

No. 21-194

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**In the Supreme Court of the United States**

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

*Petitioners,*

v.

ROBERT BONTA, IN HIS OFFICIAL CAPACITY AS  
THE ATTORNEY GENERAL FOR THE STATE OF  
CALIFORNIA, et al.,

*Respondents.*

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

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**BRIEF FOR THE MINNESOTA TRUCKING  
ASSOCIATION, AS AMICUS CURIAE SUPPORTING  
PETITIONERS**

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## **INTEREST OF THE AMICUS CURIAE\***

Amicus is a Minnesota based trucking industry trade association. It has long supported the rights of professional truck drivers and motor carriers to choose independent owner-operator or employee driving opportunities. Amicus offers this brief in support of the Court granting Petitioners' petition so the Court may preserve the rights of professional drivers and motor carriers to choose their own working relationships and business opportunities.

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\* All parties received timely notice of intent to file this brief at least 10 days in advance of the brief's due date. Amicus counsel confirms receipt of consent to file this brief from all parties. Pursuant to Rule 37.6, amicus curiae affirms no counsel for a party authored this brief in whole or in part and no person other than amicus, its members and its counsel made a monetary contribution to the preparation or submission of this brief.

## SUMMARY OF ARGUMENT

For over 100 years, the United States trucking industry has offered opportunities for professional drivers with entrepreneurial spirit to own their own business and contract with motor carriers as owner-operators. Through economic regulation and deregulation, through boom times and fuel shortages, through paper logbooks and electronic onboard recorders, owner-operators have provided the flexible capacity and service necessary to meet their own needs as well as those of motor carriers and shippers.

Owner-operators partner with motor carriers to safely move customer freight and protect the motoring public in accord with federal safety regulations. Owner-operators enjoy both the freedom and responsibility to be their own boss, to earn a profit, or suffer a loss. Represented by their own trade associations, and protected by state and federal laws, owner-operators proudly have stood the test of time.

Unfortunately, state laws like California's version of the ABC test at issue in this case eliminate the owner-operators' ability to further that stand. Eliminating the owner-operator model cuts off a professional driver's right to choose traditional employment or own their own independent business. The law further eliminates cargo capacity and service options for motor carriers and shippers.

By limiting owner-operator opportunities, infringing on motor carriers' options and service offerings for shippers, California is improperly regulating motor carriers in a way preempted by federal law. California's Labor Code § 2775, sometimes referred to as AB5, will effectively bar Minnesota owner-operators from load opportunities in California, alter the business model options available to Minnesota motor carriers wanting to serve California, and restrict the services and vendors available to Minnesota shippers for their customers and vendors in California. Amicus respectfully requests the Court grant the Petition and preserve professional drivers' rights to choose the career path that works for them, preserve the motor carrier's flexibility to offer the capacity and services shippers demand, and preserve a level playing field for owner-operators, motor carriers, and shippers in Minnesota and throughout the United States wanting to do business in California.

## **ARGUMENT**

Americans cherish the freedom to go about their business without overreaching intrusion from government. Government regulation has its place, especially when it comes to safety and fair dealing. But government overreaches when it eliminates the rights of people to choose their own careers and pursue their own business opportunities. California, through Cal. Labor Code § 2775, so overreaches that it eliminates a viable career path for professional truck drivers, both inside and outside California, to own their own trucking businesses as owner-



operators. Amicus respectfully requests this Court take this opportunity to stop California's intrusion into professional truck drivers' rights to choose to run an independent business as an owner-operator or be an employee driver.

**I. The owner-operator business model has a long history.**

“Owner-operator” is a term for an individual who owns a commercial motor vehicle and leases that vehicle and their driving services to a motor carrier under rules authorized under 49 U.S.C. § 14102 and promulgated at 49 C.F.R. §§ 376.1, *et seq.* (the “Truth-in-Leasing” regulations).

