

No. 24-1238

In The
Supreme Court of the United States

SHAWN MONTGOMERY,
Petitioner,

v.

CARIBE TRANSPORT II, LLC, ET AL.,
Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

**BRIEF OF THE TRUCK SAFETY COALITION,
PARENTS AGAINST TIRED TRUCKERS, AND
CITIZENS FOR RELIABLE AND SAFE
HIGHWAYS AS AMICI CURIAE IN SUPPORT
OF PETITIONER**

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INTEREST OF AMICI CURIAE¹

Amici are organizations dedicated to understanding and preventing the truck crashes that kill and injure far too many people each year, and to helping the victims and their families deal with the pain and trauma inflicted by these tragedies.

The Truck Safety Coalition (TSC) is a national network of victim and survivor volunteers dedicated to providing compassionate, immediate support to truck crash victims and their families. Members of TSC have been fighting for improved motor vehicle safety on our nation's highways for more than 35 years. The TSC provides information and resources to people affected by truck crashes in their time of greatest need. Besides offering support and peer-to-peer community from those who have experienced the trauma of truck crashes firsthand, the TSC advocates for effective laws and regulations to improve motor vehicle safety for all, including truck drivers and their loved ones.

Parents Against Tired Truckers (P.A.T.T.) was formed in 1994 by bereaved victims after a truck driver fell asleep at the wheel of his 80,000-pound rig, killing four innocent teenagers and seriously injuring a fifth. It has evolved into a national nonprofit that focuses primarily on addressing truck driver fatigue, with the founder of P.A.T.T. awarded the White House's "Champion of Change Award" for

¹ No counsel for any party authored this brief in whole or in part, and no person or entity other than amici curiae, their members, or their counsel made a monetary contribution intended to fund the brief's preparation or submission.

instrumental work in bringing attention to the urgent need for change in truck safety policy. P.A.T.T. advocates for changes that ensure that motor vehicle safety is a top priority for all involved in the trucking industry, including hours-of-service rules, pay policies that ensure drivers are paid for all hours worked, and the establishment of sufficient, safe rest areas.

Citizens for Reliable and Safe Highways (CRASH) is a nationwide, non-profit organization that was formed in 1990 to help mitigate the devastating problem of truck crashes. CRASH is dedicated to improving truck safety in the United States. Its members include truck drivers, other motorists, crash survivors, families of truck crash victims, emergency care workers, academic researchers, law enforcement, and crash reconstruction specialists. CRASH works at all levels of government to advocate for motor vehicle safety legislation and regulation related to trucking, regarding truck size and weight, truck driver fatigue, and truck driver training, among many other issues.

Propelled in many cases by personal grief and loss, amici and their members have a deep and abiding interest in improving truck safety. They have no stake here but their desire to reduce the risk that other families will suffer the tragedies that they have suffered. For many, this objective has become a central purpose of their lives—a way to create meaning from senseless tragedy. From decades of study and experience, amici and their members understand that freight brokers can make trucking safer—or more dangerous—and thereby change motor vehicle safety for everyone. Amici write to

illuminate brokers' lynchpin role and to explain the devastating consequences for all motorists' safety if States were prohibited from any motor vehicle safety regulation regarding brokers.

INTRODUCTION AND SUMMARY OF ARGUMENT

Life can change in an instant. For the Hahn and Boehne families, it happened on Christmas Eve three years ago. A truck driver high on cocaine, methamphetamines, and amphetamines crossed the median on I-75 in Franklin Township, Ohio, crashing into two cars. Traveling in the first car was a married couple, Karen (Hahn) Boehne and Jeremy Boehne; Karen was pregnant. In the next car was Karen's mother, Kimberly Siegrist, and Karen's sister, Lauren Hahn. Everyone in those two cars died.

