No.

In the Supreme Court of the United States

C.H. ROBINSON WORLDWIDE, INC., PETITIONER

v.

ALLEN MILLER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

MICHAEL E. SULLIVAN
ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, NV 89503

KANNON K. SHANMUGAM
Counsel of Record
STACIE M. FAHSEL
E. GARRETT WEST
MARIA E. ELIOT*
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

[*] Admitted in Maryland and practicing law in the District of Columbia pending application for admission to the D.C. Bar under the supervision of bar members pursuant to D.C. Court of Appeals Rule 49(c)(8).

QUESTION PRESENTED

Congress enacted the Federal Aviation Administration Authorization Act (FAAAA) to deregulate the trucking industry. The statute preempts a "[state] law, regulation, or other provision" that is "related to a price, route, or service of any motor carrier * * * or * * * broker." 49 U.S.C. 14501(c)(1). Another provision—commonly known as the "safety exception"—preserves the "safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. 14501(c)(2)(A).

The question presented is whether a common-law negligence claim against a freight broker is preempted because it does not constitute an exercise of the "safety regulatory authority of a State with respect to motor vehicles" within the meaning of the FAAAA's safety exception.

CORPORATE DISCLOSURE STATEMENT

Petitioner C.H. Robinson Worldwide, Inc., has no parent corporation. BlackRock, Inc., owns 10% or more of its stock.

RELATED PROCEEDINGS

United States District Court (D. Nev.):

Miller v. *C.H. Robinson Worldwide, Inc.*, Civ. No. 17-408 (Nov. 14, 2018)

United States Court of Appeals (9th Cir.):

Miller v. *C.H. Robinson Worldwide, Inc.*, No. 19-15981 (Sept. 28, 2020)

Miller v. *C.H. Robinson Worldwide, Inc.*, No. 19-15981 (Nov. 9, 2020) (order denying petition for rehearing en banc)

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C.H. Robinson Worldwide, Inc., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-27a) is reported at 976 F.3d 1016. The district court's order granting petitioner's motion for judgment on the pleadings (App., *infra*, 28a-38a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 28, 2020. A petition for rehearing was denied on November 9, 2020 (App., *infra*, 39a-40a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 14501(c)(1) of Title 49 of the United States Code provides:

> Except as provided in paragraphs (2) and (3), 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 * * * or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

Section 14501(c)(2)(A) of Title 49 of the United States Code provides:

> Paragraph (1) * * * shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.

STATEMENT

This case presents a question of statutory interpretation with enormous practical significance for the transportation industry. The Federal Aviation Administration Authorization Act (FAAAA) broadly preempts any "[state]

law, regulation, or other provision" that is "related to a price, route, or service of any motor carrier * * * or * * * broker." 49 U.S.C. 14501(c)(1). At the same time, another provision—known as the "safety exception"—provides that the preemption provision does not "restrict" the "safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. 14501(c)(2)(A). The question presented is whether a common-law negligence claim against a freight broker is preempted because it does not constitute the exercise of the "regulatory authority of a State with respect to motor vehicles" within the meaning of the FAAAA's safety exception.

Petitioner is one of the Nation's largest providers of transportation services, including freight brokerage. A freight broker is hired by a shipper to arrange for the transportation of property, ordinarily across state lines. The broker then hires a motor carrier to conduct the transportation. Because most motor carriers are small businesses that lack the resources to solicit loads from shippers, they rely on freight brokers to act as intermediaries, matching available motor carriers with shippers that need goods hauled.

In this case, Costco hired petitioner to arrange the transportation of goods from Sacramento, California, to Salt Lake City, Utah. Petitioner then hired a federally licensed motor carrier. The motor carrier employed a driver whose tractor-trailer collided with respondent's vehicle on a highway in Nevada. Respondent sustained serious injuries.

Respondent sued petitioner in federal district court, alleging that petitioner negligently caused the accident by failing competently to select the motor carrier. The district court granted petitioner's motion for judgment on the pleadings, concluding that the FAAAA preempted the

claim. The district court first reasoned that the claim "related to" a "service" offered by petitioner because a freight broker's core business is selecting motor carriers to transport property. The district court then rejected respondent's contention that his common-law negligence claim fell within the safety exception.

A divided panel of the court of appeals reversed. The court of appeals agreed with the district court that respondent's claim "related to" the services offered by petitioner. But the court of appeals nonetheless concluded that respondent's claim fell within the FAAAA's safety exception. The court reasoned that the exception preserved the State's authority to "regulate safety through common-law tort claims," including claims against freight brokers that "arise out of motor vehicle accidents." App., *infra*, 15a, 23a.

The decision below badly misinterprets the safety exception. A common-law tort claim against a freight broker is not an exercise of the "safety regulatory authority of a State." By its plain text, the safety exception preserves the State's authority to enact and enforce positive-law rules and regulations; it does not encompass private claims brought by private parties to compensate for past injuries. Further, a claim against a freight broker does not operate "with respect to motor vehicles," because brokers do not own or operate motor vehicles on state highways, nor do brokers hire or employ the drivers operating the motor vehicles.