Owner-operators date back over 100 years to the beginning of the trucking industry. *See* Paul Stephen Dempsey, *Transportation: A Legal History*, 30 *Transp. L.J.* 235, 273-74 (2003). Congress began regulating motor carriers in interstate commerce with passage of the Motor Carrier Act of 1935. As a result, owner-operators were forced to haul only “exempt” commodities because they did not have the required federal operating authority to haul anything else. However, owner-operators quickly learned they could transport more freight by leasing their trucks with a driver to motor carriers with federal operating authority. This mutually beneficial arrangement allowed owner-operators to expand their business opportunities and provided motor carriers more capacity to serve their shippers. Douglas C. Grawe, *Have Truck, Will Drive: The Trucking Industry and The Use of Independent*

*Owner-Operators Over Time*, 35 *Transp. L.J.* 115, 122-23 (2008).

Eliminating the owner-operator model eliminates a critical, influential, and protected industry segment. In the 1930s owner-operators transported exempt agricultural commodities and later helped motor carriers expand their motor carrier services in the peak of, and without interference from, Interstate Commerce Commission (ICC) regulation. *See* Motor Carrier Act of 1935, Pub. L. 74-255, 49 Stat. 543, 545 (1935). The arrangement worked. In the 1970s, owner-operators forced beneficial changes to the industry by protesting fuel price gouging and spurring fairer fuel pricing policy. Grawe, *supra* at 130-31. In the 1990s and 2000s, owner-operators brought significant claims against motor carriers violating lease agreements and the Truth-In-Leasing regulations. *See, e.g., Owner-Operator Indep. Drivers Ass'n v. Arctic Express, Inc.*, 270 F. Supp. 2d 990 (S.D. Ohio 2003). And the arrangement continues to work.

Congress, courts, and administrative agencies have long recognized the critical role independent owner-operators play in the nation's transportation system. "[T]he ICC, the body charged with responsibility for developing and maintaining a strong national transport system with the full legislative blessing of Congress, recognizes in a formal and vital way that carriers (common or contract) are entitled to obtain needed equipment and augment fleets to care for increases in traffic by means of leases." *Agric. Transp. Ass'n of Texas v. King*, 349 F.2d 873, 881 (5th Cir. 1965) (footnote

omitted). The owner-operator model has been updated with the times but remains strong in much the same form. *See* Minn. Stat. § 176.043 (an example of state statutory recognition of the owner-operator trade). The model is critical to today's demanding supply chain requirements.

“Independent owner-operators are running businesses on wheels. The cabs of the tractors are wired offices. Shippers and motor carriers track the tractor's location through satellites, communicate with independent owner-operators through satellite messaging and cell phones, while the independent owner-operators can process paperwork through laptop computers, wireless Internet access, and scanning documents.” Grawe, *supra* at 136. Applied to the nation's motor carrier industry, California's ABC test – Cal. Labor Code § 2775 – needlessly eliminates owner-operators, the long-standing, critical and influential professional driver trade in California and beyond.

## **II. The owner-operator business model is an entrepreneurial melting pot.**

For some drivers, their road to becoming an owner-operator is the next mile marker after driving as an employee. *See, e.g., Professional Truck Driver Types, The Trucker,* <https://www.thetrucker.com/truck-driving-jobs/resources/professional-truck-driver-types> (last visited Sept. 1, 2021). Some drivers grew up around owner-operators and want to continue their family's legacy. Others become owner-operators because

family obligations demand a flexible schedule. Some want the opportunity to earn more money.

The reasons drivers choose to be independent is as varied as the owner-operators themselves. Among those working with Amicus members, some owner-operators are vintage cowboy truckers, some are dedicated family-men and women. Some are military and industry veterans. Others are hungry novices with a dream. Owner-operators working with our Amicus members are men and women of all races and backgrounds. Employee drivers considering graduating to owner-operator status seek to answer the challenge of running their own business. Do they possess the skills and business acumen to manage finances and expenses, to maximize truck utilization, increase profits, and build their own business?

