No.

IN THE

Supreme Court of the United States

CAL CARTAGE TRANSPORTATION EXPRESS, LLC; CCX2931, LLC; K&R TRANSPORTATION CALIFORNIA, LLC; KRT2931, LLC; CMI TRANSPORTATION, LLC; CM2931, LLC,

Petitioners,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA; SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondents.

On Petition For A Writ Of Certiorari To The California Court of Appeal

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Federal Aviation Administration Authorization Act, which expressly preempts state laws "related to a price, route, or service of any motor carrier," 49 U.S.C. § 14501(c)(1), preempt state worker-classification laws that have an effect on a motor carrier's prices and services by discouraging the use of independent contractors?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

All parties to the proceeding in *People of the State of California v. Superior Court of Los Angeles County; Cal Cartage Transportation Express LLC et al.*, No. B304240 (Cal. Ct. App.) are named in the caption.

Pursuant to this Court's Rule 29.6, undersigned counsel state that Cal Cartage Transportation Express, LLC; CMI Transportation, LLC; and K&R Transportation California, LLC are wholly owned by parent company California Cartage Transportation, LLC. California Cartage Transportation, LLC is wholly owned by parent company NFI California Cartage Holding Company, LLC, which is wholly owned by a privately held parent company, NFI, L.P. CCX2931, LLC; CM2931, LLC; and KRT2931, LLC each have no parent company.

RELATED PROCEEDINGS

Pursuant to this Court's Rule 14.1(b)(iii), the following proceedings are directly related to this case:

- *Cal Cartage Transportation Express LLC et al. v. Superior Court of Los Angeles County; People of the State of California*, No. S266217 (Cal.) (judgment and order entered February 24, 2021).

- *People of the State of California v. Superior Court of Los Angeles County; Cal Cartage Transportation Express LLC et al.*, No. B304240 (Cal. Ct. App.) (judgment and opinion entered November 19, 2020).

- *People of the State of California v. Superior Court of Los Angeles County; Cal Cartage Transportation Express LLC et al.*, No. S261764 (Cal.) (order granting petition for review entered June 17, 2020).

- *People of the State of California v. Superior Court of Los Angeles County; Cal Cartage Transportation Express LLC et al.*, No. B304240 (Cal. Ct. App.) (order denying petition for writ of mandate entered March 26, 2020).

- *People of the State of California v. Cal Cartage Transportation Express LLC et al.*, Nos. BC689320, BC689321, BC689322 (Cal. Superior Ct.) (order entered January 8, 2020).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Cal Cartage Transportation Express, LLC; K&R Transportation California, LLC; CMI Transportation, LLC; CCX2931, LLC; CM2931, LLC; and KRT2931, LLC respectfully petition for a writ of certiorari to review the judgment of the California Court of Appeal.

OPINIONS BELOW

The California Court of Appeal's opinion is reported at 57 Cal. App. 5th 619. Pet. App. 2a-23a. The California Supreme Court's order denying further review is unreported. *Id.* at 1a. The California Superior Court's order is available at 2020 WL 497132. *Id.* at 30a-55a.

JURISDICTION

The California Court of Appeal entered its judgment on November 19, 2020. Pet. App. 2a. The California Supreme Court denied a timely petition for review on February 24, 2021. *Id.* at 1a; Cal. Rules of Court, Rule 8.532(b)(2)(A). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

The express preemption provision of the Federal Aviation Administration Authorization Act, 49 U.S.C. § 14501(c)(1), 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

> (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.[1]

The California ABC test for worker classification, Cal. Labor Code § 2775(b)(1), provides:

> For purposes of this code and the Unemployment Insurance Code, and for the purposes of wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:
>
> > (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
> >
> > (B) The person performs work that is outside the usual course of the hiring entity's business.
> >
> > (C) The person is customarily engaged in an independently established trade, occupation, or

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[1] The exceptions in paragraphs (2) and (3) of 49 U.S.C. § 14501(c) are not at issue, but are reproduced at Pet. App. 58a-59a.

> business of the same nature as that involved in the work performed.

INTRODUCTION

The Federal Aviation Administration Authorization Act of 1994 ("FAAAA") was enacted to prevent states from undermining federal deregulation of the trucking industry with regulations of their own. Congress had grown concerned with the dizzying patchwork of state laws that motor carriers had to contend with—including laws that discouraged the use of independent-contractor truck drivers, who form the backbone of the trucking industry nationwide—and decided that the solution was to broadly preempt all state laws "related to a price, route, or service of any motor carrier." 49 U.S.C. § 14501(c)(1). This deliberately expansive language prevents states from substituting their own regulatory judgment for free-market forces, and allows motor carriers to engage in uniform business practices across the country.

California, on the other hand—like several other States, including Massachusetts and Illinois—has sought to force motor carriers to cease contracting with independent owner-operator truck drivers, preferring instead an employee model in which truck drivers are wage laborers rather than entrepreneurs. These states have enacted a so-called "ABC test" for worker classification, declaring workers to be employees unless they are in a different line of business from the companies that hire them—a requirement that can never be met when a motor carrier hires a truck driver.

In this case, the City Attorney of Los Angeles alleges that petitioners—motor carriers who service

the Ports of Los Angeles and Long Beach—incorrectly classify the truckers who work for them as independent contractors rather than employees. Relying on California Supreme Court precedent holding that the FAAAA does not preempt generally applicable worker-classification laws, the California Court of Appeal upheld California's statutory ABC test for determining whether a worker is an independent contractor or an employee, notwithstanding the FAAAA's express preemption provision.