That truck driver should never have been on the road. Per the allegations, he was there because a broker hired that carrier to transport a load that night—despite knowing the carrier was an unsafe reincarnation of the same single-truck carrier that had already twice been shut down for safety violations. The consequences of that broker's decision decimated the Hahn and Boehne families on Christmas Eve.²

Such tragedies are far too common, killing or injuring more than 160,000 people a year. Due to truck size and weight, truck crashes are more likely

² See *Boehne v. C.H. Robinson*, No. 3:23-cv-00158, Compl., Dkt. No. 1 (S.D. Ohio filed June 12, 2023).

to be fatal. And the number of fatal truck crashes is ticking up.

How can this be? To start, some motor carriers—the “underbelly” of the industry—flout safety rules and cut corners because it is cheaper to avoid paying for things like driver training or vehicle maintenance. These companies stay in business despite (or perhaps because of) their disregard for motor vehicle safety because they can charge less than the motor carriers that follow the safety rules. These fly-by-night carriers have no assets and nothing to lose. If their reckless driving and unsafe trucks cause an accident, they simply close up shop and start again under a new name by paying \$300 for a new Department of Transportation registration. But their crash victims’ lives are changed instantly and forever.

The Federal Motor Carrier Safety Administration (FMCSA) registers new motor carriers and thereby authorizes them to haul freight—called “operating authority.” But such registration does not mean that these carriers have been rated as safe. The FMCSA almost certainly hasn’t rated them at all. More than 94% of the carriers on the road today have never received a safety rating.³ There are hundreds of thousands of carriers operating today, with 6,000 to 9,000-plus new registrations each month.⁴

³ FMCSA, *2024 Pocket Guide to Large Truck and Bus Statistics* 27 (2025), <https://tinyurl.com/mryjukkk> (Pocket Guide).

⁴ *The Freight Industry by the FMCSA Data: 2024 in Review*, Carrier Details, <https://tinyurl.com/5d9vpezw>.

The FMCSA can't keep up. But it can—and does—collect and make available a trove of data, mostly gathered by state safety and law enforcement personnel. The data is accessible to those that care, and it is highly predictive of safety risk.

Enter the brokers. Most shippers don't have the resources to vet carriers, so they rely on brokers to make decisions about which carriers to bring into broker-vetted networks and to hire for specific freight loads and routes. And most carriers depend on brokers, too—because they need brokers to find them freight to haul. Without a broker assigning them a load, carriers likely won't be on the road. So brokers effectively operate as gatekeepers, determining which carriers carry loads on which highways and which carriers are sidelined and off the roads.

That decision—which carrier to hire—is integral to whether motor vehicles are operated safely or not. Some carriers operate safely; others don't. And brokers have easy access to data that can help identify the least safe carriers.

Study after study has shown that safety records are probative of future crash risk. Some indicators signal double or triple the future crash risk. This safety data is readily available. Data services offer it packaged in user-friendly tools and formats. The brokers that use this extensive carrier safety data to reasonably assess whether a carrier can safely operate a truck put safer trucks on the roads. Those that ignore the safety risks revealed in the data put dangerous trucks on the road and place lives at risk. It is thus entirely sensible for States to oblige brokers to exercise reasonable care when making carrier-hiring decisions by holding them financially

responsible for the devastating consequences if they don't. And it is fully consistent with congressional design for States to exercise this safety regulatory authority.

The federal government has adopted some "regulations on commercial motor vehicle safety" governing brokers. 49 U.S.C. § 31136(a)(5). But federal safety regulation in this area is minimal, and enforcement is all but non-existent. This is unsurprising, as Congress left safety regulation to the States, legislating against a decades-long backdrop of tort principles requiring brokers to exercise reasonable care when choosing carriers to engage in inherently risky endeavors. When brokers insist, nonetheless, that Congress preempted this longstanding tort law, they aren't seeking to substitute federal broker safety standards for state ones. Instead, they want to operate in a safety-regulation-free zone.

But Congress never carved out such a zone. Quite the opposite. Congress expressly ensured that States could exercise their "safety regulatory authority ... with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). That safety exception comfortably covers state common law duties requiring brokers to exercise reasonable care when hiring a carrier. To hold otherwise would kick off a race to the bottom on safety, with States powerless to keep their roads safe for travelers like the Hahn and Boehne families. That is not the statute Congress wrote.