### **III. The owner-operator business model benefits drivers, motor carriers, and shippers.**

#### **A. The owner-operator business model benefits drivers.**

Many professional drivers prefer the owner-operator model. It allows drivers to start their own business, transport freight with their own truck and try to maximize profit by finding higher paying loads, limiting empty miles, and lowering fuel and maintenance costs. It also allows the driver to avoid the costly burdens of a motor carrier. Importantly, while the owner-operator maintains independence, when the owner-operator partners with a motor

carrier, the owner-operator obtains the benefit of (1) the motor carrier's regulatory compliance infrastructure; (2) the motor carrier's ability to solicit freight from large shippers; (3) the motor carrier's capital to invest in trailers, technology, and storage yards; (4) the motor carrier's back office to administer billing and collections; and (5) the motor carrier's insurance and reserves necessary to protect the motoring public.

Structurally, the owner-operator enters into a written agreement with the motor carrier. This agreement allows the owner-operator to lease a truck and provide a driver (usually themselves) to the motor carrier. *See Owner-Operator Indep. Drivers Ass'n v. Swift Transp. Co.*, 632 F.3d 1111, 1113 (9th Cir. 2011). "Owner-operators are truck drivers who contract with motor carriers to provide hauling services; they typically own their own equipment and lease out their trucks and hauling services to carriers...." *Id.* Extensive federal truth-in-leasing regulations oversee and control these lease agreements. *See* 49 C.F.R. §§ 376.1, *et seq.* These regulations protect the owner-operator from motor carrier financial overreaching.

In this regulated exchange, the owner-operator enjoys the freedom to make their own operating decisions. They can accept and reject loads, set their own schedule, buy or lease their own equipment, hire drivers or helpers, and make their own maintenance decisions. The owner-operator trades the stability of wages and employee benefits for higher compensation and more options. The owner-operator, untethered from an employer's benefit

plan, has more choices in the marketplace for insurance, benefits, and support services from organizations serving owner-operators such as ATBS, Drivers Legal Plan, Openforce, and the Owner Operator Independent Driver Association (“OOIDA”).

Critically, the owner-operator must make business decisions common to all business owners and make a meaningful investment in their business. Just like store owners decide whether to work the register and stock the shelves, or to invest in additional help, owner-operators decide to add revenue potential and costs by investing in additional drivers and helpers or to stay lean and operate the truck themselves. They make the decision to buy or lease a truck, or multiple trucks. The owner-operator invests in additional equipment (such as phones, laptops, and tablets) to communicate with motor carriers and shippers. The owner-operator buys or rents an electronic hours of service logging device to comply with federal hours of service laws, and purchases insurance to protect the truck, the driver, and the public when not operating with a motor carrier.

An online retailer chooses to find customers by selecting an e-commerce platform to partner with like Amazon or eBay, or by choosing to create their own e-commerce platform. The owner-operator makes a similar decision when it chooses the motor carrier to partner with for their business. Once they choose a platform the online retailer must develop a strategy to maximize revenue within that platform. The owner-operator, after selecting a motor carrier,

must develop a strategy to generate more loads, consistent loads, and better paying loads with that motor carrier.

The home builder needs a materials sourcing strategy, a method to limit the waste of any materials, and a plan to maximize the life of expensive tools and equipment to keep costs low and make profit. Similarly, the owner-operator needs a deft fuel purchasing strategy, habits that maximize fuel efficiency, and a truck maintenance plan that minimizes downtime and maximizes the life of the truck. Those critical investment, revenue development, and cost management decisions and more determine the owner-operator's profit or loss, and ultimate success or failure just as the investment, revenue, and cost management decisions make or break the shopkeeper, the online retailer, and the home builder.

Conversely, the employee driver does not invest in trucks, logging devices, and other equipment. The employee driver does not develop a revenue strategy other than to show up for work. The employee driver has no financial interest in lowering the motor carrier's fuel or maintenance costs. The employee driver receives a set rate for moving loads dictated by the motor carrier. An employee driver must use the motor carrier's chosen route. An employee driver drives a truck built to the motor carrier's specifications, with only the comforts allowed by the motor carrier, and with the controls imposed by the motor carrier. The owner-operator determines their own routes, truck specifications and comforts. The employee driver, in contrast, can only fuel, shower,

and rest where the motor carrier permits. An owner-operator retains control of these decisions. Grawe, *supra* at 126-27.