The decision below deepens a split in the lower courts over the correct interpretation of the FAAAA's express preemption provision. Like the California courts, the Third, Seventh, and Ninth Circuits have held that the FAAAA does *not* preempt generally applicable worker-classification laws, despite the laws' effects on motor carriers' prices and services.

In contrast, the First Circuit and the Massachusetts Supreme Judicial Court hold that the FAAAA *does* preempt generally applicable worker-classification laws, where those laws have an effect on a motor carrier's prices and services by discouraging the use of independent-contractor truck drivers. The Rhode Island Supreme Court similarly holds that the FAAAA preempts generally applicable worker-compensation laws that are substantively similar to worker-classification laws.

This case demonstrates the confusion resulting from the split in authority. The same worker-classification law at issue here—the so-called "ABC test"—is preempted in Massachusetts and the First Circuit, but not in California or the Seventh Circuit. Motor carriers, who are engaged in a business that is quintessentially interstate in nature, are now subject

to the very patchwork of state laws that Congress sought to avoid, free to use independent owner-operator truck drivers to satisfy their customers' shipping needs in some states but not others.

The approach followed by the California courts is in conflict with this Court's precedents. The court in this case determined that the California statute is not preempted because it is a generally applicable law that, in the court's view, has only indirect effects on motor carriers' prices, routes, or services, and does not make it impossible for motor carriers to use independent contractors. But this Court has disagreed with every part of that analysis: It has held that the FAAAA does not distinguish between generally applicable and targeted laws; that it preempts state laws with even indirect effects on prices, routes, or services; and that preemption occurs even where the state law merely discourages (but does not make impossible) a particular action. *See Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 371-73 (2008); *Northwest, Inc. v. Ginsberg*, 572 U.S. 273, 276 (2014); *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 227-28 (1995); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 385-86 (1992).

This Court should grant review to resolve the split among the lower courts, bring clarity to this important and recurring question of federal law, and ensure that the plain text of the FAAAA is enforced.

STATEMENT

1. Motor carriers move goods from point A to point B throughout the country. Motor carriers can move cargo themselves, but more often, they contract with individual truck drivers known as independent owner-operators. Independent owner-operators are

"the 'independent truckers' of song and legend." *Cent. Forwarding, Inc. v. ICC*, 698 F.2d 1266, 1267 (5th Cir. 1983). They own one or sometimes a few trucks. They do not hold a motor carrier license issued by a federal agency, and that is by design. Under federal law, these "last American cowboy[s]" lease their services and equipment to a motor carrier and haul cargo under the motor carrier's federal operating authority. H.R. Rep. No. 95-1812, at 5 (1978); *see* 49 C.F.R. § 376.1 et seq.

The business model of motor carriers contracting with independent owner-operators forms the backbone of the trucking industry. As far back as the 1950s, motor carriers had "increasingly turned to owner-operator truckers," "hir[ing] them to conduct operations under the [motor carrier's] permit." *Am. Trucking Ass'ns v. United States*, 344 U.S. 298, 303 (1953). Independent owner-operators swiftly grew to account for "approximately 40 percent of all intercity truck traffic in the United States" by the 1980s, when Congress deregulated the trucking industry. H.R. Rep. No. 95-1812, at 5; *see* Motor Carrier Act of 1980, 94 Stat. 793. Because independent owner-operators proved to be "one of the most efficient movers of goods" in the country, they became a "vital segment of the motor transportation industry." H.R. Rep. No. 95-1812, at 5, 26.

2. Congress protected the motor carrier industry's predominant practice of contracting with independent owner-operators by enacting the FAAAA in 1994 during a period of federal deregulation.

The FAAAA contains an express preemption provision that prohibits any state from passing or enforcing any 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). This preemption provision is "identical to the preemption provision" contained in the Airline Deregulation Act, H.R. Conf. Rep. No. 103-677, at 85 (1994), which this Court has interpreted as "broadly worded," "deliberately expansive," and "conspicuous for its breadth." *Morales*, 504 U.S. at 383-84 (internal quotation marks omitted); *see* 49 U.S.C. § 41713(b)(1) (preempting state laws "related to a price, route, or service of an air carrier"). Congress intentionally "adopted" the "broad preemption interpretation" set forth in *Morales* when it enacted the FAAAA. H.R. Conf. Rep. No. 103-677, at 83; *see Rowe*, 552 U.S. at 370 (explaining that the express preemption provisions in the Airline Deregulation Act and FAAAA are interpreted identically).

Congress crafted a deliberately broad express preemption provision to achieve two overarching "objectives." *Rowe*, 552 U.S. at 372. First, Congress wanted to eliminate the "patchwork of [State] regulation" relating to motor carriers' prices, routes, and services. H.R. Conf. Rep. No. 103-677, at 87. At the time, the "sheer diversity" of "State economic regulation" was "a huge problem for national and regional carriers." *Id.* It caused "significant inefficiencies, increased costs, reduction of competition, [and] inhibition of innovation and technology," and "curtail[ed] the expansion of markets." *Id.* A broad preemption provision would secure a uniform, nationwide scheme for motor carriers "attempting to conduct a standard way of doing business." *Id.* at 88.