The court of appeals' decision will impose enormous costs on the transportation industry—indeed, the very costs that Congress sought to avoid in enacting the FAAAA. Without this Court's intervention, the decision will subject businesses in the transportation industry, many of which operate nationwide or regionally, to the va-

garies of state common-law negligence doctrines. In effect, freight brokers—and the numerous businesses that themselves hire motor carriers to transport their products—will be forced to comply with the patchwork of rules that Congress determined imposed an "unreasonable burden" on interstate commerce and an "unreasonable cost" on American consumers.

The Court should resolve the question presented now. The Ninth Circuit—which this Court has unanimously reversed for its unduly narrow interpretations of the FAAAA and the similarly worded Airline Deregulation Act—covers enough of the country that the largely national transportation industry must treat its decisions as if they were the law of the land. And given the widespread confusion in the lower courts, plaintiffs will seize on the Ninth Circuit's decision in federal and state courts across the country as if it *is* the law of the land. This case, moreover, presents an ideal vehicle to resolve the question presented. The petition for a writ of certiorari should be granted.

A. Background

In 1994, Congress enacted the Federal Aviation Administration Authorization Act (FAAAA) to preempt certain state regulation of the transportation industry. The FAAAA represented the culmination of a broad deregulatory agenda undertaken by Congress over a 15-year period. In 1978, Congress had deregulated the domestic airline industry in the Airline Deregulation Act (ADA). See Pub. L. No. 95-504, 92 Stat. 1705. The ADA preempted any state laws "relating to rates, routes, or services of any air carrier" to "ensure that the States would not undo federal deregulation with regulation of their own." *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 378-379 (1992). In 1980, Congress had deregulated the trucking

industry, but without the broad preemption provision of the ADA. See Motor Carrier Reform Act, Pub. L. No. 96-296, 94 Stat. 793.

By the early 1990s, Congress had concluded that the remaining patchwork of state rules presented a "huge problem" for "national and regional" transportation companies "attempting to conduct a standard way of doing business." *City of Columbus* v. *Ours Garage & Wrecker Service, Inc.*, 536 U.S. 424, 440 (2002). Such regulation, Congress determined, imposed an "unreasonable burden" on interstate commerce and thus an "unreasonable cost on the American consumers." Pub. L. No. 103-305, § 601(a), 108 Stat. 1605.

Accordingly, in enacting the FAAAA, Congress enacted a preemption provision for the trucking industry that was modeled on the ADA's preemption provision. As amended, the FAAAA provides that a State may not "enact or enforce" a "law, regulation, or other provision having the force and effect of law" if it is "related to a price, route, or service of any motor carrier * * * or * * * broker." 49 U.S.C. 14501(c)(1). As this Court has explained, the purpose of the FAAAA's preemption provision—much like the ADA's—is to ensure that "rates, routes, and services" in the transportation industry reflect "maximum reliance on competitive forces." *Rowe* v. *New Hampshire Motor Transport Association*, 552 U.S. 364, 370-371 (2008) (citation omitted). The FAAAA thus preempts state laws that have a "connection with" or "reference to" the prices, routes, or services of a motor carrier or broker. *Id.* at 370 (emphases omitted). That connection may be "indirect," and a state law will be preempted as long as it has a "significant impact" on the FAAAA's "deregulatory and pre-emption-related objectives." *Id.* at 370-371 (internal quotation marks and citations omitted).

At the same time, the FAAAA preserves a sphere of state regulation. This Court has explained that the FAAAA's preemption provision does not reach state laws that have only a "tenuous, remote, or peripheral" effect on prices, routes, and services. *Dan's City Used Cars, Inc.* v. *Pelkey*, 569 U.S. 251, 261 (2013) (quoting *Rowe*, 552 U.S. at 371). Of particular relevance here, the FAAAA also includes an express exception: the preemption provision "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. 14501 (c)(2)(A). The Court has explained that this "safety exception" preserves the "traditional state police power over safety," including the power to ensure "safety on municipal streets and roads." *Ours Garage*, 536 U.S. at 439-440.

The FAAAA also leaves in place significant federal regulation of motor carriers and commercial motor vehicles. Congress has instructed the Department of Transportation and the Federal Motor Carrier Safety Administration (FMCSA) to establish minimum safety standards for commercial motor vehicles. See 49 U.S.C. 31136; 49 U.S.C. 113; 49 C.F.R. 1.87. The FMCSA has promulgated regulations governing, for example, the standards for commercial drivers' licenses (49 C.F.R. pt. 383) and rules for the driving of commercial motor vehicles (49 C.F.R. pt. 392). The FMCSA also monitors federally registered motor carriers for compliance with those regulations—and can revoke the registration of motor carriers that do not comply. See 49 U.S.C. 31144; 49 C.F.R. 385.5, 385.7, 385.13(e). And through a federal grant program, the States coordinate with the FMCSA to enforce those safety standards. See 49 U.S.C. 31102; 49 C.F.R. 350.201.