ARGUMENT

I. Broker Decisions about Carrier Hiring Are Integral to Safe Trucking.

A. Brokers play a large and expanding role in the trucking industry.

Brokers are an integral and growing part of the modern trucking industry—as Respondents’ amici agree. Br. for Nat’l Ass’n of Mfrs. as Amici Curiae in Support of Resps. 7-8.

Brokers “arrang[e] for transportation by motor carrier[s] for compensation.” 49 U.S.C. § 13102(2). In simple terms, a shipper with freight to move contracts with a broker, who in turn selects a carrier to move the freight. Craig Fuller, *Freight Recession Unlike any Other in History*, FreightWaves (Oct. 15, 2023), <https://tinyurl.com/4makwkr6>. Viewed from the carriers’ perspective, the broker is the party that finds them loads to move. *Id.* Brokers make their money from the “spread” between what a shipper pays to move a load and how much the broker pays a carrier to take it. See Thomas M. Corsi, *Broker/Third Party Logistics Provider and Shipper Responsibility in Motor Carrier Selection*, in *Transportation Policy & Economic Regulation* 311, 321 (John D. Bitzan & James H. Peoples eds., 2018).

Freight brokerage has grown exponentially over the years. In 1975, just 70 brokers operated in the United States. Jeffrey S. Kinsler, *Motor Freight Brokers: A Tale of Federal Regulatory Pandemonium*, 14 Nw. J. Int’l L. & Bus. 289, 298 (1993). Today, there are more than 28,000 brokers. Pocket Guide, *supra*, at 10. The share of freight traffic handled by brokers

has more than quadrupled since 2000, rising to nearly a third of all traffic by 2024. Dave Bozeman, President & Chief Exec. Officer, C.H. Robinson Worldwide, Inc., *2024 Investor Day Presentation* 12 (Dec. 12, 2024), <https://tinyurl.com/bd5yhfax>; Fuller, *supra*.

Even that exponential growth in percentage-of-freight understates the importance of brokers' roles. About 80% of shippers use brokers. Tom Gresham, *2025 Inbound Logistics Perspectives: 3PL Market Research Report*, Inbound Logistics (July 2025), <https://tinyurl.com/ywjr7thu9>. Smaller shippers, especially, depend upon brokers to identify "reliable carriers." Fuller, *supra*. Why? As Respondent and broker C.H. Robinson explains, "[s]electing motor carriers" involves "due diligence" that "is often outside of a shipper's core competency," making brokers—at least in theory, and especially if held to account—"useful in helping shippers with proper risk assessment." C.H. Robinson, *Key Factors in Motor Carrier Selection: Balanced Risk Assessment* 6 (2013) (CHR White Paper).

It's no wonder that most shippers need a broker to undertake the necessary due diligence. The number of carriers has also ballooned from about 18,000 in 1980 to more than 531,000 in 2023. Fuller, *supra*. The pandemic supercharged market entry for a time, too. From 2010 to 2020, the industry added about 199 new trucking carriers per week. *Id.* From August 2020 to September 2022, the new entrant rate spiked to over 1,124 new carriers per week—a more-than-five-fold increase. *Id.*

Market entry—obtaining "operating authority"—is not hard. It involves paying a few hundred dollars, promising to comply with the rules,

and obtaining insurance. *See* 49 U.S.C. § 13902(a); *Get Operating Authority (Docket Number)*, FMCSA (Oct. 16, 2025), <https://tinyurl.com/nhhvf359>.