Nationwide uniformity would also help the independent owner-operators. As Congress had explained in earlier deregulation efforts, the

"cumulative effect of the multiplicity of State requirements poses an overwhelming burden" on independent owner-operators, forcing them to "fight [their] way through" a "paper jungle" of forms, permits, and laws. H.R. Rep. No. 95-1812, at 12. These burdens flowed downstream: When "variations between State requirements" pose "undue problems for the independent owner-operators," it "affects the movement of goods and the price the consumer pays at the store." *Id.*

Second, Congress wanted to ensure that motor carriers' "[s]ervice options will be dictated by the marketplace[,] and not by an artificial regulatory structure." H.R. Conf. Rep. No. 103-677, at 88. Congress sought to promote free-market choices by "[l]ift[ing]" the "antiquated controls" States had imposed on the industry, thus "permit[ting] our transportation companies to freely compete more efficiently and provide quality service to their customers." *Id.* By broadly preempting state law, Congress "ensure[d] transportation rates, routes, and services [would] reflect maximum reliance on competitive market forces." *Rowe*, 552 U.S. at 371 (internal quotation marks omitted).

Congress specifically preempted a California statute that deterred motor carriers from using independent owner-operators. In 1993, the year before Congress enacted the FAAAA, California had passed a law that exempted motor carriers from rate regulations but "denied this exemption . . . to those [motor carriers] using a large proportion of owner-operators instead of company employees." H.R. Conf. Rep. No. 103-677, at 87; *see* Cal. Pub. Utils. Code § 4128.5 (1993). The California law was expressly designed to "limit[] the use of independent

contractors" working for motor carriers. Cal. Assembly Comm. on Utils. & Commerce, Digest of Assembly Bill 2015, at 1 (Sept. 9, 1993). When Congress enacted the FAAAA, it singled out the California law as being preempted by the new federal statute. H.R. Conf. Rep. No. 103-677, at 87.

3. The California statute at issue in this case has the same purpose, and the same effect, as its predecessor: It discourages motor carriers from using independent owner-operators.

California's ABC test requires a putative employer to prove three elements before a worker can be classified as an independent contractor:

> (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
>
> (B) The person performs work that is outside the usual course of the hiring entity's business.
>
> (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Cal. Labor Code § 2775(b)(1).[2]

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[2] An "ABC test" is a test used to classify workers as either employees or independent contractors. The name derives from the test's three prongs. Under an ABC test, workers are presumed to be employees, and the putative employer must demonstrate that each of prongs A, B, and C is satisfied to

Because truck drivers perform work that is within the usual course of a motor carrier's business, the "B prong" cannot be met by motor carriers that want to hire independent owner-operators, as they have historically done. This is by design. The bill's sponsor declared that the ABC test was "getting rid of an outdated [trucking] broker model that allows companies to basically make money and set rates for people that they called independent contractors." Remarks of Assembly Member Lorena Gonzalez, Assembly Floor Session at 1:08:20-1:08:30 (Sept. 11, 2019), https://bit.ly/3a4U1VF. The State Assembly Committee on Appropriation—whose statements are, under state law, presumed to express the legislative intent of statutes—later confirmed that the ABC test "makes it clear that" "port truck drivers" are "entitled" to be treated as employees. AB 2257 at 2, Assembly Committee on Appropriations Analysis (June 2, 2020); *see Altaville Drug Store, Inc. v. Emp't Dev. Dep't*, 746 P.2d 871, 875 (Cal. 1988) ("Statements of legislative committees pertaining to the purpose of legislation are presumed to express the legislative intent of statutes as enacted.").

The California statute exempts certain "business-to-business" contractual relationships from the ABC test. Cal. Labor Code § 2776. But this is a narrow exemption that applies only if twelve requirements are met. Among other things, the putative independent contractor must be a formal business

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establish an independent-contractor relationship. An increasing number of states have adopted ABC tests, *see* Keith Cunningham-Parmeter, *Gig-Dependence*, 39 N. Ill. U. L. Rev. 379, 408-11 (2019), and additional states are considering enacting an ABC test, *see* Richard Meneghello, *Could 2020 Be the Year of the California Copycats?*, Fisher Phillips (Oct. 21, 2019), https://bit.ly/3lMmKTS.

entity or sole proprietorship, have all necessary business licenses, provide its services directly to the party contracting for its services rather than to that party's customers, maintain a business location separate from the party contracting for its services, and advertise its services to the public. *Id.* § 2776(a)(1)-(12).

4. Petitioners are federally regulated motor carriers that operate trucking and drayage services at the Ports of Los Angeles and Long Beach, transporting cargo from the California ports to inland destinations. Pet. App. 33a. Petitioners engage independent owner-operator truck drivers to provide these trucking services. *Id.*

In January 2018, the City Attorney of Los Angeles sued petitioners, alleging that petitioners misclassify truck drivers as independent contractors rather than employees. Pet. App. 33a-34a. Petitioners argued that the FAAAA preempted the ABC test as applied to motor carriers. *Id.* at 35a; *see also id.* at 9a n.7.[3]

The Superior Court held that the FAAAA "clearly" preempts the ABC test. Pet. App. 31a. The court found that the ABC test interfered with motor carriers' ability to "utilize independent owner-operator truck drivers, as that term has been used in the trucking industry, by Congress, and by the U.S. Supreme Court for many decades." *Id.* at 46a. "[L]ike

[3] Petitioners further argued that because the ABC test is preempted, California's traditional, flexible, multi-factor standard should govern the worker-classification analysis. *See* Pet. App. 32a; *S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations*, 769 P.2d 399, 404 (Cal. 1989) (setting forth the traditional standard); Cal. Labor Code § 2775(b)(3) (prescribing the application of *Borello* where the ABC test does not apply).

many others before it," the court reached the "common-sense conclusion" that the ABC test related to motor carriers' "services" and "prices." *Id.* at 50a, 54a. The court explained that motor carriers operating in California would have to "revamp their business models," and that petitioners' costs of transporting goods "nearly triple[d]" when they contracted with licensed businesses rather than with independent owner-operators—"the sort of inefficiency Congress sought to preempt." *Id.* at 54a.