B. Facts And Procedural History

1. Petitioner is a federally registered property freight broker that was hired by Costco to arrange for the transportation of certain goods from Sacramento, California, to Salt Lake City, Utah. Petitioner hired a federally licensed motor carrier. In 2016, a tractor-trailer driven by an employee of the motor carrier collided with respondent's vehicle on a Nevada highway. Respondent suffered severe injuries and was left paralyzed. App., *infra*, 29a.

2. In 2017, respondent filed suit in the District of Nevada against petitioner, alleging a claim for negligence under Nevada common law. Specifically, respondent asserted that petitioner had breached its common-law duty to "select a competent contractor" when hiring a motor carrier.[1] Petitioner moved for judgment on the pleadings, arguing that the FAAAA preempted respondent's negligence claim. App., *infra*, 3a-4a.

The district court granted petitioner's motion, holding that respondent's claim was preempted. App., *infra*, 28a-38a. The court first concluded that respondent's claim "related to" petitioner's broker services, because it effectively sought to "reshape" how a broker must select a motor carrier to transport property. *Id.* at 32a-35a. The court then rejected respondent's argument that the common-law negligence claim constituted an exercise of the "safety regulatory authority of a State" and thus fell within the safety exception. *Id.* at 36a-37a. The court reasoned that respondent's theory would allow him—and injured persons like him—to "do the [S]tate's work and enforce the [S]tate's police power." *Id.* at 37a.

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[1] Respondent also sued Costco, the motor carrier, and the driver. Respondent settled with the motor carrier and driver and agreed to dismiss Costco.

3. Respondent appealed, and a divided panel of the court of appeals reversed and remanded. App., *infra*, 1a-27a.

a. The court of appeals first agreed with the district court that respondent's claim was "related to" petitioner's broker services and thus was subject to the FAAAA's preemption provision. App., *infra*, 8a-12a. The court reasoned that a freight broker's core "service" is "arranging" for transportation by a motor carrier. *Id.* at 10a. Because respondent's claim would hold petitioner "liable at the point at which it provides a 'service' to its customers," the court explained, respondent's common-law negligent-hiring claim was "directly 'connected with'" petitioner's services. *Ibid.* The court therefore concluded that the claim fell within the scope of the FAAAA's preemption provision. *Id.* at 11a.

b. The court of appeals ultimately held, however, that respondent's claim was not preempted on the ground that it fell within the FAAAA's "safety exception." App., *infra*, 14a-24a.

i. The court of appeals first concluded that a common-law negligence claim is an exercise of the "safety regulatory authority of a State." App., *infra*, 14a-21a. Construing the safety exception "broadly," the court of appeals reasoned that Congress sought to preserve the State's authority to regulate safety, which "plainly" included the "ability to regulate safety through common-law tort claims." *Id.* at 15a, 18a. And nothing in the legislative history, the court observed, suggested that Congress intended to limit that authority. *Id.* at 15a.

The court of appeals found support for its conclusion in *American Trucking Associations, Inc.* v. *City of Los Angeles*, 569 U.S. 641 (2013). App., *infra*, 15a-17a. There, this Court interpreted the phrase "force and effect of law" in the FAAAA's preemption provision to "draw[] a rough

line between a [state] government's exercise of regulatory authority" (to which the preemption provision applies) and its "own contract-based participation in a market" (to which it does not). *Id.* at 16a (quoting 569 U.S. at 649). The court of appeals reasoned that this Court's use of the phrase "regulatory authority" to describe the scope of the FAAAA's preemption provision—which includes some common-law claims, see *Northwest, Inc.* v. *Ginsberg*, 572 U.S. 273, 284 (2014) (interpreting the ADA)—meant that Congress's use of the phrase "regulatory authority" in the safety exception "surely" included "at least some common-law claims." App., *infra*, 17a.

The court of appeals proceeded to reject petitioner's contrary arguments. App., *infra*, 17a-21a. The court found unpersuasive petitioner's argument that this Court had made clear in *Ours Garage* that "safety regulatory authority" refers to the "traditional state police power over safety," 536 U.S. at 439, which is usually exercised by the state legislature or administrative agencies. Because *Ours Garage* involved municipal regulations, the court of appeals reasoned, this Court "had no reason to consider whether the safety exception is broader than [the Court's] language suggest[ed]." App., *infra*, 18a.

