through California. Thus, a significant portion of the country's trucking industry operates on California roads, at least occasionally, and may be required to comply with AB 5's mandate to use employee drivers. This requirement would cause motor carriers and owner-operators to bear the substantial, if not insurmountable, costs and burdens associated with shifting to an employer/employee business model.

In the Federal Aviation Administration Authorization Act, Pub. L. No. 103-305, 108 Stat. 1569 (1994) ("FAAAA"), Congress preempted states from engaging in the type of regulations it had just repealed on the federal level. As demonstrated by the Ninth Circuit below, however, that statute has been interpreted inconsistently. The Court should grant the Petition for Certiorari to provide national uniformity to court interpretations of the FAAAA and

---

Authorities in Support of Motion for Leave to Intervene (S.D. Cal. Dkt. 122-1 Apr. 19, 2021).

conclude that AB 5 is the type of state regulation that Congress intended to preempt.

ARGUMENT

I. Independent owner-operators represent a critical, long-established trucking business model that Congress sought to preserve and support.

Motor carriers and independent owner-operators have relied upon the independent contractor model for decades for their mutual benefit. The owner-operator experience is an important step in the professional development of individuals in the trucking industry. Even when Congress abolished the economic regulation of the trucking industry, it recognized and sought to preserve the relationship between independent truck drivers and motor carriers. To the extent that AB 5 is read to eliminate the owner-operator/motor carrier relationship, it undermines Congress's efforts to promote competition in the trucking industry.

A. The owner-operator business model is an integral step in the creation of safe and successful small businesses in the trucking industry.

The owner-operator business model often functions as the training ground for safe and successful small businesses in the trucking industry, including motor carriers. *See* OOIDA Rehearing Amicus Brief at 5-6 (citing Declaration of Todd Spencer in Support of Motion to Intervene (S.D. Cal. Dkt. 122-3) ¶¶ 13, 31). Most truck drivers begin their careers as employee drivers. *Id.* After obtaining employee experience in the trucking industry, many drivers decide to become independent

owner-operators, which involves purchasing their own truck and equipment. *Id*. Even though these independent owner-operators contract to work for motor carriers, they remain responsible for maintaining and insuring their trucks, complying with many safety requirements, and for ensuring their business is profitable. *Id.* Owner-operators who master these responsibilities may then gain the experience and knowledge to take on even greater responsibilities, both financial and regulatory, to become motor carriers with their own federal interstate operating authority. *See id.* Many motor carriers operating today were founded by individuals who first gained significant trucking experience and success as independent owner-operators. *Id.* The independent owner-operator model is one of the few professional pathways for the creation of safe and financially stable motor carriers. *Id.* Small business motor carriers with 20 or fewer trucks make up more than 97% of all motor carriers.[4] The independent contractor business model is, therefore, crucial to the functioning and the success of a safe motor carrier industry. AB 5 would fundamentally alter the trucking industry if it were to eliminate the businesses of independent owner-operators.

B. When Congress deregulated the trucking industry, it sought to preserve and support the owner-operator business model.

As a long-standing business model of the trucking industry, the owner-operator/motor carrier relationship

4. Economics & Industry Data, American Trucking Ass'ns, https://www.trucking.org/economics-and-industry-data (last visited on September 7, 2021); Industry/Owner-Operator Facts, OOIDA.com, https://www.ooida.com/MediaCenter/trucking-facts.asp (last visited on September 7, 2021) (carriers with 1-19 power units make up 95% of total).

is recognized and supported by federal law. A federal statute specifically provides for the regulation of motor carriers' use of trucking equipment not owned by them (equipment typically owned by independent owner-operators). *See* 49 U.S.C. § 14102. The federal "Truth-in-Leasing" rules regulate the contracts by which motor carriers lease trucking equipment from independent owner-operators. *See* 49 C.F.R. Part 376 *et seq.* These regulations were proposed by the Interstate Commerce Commission "to promote the stability and economic welfare of the independent trucker segment of the motor carrier industry." *See* Lease & Interchange of Vehicles, 43 Fed. Reg. 29,812, 29,812 (July 11, 1978).