Some professional drivers accept controls and choose the security of being employee drivers. However, many instead choose the challenge of being an owner-operator. For them it is their choice and a career milestone. Of 3.9 million commercial driver license holders in the U.S., between 350,000 and 400,000 are owner-operators.<sup>1</sup> These owner-operators find their niche in the industry by carving out higher rates of compensation, receiving administrative support, and liability protections from motor carriers in exchange for providing equipment and driver services the motor carrier does not, or cannot, provide on its own. The owner operator model benefits professional drivers by giving them life, career, and business choices at premium rates.

### **B. The owner-operator business model benefits the motor carrier.**

For the motor carrier, the owner-operator business model offers the benefit of flexible capacity and more service offerings. Owner-operators offer motor carriers additional capacity to haul freight for shippers without incurring additional fixed expenses such as truck payments, employee wages, and benefits. However, the motor carrier makes

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<sup>1</sup> See *Industry Facts*, Owner-Operator Indep. Drivers Ass'n, <https://www.ooida.com/wp-content/uploads/2021/03/Trucking-Facts.pdf> (last visited Sept. 1, 2021).



tradeoffs when it decides between utilizing employee drivers, owner-operators, or a combination of both.

But first, one fundamental obligation of any motor carrier is to bear responsibility for the safety of the motoring public against motor vehicle accidents. As to motor vehicle accident risk and protecting the motoring public, there are no tradeoffs for motor carriers between employee drivers and owner-operators. Whether utilizing an owner-operator or an employee, the motor carrier retains the same liability obligation to the public. By law, those costs are not borne by the owner-operator but by the motor carrier for the acts of all drivers, including owner operators, utilizing the motor carrier's operating authority. *See* 49 C.F.R. § 390.5.

However, as to day-to-day operations and fixed and variable expenses, there are tradeoffs. Opponents of owner-operators claim motor carriers utilize owner-operators to save money on taxes and benefits. Owner-operators do not cost motor carriers more or less than employee drivers; the costs are different. When utilizing an owner-operator, the motor carrier gains relief from fixed expenses such as equipment costs, some employment-related taxes, and driver benefits by paying the owner-operator only when they move a load and paying them as the independent business owners that they are. However, the motor carrier incurs a much higher variable rate with owner-operators because the motor carrier must compensate the owner-operator a percentage rate or a mileage rate two to three times higher than the motor carrier would pay its employee driver.

By adding owner-operators, motor carriers can, however, offer more capacity, more flexibility to meet shipper needs, and accept more freight. The number and type of loads from shippers can be unpredictable for motor carriers. A shipper may offer five dry goods loads per week regularly, but during certain seasons they may offer loads that require temperature control and more attention. Motor carriers can invest in equipment and employee drivers based on the more predictable dry goods loads from shippers. But motor carriers can offer more capacity, more services to shippers by contracting with owner-operators when shippers demand the extra capacity, attention, and service type. Owner-operators can demand premium rates by providing the extra, flexible capacity and additional service to motor carriers and shippers.

Motor carriers choosing to increase or reduce capacity for shippers often trade the maximum efficiency of dispatching employee drivers for the reduced overhead and additional capacity of utilizing owner-operators. Some motor carriers like this trade off, others do not, and most make the trade only as a supplement to their employee driver fleet. The mix of approaches by motor carriers means professional drivers have options.

As of December 2020, there were between 500,000 and 600,000 motor carriers in the U.S. across all vehicle classes, providing approximately 4.7 million vehicles on the road.<sup>2</sup> Between 350,000

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<sup>2</sup> See *Industry Facts*, Owner-Operator Indep. Drivers Ass'n, *supra* at n.1.

and 400,000 of those vehicles belong to owner-operators or single-truck motor carriers.<sup>3</sup> Of the top 100 motor carriers, only five utilize owner-operators exclusively, while the rest utilize employee drivers exclusively or some combination. It is fair to assume the rest of the industry likely shares a similar breakdown, some utilizing owner-operators solely, and most utilizing either a blend or employees exclusively.<sup>4</sup>

The mix of employee drivers and owner-operators suggests there is no market domination for one model but, instead, many options for employee drivers, owner-operators and motor carriers. Any owner-operator who wants to be an employee driver has many opportunities available and vice versa. Motor carriers rely on the control of employee drivers to maximize efficiency, but motor carriers also want the extra capacity in any form to offer more services and capacity to shippers which owner-operators provide.