The court of appeals likewise rejected petitioner's arguments that Congress elsewhere used "regulatory authority" to refer to administrative agencies, and that Congress's use of narrower language in the safety exception ("regulatory authority") than in the FAAAA's preemption provision ("a law, regulation, or other provision") required a narrower scope for the safety exception. App., *infra*, 19a. In the court's view, neither Congress's other uses of "regulatory authority" nor the variation within the FAAAA "clearly" signaled that Congress "intended to exclude all common-law claims from the exception's reach." *Id.* at 22a; see *id.* at 19a & n.11.

ii. The court of appeals then determined that a negligence claim against a freight broker operates "with respect to motor vehicles." App., *infra*, 22a-24a. The court rejected petitioner's argument that a claim against a freight broker falls outside that clause because the freight broker does not own or operate the motor vehicle or select the driver. *Id.* at 23a. The court reasoned that the claim need only be "relat[ed] to" motor vehicles, and it concluded that negligence claims against freight brokers satisfy that low bar as long as they "arise out of motor vehicle accidents." *Id.* at 22a-23a.

iii. The court of appeals thus held that respondent's claim fell within the safety exception and was not preempted by the FAAAA. Accordingly, it reversed the district court's order granting petitioner's motion for judgment on the pleadings and remanded for further proceedings. App., *infra*, 24a.

c. Judge Fernandez concurred in part and dissented in part. App., *infra*, 25a-27a. He joined the portion of the majority's opinion concluding that the claims fell within the preemption provision because they "related to" petitioner's "services" as a freight broker. *Id.* at 25a. But he dissented from the majority's conclusion that the safety exception applied. *Ibid.* Although he agreed with the majority that the safety exception preserved some common-law claims, he concluded that a claim against a freight broker—as opposed to a motor carrier or the driver—did not operate "with respect to motor vehicles." *Id.* at 25a-26a. He reasoned that the connection between the broker's actions and the "actual operational safety of motor vehicles" was "too attenuated." *Ibid.* He further explained that the majority's approach would "conscript brokers" into a "parallel regulatory regime," which would require them to "evaluate and screen motor carriers" according to the "varied common law mandates of myriad states." *Id.* at

27a. Judge Fernandez thus would have held that the safety exception was inapplicable to respondent's negligence claim and that respondent's claim was preempted under the FAAAA. *Ibid.*

4. Petitioner filed a petition for rehearing, which was denied without recorded dissent. App., *infra*, 39a-40a.

REASONS FOR GRANTING THE PETITION

This case presents an important question of statutory interpretation regarding the preemptive scope of the FAAAA: namely, whether a common-law tort claim against a freight broker is preempted because it does not constitute the exercise of the "safety regulatory authority of a State with respect to motor vehicles" within the meaning of the FAAAA's safety exception. In the decision below, a divided panel of the court of appeals concluded that such a claim is not preempted. That decision cannot be reconciled with the FAAAA's text or this Court's decisions interpreting it.

The decision below is yet another from the Ninth Circuit that nullifies Congress's deregulatory aims. This Court has repeatedly reversed the Ninth Circuit for failing to give effect to the preemptive force of the FAAAA and the ADA. Congress enacted the FAAAA to prevent a patchwork of state and local requirements from burdening the trucking industry. But the decision below will significantly undermine that protection by subjecting the industry to the vagaries of state tort law, and the resulting uncertainty will impose tremendous costs on American consumers. Because of the important federal interests at stake, the Court has repeatedly granted review to protect Congress's deregulatory goals in the FAAAA. This petition for a writ of certiorari should likewise be granted.

A. The Decision Below Is Erroneous

The court of appeals badly erred by holding that a common-law claim against a freight broker for negligent hiring of a motor carrier is not preempted because it constitutes an exercise of the "safety regulatory authority of a State with respect to motor vehicles." The FAAAA's safety exception preserves the State's authority to craft and enforce statutory or administrative rules that ensure the safe operation of motor vehicles on local roads. But a common-law negligence claim brought by a private party does not constitute an exercise of the State's "regulatory authority," and a negligence claim against a freight broker does not operate "with respect to motor vehicles" within the meaning of the safety exception. This Court should review and reverse the court of appeals' judgment.

1. A common-law tort claim does not constitute an exercise of the "safety regulatory authority of a State." The court of appeals disregarded the plain meaning of that phrase, and this Court's decisions construing it, in concluding otherwise.

a. The most natural reading of the safety exception is that it excludes common-law tort claims brought by private parties seeking compensation for past wrongs. The plain text of the statute, this Court's precedent, and the broader statutory context compel that conclusion.

As to the text: the phrase "regulatory authority of a State" refers to positive-law enactments promulgated and enforced by state or local officials. The phrase "regulatory authority" is almost always a synonym for "regulatory agency" or, derivatively, the powers of such an agency. Congress has repeatedly used the phrase to refer to either federal or state administrative agencies. See, *e.g.*, 15 U.S.C. 7201(1); 16 U.S.C. 824i(a), (b); 42 U.S.C. 16431(a)(1); 49 U.S.C. 14702(a); cf. *Black's Law Dictionary* 1538 (11th ed. 2019) (defining "regulation" as "official

rule or order, having legal force, usu. issued by an administrative agency"). It is also perfectly natural to refer to Congress's power to enact legislation as "regulatory authority." See, *e.g.*, *Kaiser Aetna* v. *United States*, 444 U.S. 164, 171-172 (1979). But it would be verging on the eccentric to refer to the "regulatory authority of the courts."