When Congress deregulated the trucking industry (and then enacted the FAAAA to preempt comparable state regulation), it preserved the former ICC's Truth-in-Leasing rules and transferred responsibility for them to the Department of Transportation. *See* ICC Termination Act of 1995, Pub. L. 104-88, § 204, 109 Stat. 803 (1995); *see also* Technical Amendments to Former Interstate Commerce Commission Regulations in Accordance with the ICC Termination Act of 1995, 62 Fed. Reg. 15,417, 15,419 (Apr. 1, 1997). Congress also affirmatively gave owner-operators a right to enforce those rules in federal court. *See* 49 U.S.C. § 14704; *Owner-Operator Indep. Drivers Ass'n, Inc. v. New Prime, Inc.*, 192 F.3d 778, 785 (8th Cir. 1999). These laws are intended, in part, to preserve and foster the owner-operator/motor carrier business model within the trucking industry. AB 5 subverts those objectives.

II. AB 5 will impose oppressive, if not insurmountable, economic burdens on both owner-operators and motor carriers.

Prohibiting carriers from using owner-operators would, apart from imposing potentially insurmountable costs, "disrupt and change the whole nature of [carriers'] business." *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1058 (9th Cir. 2009) ("*ATA*") ("As to smaller companies that cannot afford the vast increase in capital requirements for the purchase of equipment and personnel expenditures needed to turn independent contractors into employees, the result would likely be fatal."); *see also* Appellees' Answering Brief at 22-24 (9th Cir. Dkt. 39 May 6, 2020). These costs are far-ranging and substantial. Motor carriers who previously hauled freight using independent owner-operators will be required to: hire staff to manage HR issues (or spend time off the road learning payroll, insurance, and management skills); employ tax and/or payroll professionals to ensure compliance; acquire equipment to keep their employees on the road; and assume responsibility for the maintenance of that equipment.

The Ninth Circuit's interpretation of AB 5's Prong B (and other states' counterparts) would force current independent owner-operators who now haul freight to California to give up their self-determined profession and cede control of their business choices and work to their motor carrier employers. They may be required to sell their own, often-personalized, equipment and use the company's equipment. Moreover, their leases and other contracts entered into in reliance upon the federal truth-in-leasing regulations would be voided, leading to

additional financial losses, litigation, and loss of their businesses.

These impacts extend well beyond the relatively confined effects of the requirements at issue in *ATA*. There, only Port of Los Angeles operations were affected. AB 5 does not exempt any motor carrier operating in California with respect to carriers' residency, the extent of a company's operations in California, or the nature of a particular freight movement. Any trucking company in the country transporting property into, out of, or through California must cease using owner-operators to provide that service. The only alternative would be for motor carriers and employee drivers to stop hauling freight in service of the enormous California market or for such drivers to simply cease driving a truck. *Cf. ATA*, 559 F.3d at 1057-58. The current injunction to California's enforcement of AB 5 in the trucking industry has saved a significant number of businesses based within and outside California from likely irreparable harm.

III. California's outsized significance on the national motor carrier industry renders AB 5's potential elimination of a major industry segment an issue of exceptional importance.

The size of California's economy and its demand for trucking services dwarf those of the other forty-nine states. A large segment of interstate commerce flows to, from, and through California. Thus, when California imposes a rule on trucks operating in California, that rule applies to tens of thousands of owner-operator truck drivers who reside outside of the state. California is a leading consumer and producer of agricultural and

manufacturing products, and significant portions of the country's imports and exports pass through California seaports.[5] However one chooses to measure economic significance, California's predominance shows:

- 15% of United States gross domestic product[6];
- 23% of United States agriculture production[7];
- 15% of United States manufacturing[8];
- 40%-50% of United States import container trade[9];
- 2 busiest ports in North America[10];

---

5. Draft California Freight Mobility Plan 2020, California Department of Transportation, at 4.B.-5–12, *available at* https://dot.ca.gov/-/media/dot-media/programs/transportation-planning/documents/freight-cfmp-2019-draft/00-cfmpdraftchapter17final.pdf.

6. Regional Data, Annual Gross Domestic Product (GDP) by State, SAGDP2N Gross Domestic Product by State (Percent of U.S.), Bureau of Economic Analysis, *available at* https://apps.bea.gov/itable/iTable.cfm?ReqID=70&step=1#panel-1.

7. *Id.*; *see also* SER143-44 (Husing Decl.).