5. The City sought a writ of mandate from the California Court of Appeal. That court summarily denied the request, Pet. App. 28a, but the California Supreme Court ordered the Court of Appeal to grant the writ and hear the appeal, *id.* at 26a.

So instructed, the Court of Appeal held that the FAAAA did not preempt the ABC test. Pet. App. 4a. It explained that its decision was "compelled" by the California Supreme Court's decision in *People ex rel. Harris v. Pac Anchor Transp., Inc.*, 329 P.3d 180 (Cal. 2014), which reasoned that the FAAAA does not preempt "laws of general application" that have an "indirect" "effect" on motor carriers' prices, routes, or services—such as California's traditional, multi-factor worker-classification law that the ABC test replaced. *Id.* at 189-90 (internal quotation marks omitted); *see* Pet. App. 14a. Applying *Pac Anchor*, the Court of Appeal explained that laws of general applicability can be preempted only "if they have a direct effect on carriers' prices, routes, or services." Pet. App. 16a n.12. And because the ABC test is a "law of general application," the Court of Appeal found California's law not preempted because it does not make it "impossible" for a motor carrier to contract with an independent owner-operator, "even though"

the state law "may have some indirect effect on [petitioners'] prices or services." *Id.* at 16a-22a.

The California Supreme Court denied petitioners' petition for review. Pet. App. 1a.

REASONS FOR GRANTING THE PETITION

Courts are sharply divided over whether the FAAAA preempts generally applicable state worker-classification laws that have an effect on a motor carrier's prices and services by discouraging the use of independent contractors. This creates a patchwork of state laws that undermines Congress's legislative effort to achieve market-driven, nationwide uniformity in this space. This Court should grant review to resolve the lower courts' disagreement and clarify that the statute means what it says: State laws relating to a motor carrier's prices, routes, or services are preempted.

I. THE LOWER COURTS ARE DEEPLY SPLIT OVER AN IMPORTANT AND RECURRING QUESTION OF FEDERAL LAW.

Federal courts of appeals and state courts of last resort are deeply divided over whether generally applicable state worker-classification laws are preempted because they "relate[ ] to" a motor carrier's prices, routes, or services. 49 U.S.C. § 14501(c)(1).

Some courts hold that generally applicable worker-classification laws are not preempted because they do not have a direct effect on, or are several steps removed from, prices, routes, or services. Other courts, in contrast, hold that such laws are preempted because they *do* have a direct effect on prices, routes, or services, or because *any* effect triggers preemption. The courts' conflicting tests have led to opposite outcomes with respect to ABC laws governing worker

classification, with materially identical statutes preempted in some states but not others.

A. The Split Is Clear And Indisputable.

1. California courts, along with the Ninth Circuit, the Seventh Circuit, and the Third Circuit, hold that generally applicable worker-classification laws are not preempted.

The California Supreme Court has held that the FAAAA does not preempt "generally applicable" worker-classification laws because they create only "some indirect effect on" motor carriers' prices, routes, or services. *Pac Anchor*, 329 P.3d at 189-90 (internal quotation marks omitted). The Court of Appeal relied on *Pac Anchor* here, concluding that California's ABC law is not preempted because it does not have a "direct effect" on a motor carrier's prices, routes, or services. Pet. App. 16a n.12; *see id.* at 17a, 22a.

The Ninth Circuit has similarly concluded that California's (pre-ABC test) worker-classification law fits the category of "generally applicable background regulations that are several steps removed from prices, routes, or services," and thus "not preempted, even if the employers must factor those provisions into their decisions about" prices, routes, or services. *Cal. Trucking Ass'n v. Su*, 903 F.3d 953, 963 (9th Cir. 2018) (quoting *Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 646 (9th Cir. 2014)). The court reasoned that "Congress did not intend to hinder States from imposing normative policies on motor carriers as employers." *Id.*[4]

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[4] The Ninth Circuit declined, in that case, to decide whether the FAAAA would preempt California's ABC test. 903 F.3d at 959 n.4.

The Seventh Circuit has held that a state ABC law is not preempted because it has too tenuous a connection with a motor carrier's prices, routes, or services. In *Costello v. BeavEx, Inc.*, 810 F.3d 1045 (7th Cir. 2016), the court drew a "distinction" between "generally applicable state laws that affect the carrier's relationship with its customers and those that affect the carrier's relationship with its workforce." *Id.* at 1054. Laws in the latter category are "often too tenuously connected to" a motor carrier's prices, routes, or services to warrant preemption. *Id.* Applying this standard, the Seventh Circuit held that a state ABC law forcing motor carriers to use "employees" for its same-day delivery services was not preempted. *Id.* at 1050, 1056.

The Third Circuit also has held that a state worker-classification law was not preempted because it lacked a "direct," "indirect," or "significant" effect on prices, routes, or services. *Bedoya v. Am. Eagle Express, Inc.*, 914 F.3d 812, 823 (3d Cir. 2019). The court emphasized that the law was generally applicable because it "applies to all businesses as part of the backdrop they face in conducting their affairs," and Congress did not "mean to exempt workers from receiving proper wages," even if such wage laws have "an incidental impact on carrier prices, routes, or services." *Id.* at 824, 826 (internal quotation marks omitted).

2. The First Circuit and the Massachusetts Supreme Judicial Court have reached the opposite conclusion, holding that generally applicable worker-classification laws are preempted. Similarly, the Rhode Island Supreme Court has held that the FAAAA preempts generally applicable wage-and-hour laws that indirectly affect prices, routes, or services.