As to precedent: this Court's opinion in *City of Columbus* v. *Ours Garage and Wrecker Service, Inc.*, 536 U.S. 424 (2002), is instructive. There, the Court explained that the phrase "safety regulatory authority" preserves the "traditional state police power over safety." *Id.* at 439. As the Court has explained, the core of the State's police power is the power to "*enact legislation* for the public good." *Bond* v. *United States*, 572 U.S. 844, 854 (2014) (emphasis added); see *Torres* v. *Lynch*, 136 S. Ct. 1619, 1625 (2016). And a State generally retains the authority to "delegate" that core power to its constituent parts—like municipal governments (as in *Ours Garage*, 536 U.S. at 429) and administrative agencies. But while a State has broad discretion to determine *how* to exercise its "regulatory authority," the phrase plainly contemplates the State's power to promulgate rules and regulations—on its own or through its agents—and to enforce them through state and local officials.

As to context: the correct interpretation of "regulatory authority" is confirmed by its "neighboring words," which give it "more precise content." *United States* v. *Williams*, 553 U.S. 285, 294 (2008). Tellingly, the other clauses in the safety exception preserve the State's "authority" to "impose highway route controls"; set "limitations based on the size or weight of the motor vehicle, or the hazardous nature of the cargo"; and establish "minimum amounts of financial responsibility relating to insurance requirements." 49 U.S.C. 14501(c)(2)(A). Those

sorts of specific restrictions—for instance, how many tons a particular highway should bear—can realistically be established only by a state legislature or (more likely) an administrative agency. Such restrictions are well beyond the institutional competency of a State's Court of Common Pleas, but well within that of its Department of Transportation. Consistent with those other clauses, the safety exception should be interpreted as preserving the State's authority to legislate and promulgate regulations.

Further, the FAAAA's preemption provision uses different language, confirming that common-law claims fall within that provision but not the safety exception. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983). The preemption provision broadly provides that a State may not "enact or enforce a law, regulation, or *other provision* having the force and effect of law." 49 U.S.C. 14501(c)(1) (emphasis added). As the Court has explained, interpreting identical language in the ADA, "common-law rules" are routinely called "provisions." *Northwest, Inc.* v. *Ginsberg*, 572 U.S. 273, 282 (2014). Indeed, the Court distinguished an earlier case—*Sprietsma* v. *Mercury Marine*, 537 U.S. 51 (2002)—that "did not pre-empt a common-law tort claim" because the preemption provision there applied only to "a law or regulation," whereas the ADA's use of "provision" made it "much more broadly worded." *Northwest*, 572 U.S. at 282-283. The safety exception in the FAAAA uses even narrower language than the preemption provision in *Sprietsma*, preserving only the State's "regulatory authority." 49 U.S.C. 14501(c)(2)(A).

Whatever the outer limits of the meaning of the "safety regulatory authority of a state," it cannot extend to common-law tort claims enforced by private parties seeking recompense for past harms. The common law of torts imposes general duties of care, not specific regulatory duties characteristic of statutes and regulations. And

it is not enforced by state or local officials, but rather by private parties and their lawyers; the resulting lawsuits cannot be understood to be an exercise of the "authority of a State." And the primary goal of tort law, even if not the only one, is to "compensate" a victim for "injuries caused," *United States* v. *Burke*, 504 U.S. 229, 235 (1992) (citation omitted)—not to ensure "safety" prospectively. By applying the phrase "safety regulatory authority of a State" to a common-law negligence claim, the court of appeals gave that phrase an expansive meaning that has no basis in the text of the FAAAA.

b. The court of appeals failed to engage in the above analysis, and its interpretation is impossible to square with this Court's precedents.

As an initial matter, the court of appeals repeatedly elided the actual text of the FAAAA's safety exception ("safety regulatory authority of a State"). Instead of asking what meaning that precise phrase conveys, the court of appeals asked whether common-law claims fall within a State's broad "power over safety." *E.g.*, App., *infra*, 15a, 18a. To reframe the question that way is to answer it: of course a common-law negligence claim has *something* to do with a State's interest in safety. The text of the safety exception, however, does not preserve any claim that invokes a State's "power" and has something to do with "safety." The correct question is whether a common-law negligence claim constitutes the exercise of the "safety regulatory authority of a State." And the correct answer to that question is no.

In holding to the contrary, the court of appeals ignored bedrock rules of statutory interpretation. First, the court stated that it was interpreting the safety exception "broadly." App., *infra*, 14a, 18a. The usual rule, of course, is that an "exception" to a "general statement of policy" should be read "narrowly." *Maracich* v. *Spears*, 570 U.S.