Unsurprisingly, given these numbers, nearly all carriers in the modern era are small outfits. Close to 97% of carriers have fewer than 10 trucks. Fuller, *supra*. For these smaller carriers, brokers act as their “sales agents” and “take on the sales and customer service roles that small carriers cannot afford.” *Id.* To avail themselves of these services, carriers join “carrier networks” curated by brokers. *See* Erick Mumm, *How Do Freight Brokers Grow and Maintain a Reliable Carrier Network?*, ATS, <https://tinyurl.com/mv2scfkh>. Driving an empty truck is a losing proposition. Carriers—especially the small ones that form an increasing percentage of the vehicles on the road—depend on brokers to “provide a continual stream of freight” that allows them to stay in business—and on the roadways. Fuller, *supra*.

In short, brokers are increasingly the gatekeepers in determining who hauls freight on the roadways and who doesn’t. Motor vehicle safety for everyone depends on whether brokers exercise care in making those decisions.

B. Broker hiring decisions are at the heart of motor vehicle safety.

1. The safety of motor vehicles—and their occupants—hinges on the safety of trucking. Large trucks were involved in more than 500,000 crashes in 2022. U.S. Dep’t of Transp., *Large Truck and Bus Crash Facts 2022* 7, 13, 18 (2025), <https://tinyurl.com/5y2ea6hs> (Truck Crash Facts). Those numbers are up in recent years. *Id.* at 3 (reporting 25% and 11% increases from 2016 to 2022

in fatal and injury-only crashes, respectively). Not just because there are more large trucks on the road, but because more serious accidents are on the rise: fatal crash rates per million miles traveled are up. *Id.* at 7.

If a large truck is involved, it's all the more likely the crash will be fatal. *Id.* at 11 (comparing fatal crashes per miles traveled for large trucks and passenger cars). This is due in part to trucks' large size and heavy weight; more than 65% of fatal truck crashes involved trucks in the highest weight class. Pocket Guide, *supra*, at 40. Nearly 166,000 people, on average in their 40s, were injured or died in crashes involving large trucks in 2022. Truck Crash Facts, *supra*, at 88, 90.

The consequences of these crashes are devastating for the accident victims—including the truck drivers—and their families. Family members face overwhelming grief for their lost loved ones. For those who are injured but survive (like Petitioner here, Pet. Br. 12), recovery from physical injuries may take years—or not be entirely possible. Disabling injuries are common. One study found victims suffered incapacitating injuries in 36-45% of fatal or injury-only truck crashes. Xiaoyu Zhu & Sivaramakrishnan Srinivasan, *A Comprehensive Analysis of Factors Influencing the Injury Severity of Large-Truck Crashes*, 43 *Accident Analysis & Prevention* 49, 52 (2011). On top of that struggle is the “psychological and emotional trauma that comes with being affected by a truck crash,” both for those involved and their families. *Coping*, Truck Safety Coalition, <https://tinyurl.com/5n93sftx>.

The financial cost, too, is immense. Medical bills, lost wages, and other costs add up to more than \$14.5 million per fatal truck crash, and more than \$380,000 per injury-only truck crash. FMCSA, *Federal Motor Carrier Safety Administration Crash Cost Methodology Report 5* (2024), <https://tinyurl.com/5yzu9vne>. Truck crashes irrevocably change lives.

2.a. Not all carriers are equally likely to have accidents. Some carriers are more dangerous than others. And which carriers are more dangerous can often be assessed with readily available data.

Among the most probative indicators is a past crash. A study by the American Transportation Research Institute determined that a driver's past crash more than doubled the risk of a future crash. Am. Transp. Res. Inst., *Predicting Truck Crash Involvement: 2022 Update* 15 (2022), <https://tinyurl.com/4pwtec6z> (ATRI Study). A past crash and improper lane change violation have been among the top ten crash-predictive characteristics across four different studies spanning nearly two decades. *Id.* at 16. Past reckless driving, improper signal, and right-of-way violations round out the top five most stable driver-behavior predictors of crash risk. *Id.* at 17.