### **C. The owner-operator business model benefits the shipper.**

Motor carriers with the added services and capacity offered by owner-operators benefit

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<sup>3</sup> *Id.*

<sup>4</sup> See *2020 Essential Financial and Operating Information for the 100 Largest For-Hire Carriers in North America*, Transport Topics <https://www.ttnews.com/top100/for-hire/2020> (last visited Sept. 1, 2021).

shippers. The extremely competitive and diverse transportation industry means shippers often must utilize multiple transportation service providers to move their freight efficiently, safely and on-time. The owner-operator business model fills part of that need by allowing motor carriers to serve shippers with supplemental capacity and service needs. This reduces the number of providers a shipper must engage to move its freight, easing administrative burdens, lowering transactional costs, and improving service.

For example, a shipper may have inconsistent freight volumes, or inconsistent freight origins and destinations. Motor carriers and shippers both struggle to efficiently manage such inconsistency. The shipper may reliably have five loads per week between A and B, but sporadically may ramp up to seven or eight loads per week. The shipper and the motor carrier can manage the five loads, but the sporadic extra loads are difficult to service. Owner-operators solve this problem by offering the periodic flexibility to transport the extra loads, respond to spikes in volume, and service new, erratic, or sparse markets.

If the shipper could not utilize the extra capacity from the motor carrier and their owner-operator, the shipper would need to spend time and resources finding another motor carrier. However, a new motor carrier may not offer the same rates and service levels. That new motor carrier may also lack knowledge on how to meet the shipper's administrative needs. And the shipper will endure the administrative burden to set up a new vendor in

its system. All these tedious tasks add time, cost, and inefficiency to the shipper's business.

By working together, the owner-operator and the motor carrier can pursue their own business initiatives and serve the variable freight needs of shipping customers. The owner-operator gets access to larger shippers that it may not otherwise be able to serve without the motor carrier's resources. The owner-operator also receives premium rates for offering flexible capacity and service. The motor carrier receives more business from the shipper. The shipper gains access to flexible capacity and service without adding administrative and transactional costs. In the owner-operator model, the owner-operator receives the freight benefits, the freedom, and the premium earning potential, all while being protected by unique laws and support networks built to serve owner-operators.

#### **IV. Existing regulations, case law, and service providers protect and support the owner-operator.**

Existing state and federal laws protect owner-operators from motor carrier and shipper bad acts. For example, Minn. Stat. § 363A.17 prohibits businesses from discriminating against any vendor or customer on the basis of race, sex, national origin, color, sexual orientation, or disability. Federal truth-in-leasing laws protect owner-operators from motor carriers taking unauthorized deductions from owner-operator compensation. *See* 49 C.F.R. § 376.12. Federal motor carrier safety regulations protect the motoring public by imposing federal

safety requirements on motor carriers and their drivers and owner-operators alike. *See* 49 C.F.R. § 390.5. Existing independent contractor definitions such as the economic realities test, the right to control test, and others, offer standards that protect drivers from misclassification and ensure owner-operators can retain the freedom they are entitled to under law. But California's ABC test provides no such protection for trucking owner-operators; it simply defines them out of existence.

Owner-operators are an industry protected by decades of case law. Owner-operators who have been legally harmed by motor carriers and shippers violating federal truth-in-leasing and other laws have exercised their claim rights for years. *See, e.g., Owner-Operator Indep. Drivers Ass'n v. Supervalu, Inc.*, 651 F.3d 857 (8th Cir. 2011); *Owner-Operator Indep. Drivers Ass'n v. Swift Transport. Co.*, 632 F.3d 1111 (9th Cir. 2011); *Owner-Operator Indep. Drivers Ass'n v. New Prime, Inc.*, 339 F.3d 1001 (8th Cir. 2003). These legal actions demonstrate the owner-operator industry is organized, well-funded, and fully capable of protecting its best interests.