48, 60 (2013) (citation omitted). To be sure, the court of appeals cited *Ours Garage*, which stated that a "specific exception" to a "general policy" does not "invariably call for the *narrowest possible construction* of the exception." 536 U.S. at 440 (emphasis added). But that statement provides no support for a *broad* interpretation of an exception. Second, although the Court has explained that "the best evidence of Congress' pre-emptive intent" is "statutory language," *Dan's City Used Cars, Inc.* v. *Pelkey*, 569 U.S. 251, 260 (2013), the court of appeals repeatedly referred to the absence of legislative history supporting petitioner's view. App., *infra*, 15a, 18a. But petitioner hardly bore the burden of adducing legislative history to support its (plain-text) interpretation.

What is more, the court of appeals badly misconstrued this Court's decision in *American Trucking Associations, Inc.* v. *City of Los Angeles*, 569 U.S. 641 (2013). The court's attenuated chain of reasoning went like this: In *American Trucking Associations*, the Court stated that the FAAAA's preemption provision "draws a rough line between a government's exercise of *regulatory authority* and its own contract-based participation in a market." *Id.* at 649 (emphasis added). The FAAAA's preemption provision includes common-law claims. See *Northwest*, 572 U.S. at 284. Thus, because Congress also used the term "regulatory authority" in the safety exception, it must also include common-law claims. App., *infra*, 16a-17a.

That syllogism is multiply flawed. As a preliminary matter, the Court in *American Trucking Associations* was not interpreting the safety exception—indeed, its only mention of the safety exception was to deem it "not relevant here." 569 U.S. at 647 & n.2. If anything, any hints from *American Trucking Associations* cut the other way. The governmental action at issue there was a core exercise of the "regulatory authority of a State": the

"Board of Harbor Commissioners" (an administrative agency) enforced a "municipal ordinance" (a positive-law enactment), the violation of which was "a violation of criminal law" (enforced by state or local officials). *Id.* at 650. It is little wonder that the Court described the governmental action there as "regulatory authority."

In short, the court of appeals erred by reading too much into this Court's opinion in *American Trucking Associations* and focusing too little on the actual text of the statute. The court of appeals' mode of analysis is impossible to reconcile with this Court's prevailing approach, and the result is a broad interpretation of the safety exception that eviscerates the preemptive scope of the FAAAA.

2. Even if the safety exception could be interpreted to cover some common-law claims, a claim against a freight broker does not operate "with respect to motor vehicles." 49 U.S.C. 14501(c)(2)(A). Though the phrase "with respect to" is quite broad, it cannot be interpreted with an "uncritical literalism." *Dan's City*, 569 U.S. at 260-261 (citation omitted). To the contrary, as the Court explained regarding a similar "with respect to" clause in the FAAAA, the phrase "massively limits" the scope of the safety exception. *Id.* at 261.

As Judge Fernandez explained in his partial dissent, the best reading of that phrase restricts the State's "regulatory authority" to the "actual operational safety of motor vehicles." App., *infra*, 26a. That is in part because Congress defined "motor vehicle" narrowly. Specifically, a "motor vehicle" is a "vehicle * * * *used* on a highway in transportation." 49 U.S.C. 13102(16) (emphasis added). The way to "use" a vehicle on a "highway" is, of course, to drive it. So safety rules that are "with respect to motor vehicles" "used on a highway" are those designed to ensure safe driving on any "road, highway, street, and way

in a State." 49 U.S.C. 13102(9) (defining "highway"). The kind of rules within that authority are obvious: speed limits, maintenance rules, licensing requirements, and—assuming for the moment that common-law claims fall within the safety exception—negligence suits against *drivers*.

Properly understood, then, the safety exception plainly excludes negligence claims against freight brokers. A freight broker does not "use" a motor vehicle. The broker does not drive the vehicle, own it, or even employ a driver for it. Instead, as defined by the statute, a broker "arrang[es]" for transportation "by motor carrier," and the "motor carrier" does the rest. 49 U.S.C. 13102(2), (14). In particular, the motor carrier actually provides the "motor vehicle transportation" by, for example, owning the vehicles and employing the driver. *Ibid.* The broker is thus two steps removed from the "use" of the vehicle. That connection is too tenuous to bring a claim against a freight broker within the safety exception.

3. For the foregoing reasons, the court of appeals badly erred by interpreting the "safety regulatory authority of a State with respect to motor vehicles" to preserve a common-law claim against a freight broker. More broadly, the court of appeals' decision also cannot be squared with the general policy of the FAAAA. As Judge Fernandez explained, the court of appeals' interpretation of the safety exception allows a state court to "conscript brokers into a parallel regulatory regime" that requires them to "screen motor carriers" for safety. App., *infra*, 27a. Indeed, to the extent that an individual State applies its negligence standard particularly stringently, the court of appeals' interpretation could "effectively eliminate some motor carriers from the transportation market altogether," or limit them to certain regional markets. *Ibid.*

That result is flatly inconsistent with the FAAAA's "overarching goal": to ensure that "transportation rates, routes, and services" reflect "maximum reliance on competitive market forces," thus stimulating "efficiency, innovation, and low prices." *Rowe*, 552 U.S. at 371 (citation omitted).