Another study documented a significant link between roadside inspection violations and the likelihood of future crashes. Craig D. Lack et al., *Insights into Motor Carrier Crashes: A Preliminary Investigation of FMCSA Inspection Violations*, 156 Accident Analysis & Prevention, Article 106105, at 1, 4 (2021). The violations with the most predictive power were those indicative of a "safety culture" (or lack thereof), in that they involved "simple checks and

standard maintenance *before* driving.” *Id.* at 5. Many of these items, while “certainly important for a safe drive,” may not independently be that risky, but nonetheless show a disregard for safety, and a corresponding risk of unsafe operations. *Id.* For example, “inoperative required lamps” and defective windshield wipers were highly correlated with crashes. *Id.* The key commonality among the most predictive violations is that they “might very easily be identified in a visual inspection,” and thus indicate whether a carrier takes safety seriously. *Id.*

b. The Federal Motor Carrier Safety Administration collects and publishes extensive safety data about carriers, but generally lacks the resources to itself evaluate most carriers’ safety.

FMCSA does issue safety ratings to some carriers, rating them as “unsatisfactory,” “conditional,” or “satisfactory” following a “compliance review.” 49 C.F.R. §§ 385.3, 385.9. But the vast majority of carriers—more than 94%—have not had a compliance review and therefore remain unrated by FMCSA. Pocket Guide, *supra*, at 27; Safety Fitness Determinations, 88 Fed. Reg. 59489, 59492 (Aug. 29, 2023).⁵ Where available, however, the FCMSA ratings are informative. A “conditional” rating, for example, held by over a quarter of rated carriers, Pocket Guide, *supra*, at 27, “means a motor

⁵ An “unsatisfactory” rating, issued to about 2% of rated carriers, Pocket Guide, *supra*, at 27, results in the loss of operating authority if the rating becomes final after the carrier fails to make safety improvements during a 45- or 60-day period. 49 C.F.R. §§ 385.11(d), 385.13(e).

carrier does not have adequate safety management controls in place.” 49 C.F.R. § 385.3.⁶

The agency also collects an extensive array of safety data through the Carrier Safety Measurement System, even though such data is not used to generate safety ratings. 88 Fed. Reg. at 59492. FMCSA uses this data “to identify carriers with potential safety issues” and target them for interventions like cautionary letters or targeted inspections. John A. Volpe, FMCSA, *The Carrier Safety Measurement System (CSMS) Effectiveness Test by Behavior Analysis and Safety Improvement Categories (BASICS)* 4 & n.1 (2014), <https://tinyurl.com/58eejpvh>. The data also “empower[s] motor carriers and other stakeholders involved with the motor carrier industry to make safety-based business decisions.” U.S. Dep’t of Transp., *Privacy Impact Assessment 2* (2014), <https://tinyurl.com/ss9h5xu3>.⁷

The agency collects this data in seven Behavior Analysis and Safety Improvement Categories (BASICS), which are: unsafe driving, hours-of-service compliance, driver fitness, controlled substances and alcohol, vehicle maintenance, hazardous material

⁶ New entrants can begin operating immediately, with no safety evaluation. They are supposed to receive a safety audit within the first 12 months, but it is not a compliance review and does not result in a rating. See *New Entrant Safety Assurance Program*, FMCSA, <https://tinyurl.com/37u87rm9> (New Entrant Program).

⁷ For example, driver-level Safety Measurement System data informs the Pre-Employment Screening Program. Carriers that use the program have 8% lower crash rates and 17% lower out-of-service rates than other carriers. *Pre-Employment Screening Program*, FMCSA, <https://tinyurl.com/2u684272>.

compliance, and crash involvement. Volpe, *supra*, at 4.⁸ FCMSA’s source material for the BASIC categories includes “relevant inspection, violation, and crash data” from the Motor Carrier Management Information System. *Id.* at 16. Much of this source data, in turn, is generated from state-level inspections and reports (e.g., state law enforcement crash reports), as States conduct the lion’s share of roadside inspections. *See Roadside Inspection Activity*, FMCSA (Oct. 31, 2025) <https://tinyurl.com/3rh3yd4z> Each data point is categorized and weighted by time and severity. Volpe, *supra*, at 16. For example, in the unsafe driving category, a reckless driving violation has a weight of 10 and failure to yield has a weight of 5. ATRI Study, *supra*, at 25. The time weighting puts more emphasis on recent events. Volpe, *supra*, at 16.