8. *Id.*

9. Draft California Freight Mobility Plan 2020, *supra* note 5, at 2.-4–5.

10. U.S. Container Port Congestion & Related International Supply Chain Issues: Causes, Consequences & Challenges at 1, Federal Maritime Commission Bureau of Trade Analysis (July 2015), *available at* https://www.fmc.gov/wp-content/

- $382 billion worth of goods (178 million tons) imported from other states and $506 billion (90 million tons) exported to other states[11];

- $179 billion worth of goods (37 million tons) imported internationally through California to the other 49 states[12];

- Trucks moved 82% (by weight) of all shipments originating in California[13];

- Trucks carried 12 million tons of goods through California for the international market;

- Trucks carried 788 million tons of goods intrastate.[14]

---

uploads/2019/04/PortForumReport_FINALwebAll.pdf; *see also* SER144-45 (Husing Decl.) (explaining that the ports of Los Angeles and Long Beach handled 35.9% of all U.S. imported containerized cargo in 2017).

11. Draft California Freight Mobility Plan 2020, *supra* note 5, at 4.B.-8–10.

12. *Id.* at 4.B.-33.

13. California, Bureau of Transp. Statistics, U.S. Dep't of Transp., *available at* https://www.bts.gov/archive/publications/commodity_flow_survey/2012/state_summaries/state_tables/ca (last visit on June 6, 2021); *see also* SER143 (Husing Decl.) (explaining that California leads the nation in total value of all commodities exported by truck).

14. Draft California Freight Mobility Plan 2020, *supra* note 5, at 4.B.-14.

Because many motor carriers across the United States rely upon cargo going to and from California, and because AB 5 is not constrained to apply to drivers or motor carriers based in California or who have a minimum level of contact with California, AB 5's enforcement will have far-reaching and immediate negative consequences on a large part of the country's economy. Accordingly, the potential impact of AB 5 to eliminate a major segment of the trucking industry within and beyond California is an issue of exceptional importance.

IV. The Ninth Circuit's decision demonstrates the need for this Court to provide a national unified interpretation of the FAAAA.

The FAAAA's preemption language has lent itself to varied judicial interpretations. Courts have failed to consistently recognize the context of Congress's enactment of the FAAAA, including the historical economic regulation of the trucking industry and Congress's original intent to deregulate the industry to promote competition. This inconsistency calls for this Court's resolution.

A. Congress passed the FAAAA to secure its deregulation of the trucking industry.

Congress included the FAAAA's preemption provision to preserve its efforts to repeal the economic regulation of the trucking industry with legislation enacted between 1980 to 1995. Before that time, the Interstate Commerce Commission regulated motor carriers, treating trucking like a public utility, with a level of government control that would seem unfathomable today. Motor carriers

were required to seek approval of their specific services (the transportation of a specific commodity) over specific routes (the origin and destination of that service). Seeking this approval, the motor carrier had to demonstrate that the proposed service would serve the public necessity. *See, e.g.*, *Schaffer Transp. Co. v. United States*, 355 U.S. 83, 85 (1957) (reviewing the ICC's decision, under Section 207(a) of the Motor Carrier Act of 1935, as amended by the Transportation Act of 1940, upon a motor carrier's application to expand its existing authority to haul "granite from Grant County, South Dakota, to points in 15 States").

Motor carriers were also required to file, for ICC approval, tariffs setting the rates (prices) they would charge the public for providing that approved service. The ICC was responsible for ensuring that a carrier's rates were both reasonable and nondiscriminatory. *See, e.g.*, *Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 119, (1990). Deviation "from the filed rate [could] result in the imposition of civil or criminal sanctions on the carrier or shipper." *Id.* at 120. Rates had the force and effect of law under the Filed Rate Doctrine. *Id*. at 127 (citing *Louisville & Nashville R. Co. v. Maxwell*, 237 U.S. 94, 97 (1915)).

Congress began to pull back the scope of the ICC's economic regulation by passing a series of laws beginning with the Motor Carrier Act of 1980. Pub. L. 96-296, 94 Stat. 793 (July 1, 1980). Fifteen years later in 1995, a year before Congress terminated the ICC, it observed that some 26 states were still requiring motor carriers to file and seek a state agency's approval of its rates, routes, and services under various regulatory structures. Congress

saw this state regulation as an obstacle to its goal of eliminating the economic regulation of the motor carrier industry nationwide and believed preemption legislation was both in the public interest as well as necessary to facilitate interstate commerce. H.R. Conf. Rep. No. 103-677, at 86 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1758. In response, Congress tacked on a section to the FAAAA preempting state regulation of motor carrier prices, routes, and services:

> [A] State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a 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.

Pub. L. No. 103-305, § 601; 49 U.S.C. § 14501(c)(1). Congress enacted the FAAAA preemption provision, therefore, to address the specific problem presented by state attempts to re-impose ICC-like economic regulation on the motor carrier industry.