Many businesses and organizations provide support such as tax and bookkeeping services, marketing services, insurance and benefits products, fuel optimization technology, route optimization technology, legal services, and more to owner-operators. These support businesses and organizations, coupled with the expansive laws, the unique laws, and the strong demand in the marketplace for employee drivers and owner-operators combine to protect owner-operators and

provide them leverage against any bad actors. Eliminating the owner-operator model not only eliminates the owner-operators themselves, but also hurts the businesses and organizations built to support owner-operators on top of the pain shippers and motor carriers would suffer from no owner-operators being available.

**V. The California ABC test cuts service available to shippers and protections available to the public.**

Enforcement of California's ABC test gives existing owner-operators and motor carriers operating in or through California only three options: (1) transition to a wholly employee driver model; (2) force owner-operators to obtain their own motor carrier operating authority and motor carriers to obtain a property broker license to broker loads; or (3) leave the industry.<sup>5</sup> None of these options

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<sup>5</sup> The California Court of Appeals in *People v. Superior Court of Los Angeles County*, 57 Cal. App. 5th 619, 271 Cal. Rptr. 3d, 570, 579-82 (2020), *petition for cert. filed sub nom. Cal Cartage Transp. Express, LLC v. California* (U.S. Apr. 16, 2021) (No. 20-1453), contended California's ABC test provides a fourth option – the continuance of the existing owner-operator model, because of California's business-to-business exemption to the ABC test. *See* Pet. App. 18a. However, the business-to-business exemption does not permit the owner-operator model to continue in California for all practical purposes. For example, the business-to-business exemption requires that the owner-operator be able to contract with other businesses and maintain a clientele without restrictions from the motor carrier (Cal. Labor § 2776(a)(7)). This requirement conflicts with Federal Truth-In-Leasing regulations (49 C.F.R. § 376.12), which require motor carriers to maintain “exclusive possession, control, and use of

benefit owner-operators, motor carriers or shippers. These options restrict freedoms, reduce protections, and decrease efficiency inside and outside California's borders.

An owner-operator and a motor carrier choosing option one – an employee driver relationship – must decide whether the owner-operator, even one living in Minnesota, will be an employee only when driving in California, only if the owner-operator moves to California, only if the owner-operator is dispatched out of a terminal in California, or some other criteria. The Minnesota motor carrier with owner-operators living and operating throughout the United States on irregular routes must determine whether to convert all owner-operators to employees because of the potential for moving loads in California from time to time based on unclear thresholds or abandon service to California altogether. The owner-operator loses the freedom to choose their own fuel and maintenance stops, to set

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the [owner-operator's] [truck] for the duration of the [contract].” 49 C.F.R. § 376.12(c). By federal law the owner-operator cannot contract with multiple motor carriers at one time to haul non-exempt freight (virtually all freight except limited agricultural commodities is non-exempt freight), effectively barring a motor carrier with complying with the business-to-business exemption and the Federal Truth-In-Leasing regulations at the same time. Further, the business-to-business exemption requires the owner-operator to provide services directly to the motor carrier and not to the motor carrier's customer (Cal. Labor § 2776(a)(2)). When an owner-operator delivers freight from a consignor to a consignee, is the owner-operator providing the service to the motor carrier that contracted them, or is the owner-operator providing the service to the consignor? Or to the consignee? The legislature provided no guidance.



their own work schedule, to pick the truck they want, and more. The shipper and the motor carrier lose the ability to flex capacity up and down to match shippers' needs. The owner-operator loses the opportunity to generate more revenue and test their own entrepreneurial skills.

Alternatively, the Minnesota motor carrier may set up separate business operations and relationships for California, adding inefficiencies and significant administrative burdens, and choose to interline (*i.e.* involve additional motor carriers) all freight into and out of California by transferring possession of trailers and loads off at the California border between owner-operators and employee drivers. *See Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 527-28 (1959) (describing interline operation of motor carriers). Doing so needlessly increases the motor carrier's costs to serve shippers in California and reduces the loads and revenue available to owner-operators outside of California. It may help the motor carrier and the owner-operator comply with California's ABC test, but it would decrease utilization, increase truck and driver idle time waiting for handoffs, complicate the movement of freight throughout the United States, and slow the delivery of goods. Courts have recognized the burden conflicting state laws can have on the trucking industry and have ruled federal law must preempt a state law when it imposes too much of a burden on interstate commerce. For example, this Court ruled an Illinois law specifying a certain mudguard design on trucks to be an unconstitutional burden on interstate commerce because it would have required motor carriers to

switch out equipment at the Illinois border. *Bibb*, 359 U.S. at 529-30.