B. The Decision Below Implicates An Important Question Of Federal Law That Warrants This Court's Review

This case presents a question of enormous legal and practical importance. The court of appeals' decision severely curtails the preemptive scope of the FAAAA, thus contravening Congress's clear intent to establish a uniform regulatory regime and imposing significant costs on the transportation industry. In addition, this case is an ideal vehicle for resolution of the question presented. The Court should therefore grant review. At a minimum, given the significant federal interests at stake in this case, the Court may wish to call for the views of the Solicitor General.

1. As its frequent grants of certiorari demonstrate, the Court has paid particular solicitude to the scope of the FAAAA's preemption provision. See *American Trucking Associations, Inc.* v. *City of Los Angeles*, 569 U.S. 641 (2013); *Dan's City Used Cars, Inc.* v. *Pelkey*, 569 U.S. 251 (2013); *Rowe* v. *New Hampshire Motor Transport Association*, 552 U.S. 364 (2008); *City of Columbus* v. *Ours Garage & Wrecker Services, Inc.*, 536 U.S. 424 (2002). The Court has likewise repeatedly granted certiorari in cases interpreting the analogous preemption provision in the Airline Deregulation Act. See *Northwest, Inc.* v. *Ginsberg*, 572 U.S. 273 (2014); *American Airlines, Inc.* v. *Wolens*, 513 U.S. 219 (1995); *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374 (1992). The Court frequently

grants review in such cases for good reason: Congress has indicated that there is a significant federal interest in ensuring uniform regulatory regimes in key sectors of the transportation industry.

Yet the Ninth Circuit has repeatedly ignored this Court's precedents, which have emphasized those statutes' broad preemptive scope. See, *e.g.*, *Ginsberg* v. *Northwest, Inc.*, 695 F.3d 873 (2012), rev'd, 572 U.S. 273 (2014); *American Trucking Associations, Inc.* v. *City of Los Angeles*, 660 F.3d 384 (2011), rev'd in part, 569 U.S. 641 (2013). Most recently, the Court unanimously reversed the Ninth Circuit's interpretation of the ADA in *Northwest.* As the petition for certiorari in that case explained, the Ninth Circuit's "flawed decision" followed a "persistent failure to apply the analytical framework articulated in this Court's ADA and FAAAA jurisprudence." Pet. at 14, *Northwest*, *supra* (No. 12-462). And that erroneous decision, according to the petition there, provided a "model for plaintiffs to eviscerate the preemptive effect of the ADA and FAAAA." *Ibid.*

So too here. This time, instead of interpreting the preemption provision too narrowly, the court of appeals interpreted the safety exception too broadly—once again constricting the statute's preemptive scope. See App., *infra*, 18a. As in *Northwest*, the Ninth Circuit's interpretation has no basis in the statute's text, and it is unsurprising that the decision conflicts with many other lower-court decisions holding the safety exception inapplicable to common-law claims against freight brokers. See, *e.g.*, *Ying Ye* v. *Global Sunrise, Inc.*, Civ. No. 18-1961, 2020 WL 1042047 (N.D. Ill. Mar. 4, 2020); *Lloyd* v. *Salazar*, 416 F. Supp. 3d 1290 (W.D. Okla. 2019); *Creagan* v. *Wal-Mart Transportation, LLC*, 354 F. Supp. 3d 808 (N.D. Ohio 2018); *Krauss* v. *IRIS USA, Inc.*, Civ. No. 17-778, 2018

WL 2063839 (E.D. Pa. May 3, 2018); *Volkova* v. *C.H. Robinson Co.*, Civ. No. 16-1883, 2018 WL 741441 (N.D. Ill. Feb. 7, 2018).[2]

2. The court of appeals' expansive interpretation of the safety exception will also invite the very mischief that Congress sought to abate with the FAAAA. The statute aimed to address the "huge problem" that the "sheer diversity" of state rules created for "national and regional carriers attempting to conduct a standard way of doing business." H.R. Conf. Rep. No. 677, 103d Cong., 2d Sess. 87 (1994); see *Ours Garage*, 536 U.S. at 440 (citing the same report). Congress determined that the "unreasonable burden" on interstate commerce imposed by the regulations would ultimately impose an "unreasonable cost on the American consumers." Pub. L. No. 103-305, § 601(a), 108 Stat. 1605. The court of appeals' rule imposes just such a burden on the transportation industry by exposing freight brokers and other business to liability. See Robert D. Moseley & C. Fredric Marcinak, *Federal Preemption in Motor Carrier Selection Cases Against Brokers and Shippers*, 39 Transp. L.J. 77, 83 (2012) (Moseley & Marcinak).