In passing this preemption provision, Congress did not choose the terms "price, route, or service" in a vacuum. These terms were established by federal statute and ICC regulations and interpreted by decades of ICC administrative and federal court decisions. The only change Congress made to those terms was to substitute "price" for "rate" without any intended change in meaning. *See* H.R. Conf. Rep. 103-677 at 83, *reprinted in* 1994 U.S.C.C.A.N. 1715, 1755 (explaining that the use of "price" rather than "rate" was not intended to legislate a new or

different meaning or to depart from the prevailing judicial interpretation).

Courts should interpret the FAAAA preemption provision in mind the context of both the prior statutory and regulatory setting that informs the terms used and Congress' intent to preserve and promote the owner-operator/motor carrier business model and to promote competition in the trucking industry. AB 5 contravenes these goals.

B. The circuit courts have split on the question of whether state rules that dictate the way motor carriers haul freight "relate to" carriers' prices, routes, or services and are therefore preempted by the FAAAA.

When the Ninth Circuit decided that the FAAAA does not preempt AB 5, it split with the First and Third Circuits and countered its own previous decisions balancing states' authority to protect workers against Congress's deregulatory aims.

1. The Ninth Circuit's AB decision departs from its prior balanced consideration of the FAAAA's purpose.

The difference between the Ninth Circuit's AB 5 decision and its prior FAAAA decisions demonstrate the inconsistency of the lower courts' FAAAA interpretations. Before upholding AB 5, the Ninth Circuit had staked out a refined position on the scope of FAAAA preemption that balanced a state's authority to exercise its police powers in protecting workers' rights with Congress's goal

of deregulating the motor carrier industry. The limiting principles that court adopted in *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184 (9th Cir. 1998), and *Dilts v. Penske Logistics, LLC*, 769 F.3d 637 (9th Cir. 2014), reflect the original purpose of the FAAAA and the appropriate balance between federal and state regulatory authority of the motor carrier industry. That balance enables states, as demonstrated in *Mendonca* and *Dilts*, to enact reasonable regulations but prevents them from regulating the industry against Congress's deregulatory wishes, as in AB 5.

In *Mendonca*, the Ninth Circuit examined the meaning of the FAAAA's "related to" statutory language when evaluating California's prevailing wage laws and found that the wage laws that merely increased costs for carriers were not preempted. 152 F.3d at 1185, 1189. The increased costs and other effects of the prevailing wage requirements relation to prices, routes, and services were "no more than indirect, remote, and tenuous." *Id.* at 1189. The law did not "frustrate[] the purpose of deregulation by *acutely* interfering with the forces of competition." *Id.* Similarly, the meal and rest break requirements at issue in *Dilts* increased the costs of providing carrier services, a tenuous connection that did not "relate to" prices, routes, or services under the FAAAA as in *Mendonca*. 769 F.3d at 648-49. Thus, the FAAAA does not preempt wage and break requirements but does preempt a state dictating the business model in which carriers provide their service, undoing companies' market-based choices. *See id.*; *ATA*, 559 F.3d at 1056.

The Ninth Circuit's AB 5 opinion, however, upends this balance and permits California to wholly eliminate

the business model used by a significant segment of the trucking industry. Comparing AB 5 to the rules at issue in *Mendonca* and *Dilts* demonstrates that the FAAAA preempts AB 5 without disrupting states' ability to protect workers' rights through exercise of their police powers. While the prevailing wage rules and break requirements merely increased carriers' costs, AB 5 fundamentally changes carriers' market-driven business model, "acutely interfering with the forces of competition." Thus, even if AB 5 relates to prices, routes, and services indirectly—*e.g.*, *Cal. Trucking Ass'n v. Su*, 903 F.3d 953, 960 (9th Cir. 2018) (quoting *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260 (2013))—it eliminates an entire category of truck driving opportunities for small-business-minded individuals, as well as the motor carriers who rely upon independent owner-operators to do business. This result subverts Congress's intent to allow the market to dictate how motor carriers provide trucking services, to preserve and strengthen the independent owner-operator driver business model, and to preempt such pervasive state regulation.

The FAAAA's legislative history demonstrates that Congress never intended the FAAAA to serve as a sword against all exercises of state regulatory authority. This history supports a narrow interpretation of FAAAA preemption that leaves room for reasonable regulations to address working conditions within the motor carrier industry. California could have taken a different approach to address worker misclassification without running afoul of FAAAA preemption. But unlike similar efforts to improve trucker working conditions, such as the laws at issue in *Mendonca* and *Dilts,* AB 5 goes too far by threatening the wholesale delegitimization of otherwise

legitimate, successful owner-operator/motor carrier relationships.