The First Circuit has held that a state worker-classification law directly relates to, and has a direct effect on, motor carriers' prices, routes, or services. In *Massachusetts Delivery Association v. Coakley*, 769 F.3d 11 (1st Cir. 2014), the district court had found that the FAAAA did not preempt the state's ABC worker-classification test because it was a "generally applicable wage law" whose application to motor carriers had only "an indirect impact" on prices, routes, and services—reasoning that mirrored the decision below and the approaches taken by the Ninth, Seventh, and Third Circuits. *Id.* at 21 (internal quotation marks omitted). But the First Circuit reversed, holding the district court's "narrow[ ]" reading of the FAAAA resulted in "critical errors." *Id.* at 17, 21. The court, "following Congress's directive to immunize motor carriers from state regulations that threaten to unravel Congress's purposeful deregulation in this area," confirmed that the "logical effect" of a particular regulatory scheme "can be sufficient even if indirect." *Id.* at 21.

After a remand, the First Circuit held that the FAAAA preempted the state's ABC law because of its direct and "tangible" effects on prices, routes, and services. *Schwann v. FedEx Ground Package Sys., Inc.*, 813 F.3d 429, 439-40 (1st Cir. 2016). The court explained that the law made it "quite difficult" for motor carriers such as FedEx to treat its last-mile delivery drivers as independent contractors, and thus the law "directly and substantially restrain[ed] the free-market pursuit of perceived efficiencies and competitive advantage," "change[d] the manner in which" FedEx delivered packages, and ran "counter" to Congress's directive to avoid a "patchwork of state service-determining laws." *Id.* at 438-39 (internal quotation marks omitted).

The Massachusetts Supreme Judicial Court has likewise held that the FAAAA preempts a generally applicable worker-classification law. In *Chambers v. RDI Logistics, Inc.*, 65 N.E.3d 1 (Mass. 2016), the court found that the state's ABC law, as applied to retail companies that hired independent contractors to drive and deliver furniture, resulted in motor carriers "adopt[ing] a different manner of providing services from what they otherwise might choose." *Id.* at 9. The state law's influence on who drives the delivery trucks—employees or independent contractors—in turn "likely" would have a "significant, if indirect, impact on motor carriers' services" and, by "raising the costs of providing those services," on prices. *Id.*

The Rhode Island Supreme Court has similarly held that "even an indirect effect by a state law of general applicability is sufficient to meet the 'related to' language in the preemption clause." *Brindle v. R.I. Dep't of Labor & Training*, 211 A.3d 930, 935 (R.I. 2019). The court then held that the Airline Deregulation Act preempted a state labor law requiring one-and-a-half pay on Sundays and holidays because the state law "could impact or modify" the airline's services, such as flight frequency, customer service, and staffing. *Id.* at 938.[5]

3. Even the federal courts within California are split over whether the FAAAA preempts California's ABC test. Two have reached the same conclusion as the Court of Appeal below. *Henry v. Cent. Freight*

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[5] Although the state law at issue in *Brindle* was not a worker-classification law, it was substantively identical to worker-classification laws because it determined the compensation that workers statewide were owed. *See* 211 A.3d at 931; R.I. Gen. Stat. § 25-3-3(a).

Lines, Inc., 2019 WL 2465330, at *7 (E.D. Cal. June 13, 2019); *W. States Trucking Ass'n v. Schoorl*, 377 F. Supp. 3d 1056, 1070 (E.D. Cal. 2019). Four have reached the opposite conclusion, holding that the FAAAA preempts California's ABC test. *Cal. Trucking Ass'n v. Becerra*, 433 F. Supp. 3d 1154 (S.D. Cal. 2020) (issuing injunction against enforcement of ABC test), *appeal pending*, Nos. 20-55106, 20-55107 (9th Cir.); *B&O Logistics, Inc. v. Cho*, 2019 WL 2879876 (C.D. Cal. Apr. 15, 2019); *Valadez v. CSX Intermodal Terminals, Inc.*, 2019 WL 1975460 (N.D. Cal. Mar. 15, 2019); *Alvarez v. XPO Logistics Cartage LLC*, 2018 WL 6271965 (C.D. Cal. Nov. 15, 2018).

B. The Split Has Led Courts To Different Conclusions As To The Same Statute.

The conflict and confusion in the lower courts has led to an untenable situation: *The same law* is preempted in some states but not in others. The ABC tests in California, Massachusetts, and Illinois are almost identical. Each provides that an individual shall be an employee unless that worker is "free from [the] control and direction" of the hiring entity, performs work "outside the usual course of [the hiring entity's] business," and is engaged in an "independently established trade, occupation, . . . or business." *See* Cal. Labor Code § 2775(b)(1); Mass. Gen. Laws ch. 149 § 148B(a); 820 Ill. Comp. Stat. Ann. 115/2. But the FAAAA has been applied differently to these laws because of lower courts' divergent tests for preemption. The California and Illinois laws have been held *not* preempted against motor carriers; the Massachusetts law, in contrast, *has* been held preempted and unenforceable against motor carriers.

Lower courts have recognized the split in authority and expressly noted the need for this Court

to resolve it. "[T]he Supreme Court" has not "recited precise standards for evaluating" the application of the FAAAA to generally applicable worker-classification laws. *Bedoya*, 914 F.3d at 820. As a result, "[e]xactly where the boundary lies between permissible and impermissible state regulation is not entirely clear." *Schwann*, 813 F.3d at 437. As one court recognized, there is irreconcilable "tension with[in] the case law." *Echavarria v. Williams Sonoma, Inc.*, 2016 WL 1047225, at *8 (D.N.J. Mar. 16, 2016) (contrasting the "First Circuit's conclusion" in *Schwann* with "other circuits"). Indeed, the California Court of Appeal in this case acknowledged parting ways with the First Circuit's decision regarding Massachusetts' ABC test, "which contains the same language as California's ABC test." Pet. App. 13a n.10.