The court of appeals' decision will only invite more (and more creative) common-law claims against freight brokers and other businesses that select licensed motor carriers to transport products. Because jury awards in

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[2] Reflecting the widespread confusion on this question, other lower courts have come to the same conclusion as the court of appeals. See, *e.g.*, *Grant* v. *Lowe's Home Centers, LLC*, Civ. No. 20-2278, 2021 WL 288372 (D.S.C. Jan. 28, 2021); *Uhrhan* v. *B&B Cargo, Inc.*, Civ. No. 17-2720, 2020 WL 4501104 (E.D. Mo. Aug. 5, 2020); *Lopez* v. *Amazon Logistics, Inc.*, 458 F. Supp. 3d 505 (N.D. Tex. 2020); *Huffman* v. *Evans Transportation Services*, Civ. No. 19-0705, 2019 WL 4143896 (S.D. Tex. Aug. 12, 2019); *Finley* v. *Dyer*, Civ. No. 18-78, 2018 WL 5284616 (N.D. Miss. Oct. 24, 2018).

personal-injury cases sometimes exceed insurance limits for motor carriers or the drivers, plaintiffs have begun to target freight brokers and others to attempt to secure large damage awards in such cases. See Moseley & Marcinak 77-78. No doubt, plaintiffs are seeking to expand the universe of liable defendants to *any* business that hires a motor carrier (or hires a broker to hire a motor carrier) to transport goods—thereby sweeping in not just freight brokers but also major national businesses that engage in shipping. And plaintiffs are already invoking the court of appeals' decision in courts across the country as they seek to expand from their beachhead in the Ninth Circuit. See, *e.g.*, *Grant*, 2021 WL 288372, at *3.

The uncertainty about the extent of liability is itself a burden on businesses. The court of appeals' decision subjects the transportation industry to a patchwork of state negligence doctrines, which will "create uncertainty and even conflict" as "different juries in different States reach different decisions on similar facts." *Geier* v. *American Honda Motor Co.*, 529 U.S. 861, 871 (2000). The uncertainty regarding the substantive legal rules in the States will be compounded by the notorious unpredictability of jury-by-jury damages calculations in personal-injury cases. Cf. *Exxon Shipping Co.* v. *Baker*, 554 U.S. 471, 499-501 (2008) (discussing the "stark unpredictability" of punitive-damages awards). The resulting liability will significantly increase the cost of interstate transportation of goods through any State within the Ninth Circuit. And because of the Ninth Circuit's coast-long reach, that includes pretty much anything coming in from—or going out over—the Pacific Ocean.

3. This case presents an ideal vehicle for addressing and resolving the question presented. The relevant question was fully briefed and decided at every stage of the proceedings. Because the case was dismissed on a motion

for judgment on the pleadings, the issue is cleanly presented. See App., *infra*, 38a. And if the FAAAA preempts respondent's claim, it would obviously be dispositive.

The Court should address this question now. The issue is a plainly recurring one, as evidenced by the number of lower-court decisions addressing the issue. See pp. 21, 22 & n.2, *supra*. Further percolation is also unlikely to be helpful to the Court because the arguments have been fully ventilated in the majority and dissenting opinions below and the opinions of other lower courts. And the Ninth Circuit is unlikely to correct its own errors, given its chronic tendency to narrow the FAAAA's preemptive scope. Waiting will serve no purpose other than to allow the court of appeals' erroneous and costly interpretation of the FAAAA to hang over the entire West Coast—and perhaps to proliferate beyond it.

At a minimum, the Court may wish to invite the Solicitor General to file a brief expressing the views of the United States. Given the federal interest in "achieving the deregulatory objectives" of the FAAAA, the United States has routinely participated as an amicus in FAAAA cases. U.S. Br. at 1, *American Trucking Associations*, *supra* (No. 11-798); see U.S. Br. at 1, *Rowe*, *supra* (No. 06-457); see also U.S. Br. at 1-2, *Northwest*, *supra* (No. 12-462) (ADA). And indeed, this Court has previously requested the views of the Solicitor General at the certiorari stage in those cases. See *American Trucking Associations, Inc.* v. *City of Los Angeles*, 566 U.S. 903 (2012); *Rowe* v. *New Hampshire Motor Transport Association*, 549 U.S. 1109 (2007).

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The petition for certiorari in this case provides the Court with an ideal opportunity to consider and resolve the question presented. The decision below is seriously flawed, and the question is undeniably important. Further review is therefore warranted.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, in light of the substantial federal interests, the Court may wish to call for the views of the Solicitor General.

Respectfully submitted.

MICHAEL E. SULLIVAN
ROBISON, SHARP,
SULLIVAN & BRUST
71 Washington Street
Reno, NV 89503

KANNON K. SHANMUGAM
STACIE M. FAHSEL
E. GARRETT WEST
MARIA E. ELIOT*
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

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* Admitted in Maryland and practicing law in the District of Columbia pending application for admission to the D.C. Bar under the supervision of bar members pursuant to D.C. Court of Appeals Rule 49(c)(8).