2. The Ninth Circuit's AB 5 decision conflicts with decisions of the First and Third Circuits, which consider state rules that eliminate the use of independent contractors in transportation to be preempted by the FAAAA.

The Ninth Circuit's AB 5 decision represents another entry in the circuit courts' divergent approach to dealing with the states' attempts to dictate employment structures in the transportation sector. First, in 2016, the First Circuit in decided that the FAAAA preempted a state rule effectively identical to AB 5. *See Schwann v. FedEx Ground Package Sys.*, 813 F.3d 429, 438-39 (1st Cir. 2016).

In *Schwann*, persons who completed "last mile" deliveries for FedEx as independent contractors complained that they should have been treated as employees—and receive corresponding worker benefits—pursuant to the Massachusetts Independent Contractor Statute, Mass. Gen. Laws ch. 149, § 148B(a).[15] *Id.* at

15. The Massachusetts rule shares operative language with AB 5:

> For the purpose of this chapter and chapter 151, an individual performing any service, except as authorized under this chapter, shall be considered to be an employee under those chapters unless:--
>
> (1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and

432-33. The First Circuit noted that the "usual course of business" prong of the Massachusetts law "makes any person who performs a service within the usual course of the enterprise's business an employee," in contrast to other labor regimes that treat this as one factor of many to be considered. *Id.* at 438. This framework "runs counter to Congress's purpose" in deregulating—and prohibiting the states' regulation of—interstate transportation because the "decision whether to provide a service directly, with one's own employee, or to procure the services of an independent contractor is a significant decision in designing and running a business." *Id.*

Then, in *Bedoya*, the Third Circuit reviewed New Jersey's different approach to regulating the labor market. *Bedoya v. Am. Eagle Express Inc.*, 914 F.3d 812 (3d Cir. 2019), *cert. denied,* 140 S. Ct. 102 (2019). In *Bedoya*, as in *Schwann*, delivery drivers sued their employer for misclassification, arguing that the state classification rule entitled them to employee status and benefits. 914 F.3d at 815-16. The defendant argued that the FAAAA preempted the classification rule and plaintiffs' claims. *Id.* Distinguishing *Schwann*, the Third Circuit determined that the FAAAA did not preempt New Jersey's rule. *Id.* at 824. Crucially, New Jersey's rule contained a caveat to its "course of business" prong, providing a path to independent contractor status where the worker's service

---

> (2) the service is performed outside the usual course of the business of the employer; and,
>
> (3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

"is performed outside of all the places of business of the enterprise for which such service is performed." N.J. Stat. 43:21-19(i)(6)(B). This different meant that the New Jersey "test does not bind [the employer] to a particular method of providing services and thus it is unlike the preempted Massachusetts law at issue in Schwann." *Bedoya*, 914 F.3d at 824 (citing *Schwann*, 813 F.3d at 429).

Thus, the First and Third Circuits consider the FAAAA to preempt state rules that bind motor carriers to a particular model of providing their services. The Ninth Circuit held the opposite: the FAAAA does not preempt AB 5 despite its effective prohibition of independent contractors.

CONCLUSION

This issue of worker misclassification has become the recent focus of many state legislatures. While there are instances where the distinction between employees and independent contractors needs to be reestablished for the correct treatment of workers, this problem should not be solved by state legislation that potentially eliminates a trucking business model crucial to the motor carrier industry and recognized and preserved by Congress. In deregulating the trucking industry, Congress abandoned one of the most comprehensive areas of government regulation and sought to foster a more competitive trucking environment. Through FAAAA preemption, it sought to ensure that states do not frustrate those goals by re-regulating in areas that the federal government purposefully left to the market. California's AB 5, however, by seeking to fundamentally restructure business relationships in the trucking industry, falls

squarely within the FAAAA's scope. OOIDA urges the Court to grant the Petition for Certiorari and settle this issue before the trucking industry must bear the burden of restructuring its workforce across the country to comply with California's labor policy choices.

Respectfully submitted,

Paul D. Cullen, Jr.
Counsel of Record
Charles R. Stinson
The Cullen Law Firm, PLLC
1101 30th Street, NW, Suite 300
Washington, DC 20007
(202) 944-8600
pxc@cullenlaw.com

Counsel for Amicus Curiae