The split of authority calls out for this Court's intervention not only because lower courts disagree about how to interpret and apply federal law, but also because their disagreement creates a "patchwork" of state laws that "is inconsistent with Congress' major legislative effort." *Rowe*, 552 U.S. at 373. The courts' divergent decisions regarding ABC worker-classification laws are imposing the very kind of "problem[atic]" discrepancies in state law the FAAAA is intended to prevent. H.R. Conf. Rep. No. 103-677, at 87. Absent intervention from this Court, the split—and the resulting patchwork of state laws—will persist.

II. THE CALIFORNIA COURTS' APPROACH TO FAAAA PREEMPTION CANNOT BE RECONCILED WITH THIS COURT'S DECISIONS.

This Court has explained that a state law is "related to" a motor carrier's prices, routes, or

services—and thus preempted—so long as it has "a connection with, or reference to," a motor carrier's prices, routes, or services. *Rowe*, 552 U.S. at 370 (quoting *Morales*, 504 U.S. at 384). As demonstrated by *Pac Anchor* and the decision below, the California courts have developed their own test for FAAAA preemption, one that has no grounding in the statutory text and is in substantial tension with decisions of this Court.

A. The California Courts Have Relied On Three Principles That Are In Tension With This Court's Decisions.

1. The California courts place substantial weight on whether the state law is "generally applicable," applying a deferential standard of review. In *Pac Anchor*, the California Supreme Court held that the FAAAA does not preempt worker-classification laws that "apply to all employers" absent exceptional circumstances, such as a law outright dictating motor carriers' prices or services. *Pac Anchor*, 329 P.3d at 189-90; *see also id.* at 190 ("regulations of general applicability are not preempted as applied under the FAAAA"). The Court of Appeal faithfully followed that teaching, repeatedly emphasizing that the ABC statute was "generally applicable" in justifying its preemption decision. *See, e.g.*, Pet. App. 4a, 14a, 16a & n.12.

This Court, however, has rejected the suggestion that laws of general applicability are immune from FAAAA preemption. The statute's plain language is clear: It preempts *any* state law "related to a price, route, or service of any motor carrier." 49 U.S.C. § 14501(c)(1). The "ordinary meaning of these words is a broad one," and if Congress had intended to preempt only those state laws that expressly governed

prices, routes, or services, "it would have forbidden the States to '*regulate*'" prices, routes, or services. *Morales*, 504 U.S. at 383-85. Distinguishing between generally applicable and targeted laws flatly "ignores the sweep of the 'relating to' language" enacted by Congress. *Id.* at 386.

Carving out "laws of general applicability" from the FAAAA's preemptive scope would also "creat[e] an utterly irrational loophole," because there is "little reason why state impairment of the federal scheme should be deemed acceptable so long as it is effected by the particularized application of a general statute." *Morales*, 504 U.S. at 386. Indeed, Congress was concerned that states would attempt to regulate motor carriers' prices, routes, or services through "the guise of some form of unaffected regulatory authority." H.R. Conf. Rep. No. 103-677, at 84.

This Court has repeatedly held generally applicable state laws preempted. *See Northwest, Inc. v. Ginsberg*, 572 U.S. 273, 276 (2014) (claims for breach of the implied covenant of good faith and fair dealing preempted); *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 227-28 (1995) (claims under a state's consumer-fraud and deceptive-business practices law preempted); *Morales*, 504 U.S. at 383 ("general consumer protection laws" preempted). In none of these cases did the Court suggest it was subjecting the state laws to a more deferential preemption inquiry.

2. The California courts also focus on whether the state law's effect on motor carriers' prices, routes, or services is direct or indirect. In *Pac Anchor*, the California Supreme Court created a "direct effect" requirement for generally applicable laws, holding that state minimum wage and employer recordkeeping laws were not preempted because their

"effect on . . . prices, routes, or services . . . is indirect, and thus falls outside the scope of the test set forth in *Morales*." 329 P.3d at 189. In this case, the Court of Appeal followed *Pac Anchor* by concluding that a generally applicable state law cannot be preempted unless it has a "direct effect" on motor carriers' prices, routes, or services. Pet. App. 16a n.12; *see also id.* at 22a (no preemption unless state law "prohibits motor carriers from using independent contractors or otherwise *directly* affects motor carriers' prices, routes, or services" (emphasis added)).

Morales, of course, held the opposite. The California courts' artificial distinction between direct and indirect effects is what the *dissent* advocated in *Morales*. In the dissent's view, only state laws "relate[d] *directly* to rates, routes, or services" should be preempted, while state laws with an "*indirect* connection with, or relationship to," rates, routes, or services should not be preempted. *Morales*, 504 U.S. at 420-21 (Stevens, J., dissenting) (emphases added). The majority disagreed, holding that a state law may be preempted "even if the law is not specifically designed to affect" rates, routes, or services, "or the effect is only indirect." *Id.* at 386 (majority opinion) (internal quotation marks omitted). The Court concluded that the "general consumer protection laws" at issue had a "significant impact" on airlines' ability to market their product, "and hence a significant impact upon the fares they charge." *Id.* at 390. The laws' indirect, one-step-removed effect on prices was sufficient to trigger preemption. *Id.*

In *Rowe*, 552 U.S. at 370, this Court reaffirmed *Morales*'s rejection of the distinction between direct and indirect effects, confirming that the FAAAA preempts state laws relating to a motor carrier's

prices, routes, or services "even if a state law's effect . . . is only indirect." This Court has since affirmed yet again that the "phrase 'related to' . . . embraces state laws having a connection with or reference to carrier rates, routes, or services, *whether directly or indirectly*." *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260 (2013) (internal quotation marks omitted) (emphasis added).