An owner-operator choosing option two, obtaining their own motor carrier operating authority, forces the motor carrier to change its relationship with the owner-operator. The motor carrier must obtain property broker authority in order to tender loads from shippers to the owner-operator, now also a motor carrier. Doing so blurs the first motor carrier's role as a motor carrier or a broker. The first motor carrier will need to clarify its role and decide whether to become a broker full-time, across all shipments or to act as a broker to its shippers only for California shipments and a motor carrier for all other shipments. Of course, this only creates more opacity to the shipper.

Every time it chooses to be a broker, the motor carrier simplifies its role, including reducing its duties to the motoring public. Specifically, an interstate motor carrier must possess a minimum of \$750,000.00 of financial responsibility, typically liability insurance, to protect the public. 49 C.F.R. §§ 387.7, 387.9. A broker has no similar requirement to protect the public. The motor carrier's decision to be a broker, whether full-time or part-time, will affect operations, billing rates, insurance, liability, safety, licensing, and virtually every other aspect of the motor carrier's business and its relationships with shippers and drivers. A Minnesota motor carrier choosing a broker business model for just California or for California and beyond would lead to an internal patchwork of inconsistent processes,

procedures, and classifications, and less financial responsibility to protect the motoring public.

An owner-operator reincarnating into a one-truck motor carrier would likely lack the financial wherewithal to invest in more robust safety technology such as rear-end collision avoidance or lane-keep equipment. They would likely lack internal resources to aid with regulatory compliance. They would likely lack the financial wherewithal to obtain insurance limits higher than the federal minimum of \$750,000, an insufficient amount to keep up with today's multi-million-dollar verdicts in motor vehicle accident litigation. Further, the original motor carrier (now just a broker) would avoid the motor carrier public financial responsibility cost altogether leaving only the owner-operator's minimum insurance policy as compensation to an injured person. As a result, eliminating the owner-operator model could, unintentionally, increase risks and financial exposure for the motoring public.

Option three is equally undesirable. An owner-operator leaving the industry is a lost entrepreneurial opportunity. It is a lost opportunity for additional capacity motor carriers want. And it is a lost opportunity for service flexibility shippers need.

California's ABC test adversely affects the interstate cargo transportation industry to the core. Interstate commerce requires uniform rules to operate efficiently. Federal law must preempt any state law that intrudes upon, and fundamentally

alters a long-standing, proven, and mutually beneficial business model in the interstate trucking industry.

Today, an owner-operator, a motor carrier, and a shipper based in Minnesota, with shipments and facilities around the country are stuck with not knowing whether the owner-operator business model can continue to stand the test of time. The First Circuit in *Schwann v. FedEx Ground Package Sys., Inc.*, 813 F.3d 429 (1st Cir. 2016) found the same ABC test pre-empted by The Federal Aviation Administration Authorization Act (“FAAAA”), 49 U.S.C. § 14501(c)(1), but the Ninth Circuit in the case below rejected any pre-emption of the ABC test by FAAAA. As a Minnesota motor carrier trying to serve customers throughout the United States with entrepreneurially minded drivers, and trying to comply with all applicable laws, the motor carrier cannot engage with owner-operators with any certainty of its relationships. Minnesota owner-operators lose business opportunities because of the courts’ inconsistent respect for the owner-operator model.

## CONCLUSION

The owner-operator model has a long, proud history, serving a vital trucking industry niche. It coexists today within a heavily regulated segment of the trucking industry. But the model can never satisfy California’s ABC test. California eliminated owner-operators despite the FAAAA’s preemption of state laws that relate to price, routes, or services of interstate motor carriers. The Court has the

opportunity to settle the owner-operator model's future by granting the petition. Amicus respectfully requests the Court take the opportunity and grant the petition.

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