3. The California courts ask whether the state law makes it "impossible" for motor carriers to use independent contractors. Pet. App. 14a, 21a; *see Pac Anchor*, 329 P.3d at 189 ("Nothing in the People's [Unfair Competition Law] action would *prevent* defendants from using independent contractors." (emphasis added)). If the statute "is not one that prohibits motor carriers from using independent contractors," the court below held, it "therefore[ ] does not have an impermissible effect on prices, routes, or services." Pet. App. 18a.

This Court, however, has held that FAAAA preemption does *not* require that state law "*compel*[ ] or *restrict*[ ]" a motor carrier from taking certain actions, such as advertising in a particular way. *Morales*, 504 U.S. at 389 (emphases added). Nor does the FAAAA preempt states laws only if they "*force* [motor carriers] to adopt or change" their prices, routes, or services. *Ginsberg*, 572 U.S. at 279 (emphasis added) (quoting and rejecting the Ninth Circuit's test in *Ginsberg v. Northwest, Inc.*, 695 F.3d 873, 880 (9th Cir. 2012)). Instead, the FAAAA prevents states from "curtail[ing]" a motor carrier's ability to set prices, routes, and services as the free market allows. *Morales*, 504 U.S. at 389.

The California courts' "impossibility" standard would save from preemption one of the very laws that

led Congress to enact the FAAAA preemption provision. The 1993 law enacted by the California Legislature discouraged but did not prohibit the use of independent contractors; it denied rate-regulation exemptions to motor carriers that paid independent contractors more than 10 percent of the carrier's intrastate revenue. Cal. Pub. Utils. Code § 4128.5 (1993). Congress singled out that law as one that would be preempted by the FAAAA, *see* H.R. Conf. Rep. No. 103-677, at 88, but under the approach taken by the California courts, the law would survive.

B. The FAAAA Preempts California's ABC Test.

California's ABC test is preempted because it has an impermissible "connection with" motor carriers' prices, routes, and services. *Rowe*, 552 U.S. at 371 (quoting *Morales*, 504 U.S. at 384). Motor carriers such as petitioners have been contracting with independent owner-operators for nearly a century. And a motor carrier's decision to provide services with one's own employee, or to procure the services of an independent owner-operator, is one of the "essential details of a motor carrier's system for picking up, sorting, and carrying goods." *Id.* at 373; *see R. Mayor of Atlanta, Inc. v. City of Atlanta*, 158 F.3d 538, 545 (11th Cir. 1998) (holding that the FAAAA preempted state towing laws "limit[ing] who is permitted to provide the [towing] services"), *abrogated on other grounds by City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424 (2002).

California's ABC test makes it exceedingly difficult (quite likely impossible) for motor carriers to hire independent owner-operators because, by definition, a truck driver does not perform "work that is outside the usual course of the [motor carrier's]

business." Cal. Labor Code § 2775(b)(1)(B). This thumb on the scale "curtail[s]" a motor carrier's ability to contract with independent owner-operators, as they have for decades. *Morales*, 504 U.S. at 389.

The business-to-business exemption that "further supported" the lower court's decision, Pet. App. 18a, is of no support at all. At minimum, it requires motor carriers that have historically contracted with an individual owner-operator (call him Joe Trucker) to instead contract only with formalized business entities (*e.g.*, Joe Trucker, Inc.) that satisfy a host of statutory controls. *See* Cal. Labor Code § 2776(a)(1)-(12).[6] Accordingly, the "effect" of California's law is that carriers will make hiring decisions that "differ significantly from those that, in the absence of the [law], the market might dictate." *Rowe*, 552 U.S. at 372.

California's ABC test also relates to prices because, as an "economic matter," it has a "tangible

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[6] It is far from clear that motor carriers could *ever* invoke the business-to-business exemption successfully. Whether an individual truck driver has met all of the exemption's dozen requirements—forming a business, finding a business location, advertising to the public—is beyond the motor carrier's control. Tellingly, California's Attorney General has never taken the position that the exemption could apply to motor carriers. *See Cal. Trucking Ass'n*, 433 F. Supp. 3d at 1169. But even if the exemption could apply to certain drivers, it would still change the current "system of services" used by motor carriers, *Rowe*, 552 U.S. at 372, and its maze of controls still "curtail[s]" a motor carrier's ability to hire drivers according to prevailing market forces, *Morales*, 504 U.S. at 389; *see* Statement by President Clinton Upon Signing H.R. 2739 (Aug. 23, 1994) ("State regulation preempted under [the FAAAA] takes the form of controls on *who can enter the trucking industry*" (emphasis added)).

effect" on prices. *Morales*, 504 U.S. at 388. State laws that influence inputs that in turn affect prices are preempted. In *Ginsberg*, for example, a generally applicable state-law claim against an airline's termination of the plaintiff's frequent-flyer membership had a "connection with" the airline's prices because terminating the membership affected mileage credits, which in turn affected ticket prices. 572 U.S. at 284. Here, it is beyond cavil that motor carriers hiring employees instead of independent owner-operators must incur substantial additional labor costs. *See Schwann*, 813 F.3d at 439; *Chambers*, 65 N.E.3d at 9. And the trial court found that motor carriers must pay nearly three times the rate to organized businesses than to independent owner-operators to transport cargo over the same route. Pet. App. 54a. Because the ABC test influences motor carriers' inputs (per-route costs), which in turn affect the outputs (prices), it is preempted.

California's ABC test would "undo federal deregulation with regulation of [its] own." *Rowe*, 552 U.S. at 368 (internal quotation marks omitted). Left unreviewed, the decision below would let stand an application of a worker-classification law that "has a significant and adverse impact in respect to the [FAAAA]'s ability to achieve its preemption-related objectives." *Id.* at 368, 371-72 (internal quotation marks omitted). Applied to motor carriers, it creates "the kind of state-mandated regulation that the federal Act preempts," instead of leaving motor carriers' hiring decisions "to the competitive marketplace." *Id.* at 373. Moreover, "[t]o allow [California] to insist that the carriers [hire employees] would allow other States to do the same," creating a "regulatory patchwork" that "is inconsistent with Congress' major legislative effort." *Id.*

III. THIS CASE PRESENTS A CRITICALLY IMPORTANT LEGAL ISSUE WITH SWEEPING COMMERCIAL RAMIFICATIONS.

A. The decision below has broad ramifications for motor carriers. California's ABC test upends their decades-long business model in the most populous state in the nation, undermining their ability to operate efficiently and effectively within the state and across the country as Congress intended. If the decision below stands, some companies may increase their existing staff of employee drivers, but others may be forced to dramatically decrease their operations or leave the industry entirely because trucking involves fluctuating demand that makes relying on a fleet of employees impracticable. And absent this Court's intervention, the decision below *will* stand. The Court of Appeal's ruling is binding on the state's trial courts, and California lower courts view the California Supreme Court's *Pac Anchor* decision as "compel[ling]" the answer that the FAAAA does not preempt the ABC test. Pet. App. 14a; *accord Parada v. E. Coast Transp. Inc.*, __ Cal. Rptr. 3d __, 2021 WL 1222007, at *6 (Cal. Ct. App. Mar. 26, 2021) (agreeing with the decision below "that *Pac Anchor* is 'dispositive' on the question whether the FAAAA preempts a claim against a motor carrier seeking to enforce the ABC test"). Because the California Supreme Court ordered the Court of Appeal to review the Superior Court's decision below and then denied review when the Court of Appeal found *Pac Anchor* dispositive, the issue is unlikely to ever reach the California Supreme Court again.

As a result of the California courts' rulings, motor carriers are unable to "conduct a standard way of doing business" nationwide as Congress promised.

H.R. Conf. Rep. No. 103-677, at 87. As they transport goods from state to state, motor carriers will make decisions about who drives their trucks not by "competitive market forces," but rather by each state's "own governmental commands." *Rowe*, 552 U.S. at 372 (internal quotation marks omitted). If a federally licensed motor carrier were to hire an independent owner-operator in Massachusetts to transport goods cross-country, the motor carrier would have to swap out its driver in Illinois or California and put an employee behind the wheel.

The nation's approximately 352,000 individual truckers will also be plunged into a state of uncertainty. *See* Jennifer Cheeseman Day & Andrew W. Hait, *America Keeps on Truckin'*, U.S. Census Bureau (June 6, 2019), https://bit.ly/3tO3qbq. Independent truckers within California who own their own trucks will be forced to become employees of a single motor carrier and may be required to give up ownership of their personal fleet of trucks, in addition to giving up their freedom and flexibility. Independent truckers from other states will be unsure, every time they cross into an ABC-test jurisdiction, whether they may continue to work as an independent owner-operator. These "variations between State requirements" pose "undue problems for the independent owner-operators," and in turn "affect[] the movement of goods and the price the consumer pays at the store." H.R. Rep. No. 95-1812, at 12.

Because the Airline Deregulation Act's preemption provision is identical to the FAAAA's, *see Morales*, 504 U.S. at 386, the lower court's decision casts a pall of uncertainty over the airlines as well. Given the many industries, workers, and levels of

government at play, whether and how federal law preempts "the nature and scope of [state] misclassification" laws is "among the most critical issues confronting contemporary labor and employment law." Scott L. Cummings & Emma Curran Donnelly Hulse, *Preemption as a Tool of Misclassification*, 66 UCLA L. Rev. 1872, 1904 (2019).

B. This case is an ideal vehicle to resolve the question presented. The Court of Appeal squarely decided the issue and recognized in doing so that it was diverging from other courts. *See* Pet. App. 13a n.10 (acknowledging that "[t]he First Circuit held prong B of Massachusetts' ABC test (which contains the same language as California's ABC test) is preempted by the FAAAA").

There is no impediment to reviewing the decision below. "[T]he federal questions that could come here . . . have been adjudicated by the State court," and will require decision no matter what happens next in the state courts following this appeal. *Radio Station WOW v. Johnson*, 326 U.S. 120, 127 (1945). Following this appeal, the City will seek to adjudicate under the state ABC test the worker classification of hundreds of owner-operators contracting with petitioners. Pet. App. 6a-7a. And there is no question how that inquiry will end for the many owner-operators who cannot hope to, or have not tried to, satisfy the ABC test's business-to-business exemption—as to those owner-operators, the lower court's decision that the FAAAA does not preempt the ABC test will dictate their classification as petitioners' employees. Because those workers *cannot* meet the ABC test and their only defense is federal preemption, "[n]othing that could happen in the course of the" proceedings to come, "short of

settlement of the case, would foreclose or make unnecessary decision on the federal question." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 480 (1975).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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