The weighted violations are then added together and used to generate a percentile score, reflecting how each carrier compares to other similar carriers in a particular category like unsafe driving or vehicle maintenance. *Id.* The agency sets “intervention thresholds” for each category, *i.e.*, percentile scores at which the agency prioritizes carriers for interventions like warning letters. *Id.* at 4 & n.1.

This methodology works well to predict crash risk. The 40% of carriers with the worst scores for

⁸ In 2024, FMCSA reorganized the categories (now called “compliance categories”) and announced some methodological changes, but the core approach outlined here still applies. *See* Enhanced Carrier Safety Measurement System (SMS), 89 Fed. Reg. 91874 (Nov. 20, 2024); FMCSA, *Prioritization: Approved Changes to the SMS Methodology* (Dec. 2024), <https://tinyurl.com/46ze2feu>.

unsafe driving had nearly double the national average crash rate. *Id.* at 8 (crash rates); Revised Carrier Safety Measurement System, 88 Fed. Reg. 9954, 9959 (Feb. 15, 2023) (intervention thresholds). The data on hours-of-service violations and past crashes are also tightly tied to increased crash risk, with poor performance increasing crash rates by more than 80%. Volpe, *supra*, at 8. Poor performance on vehicle maintenance measures raised crash rates by 65%. *Id.* Multiple studies have confirmed the predictive value of these metrics. See John A. Volpe, FMCSA, *Addendum: SMS Effectiveness (ET) Update 7* (2018); ATRI Study, *supra*, at 25 (evaluating driver-related violations and concluding that “[m]ost of the violations that fit into a BASIC violation are statistically significant in increasing crash likelihood”). These are just some of the studies documenting strong links between past safety violations and a heightened risk of future crashes. See Lack, *supra*, at 2-3 (discussing other studies).

Another indicator a carrier is potentially unsafe is “chameleon carrier” status, *i.e.*, a carrier that is “using a new identity in an effort to disguise their former identity and evade enforcement actions issued against them by” the FMCSA, such as out-of-service orders. U.S. Gov’t Accountability Off., GAO 12-364, *Motor Carrier Safety: New Applicant Reviews Should Expand to Identify Freight Carriers Evading Detection* 1 (2012) (GAO Report); New Entrant Program, *supra*. Carriers with chameleon attributes are three times more likely to be involved in fatal or injury-only crashes than other new entrants. GAO Report, *supra*, at 17. Chameleon carriers are legally prohibited. 49 C.F.R. § 385.1005. Yet, per FMCSA, “it does not have the resources to vet all new carriers.”

GAO Report, *supra*, at 11. Still, while it is difficult for FMCSA to prevent them due to lack of enforcement resources, potential chameleon carriers can be flagged based on a few match criteria (like name, phone number, and address). A GAO analysis of publicly available FMCSA data identified more than 1,100 potential chameleon carrier applicants in 2010 based on match criteria and a “motive” to hide their identities like past safety violations. *Id.* at 13-14.

3. This extensive array of safety data is available to brokers when they make decisions about whether to bring a carrier into their network or to hire them to move freight. FMCSA maintains several websites that provide easy access to safety-related information. See *Online Safety Data Resources*, FMCSA, (Nov. 4, 2024), <https://tinyurl.com/4f43p7ex>. The websites and databases provide, among other things, motor carriers’ safety ratings (if issued), roadside inspection results, operating authority and insurance history, and their out-of-service rates compared to national averages—*i.e.*, the rates of inspection violations resulting in either a driver or a truck being required to go out-of-service. See, *e.g.*, *Vehicle Inspection File*, U.S. Dep’t of Transp. (Dec. 2, 2025), <https://tinyurl.com/4ecb3hk2>; *SAFER – Company Snapshot*, U.S. Dep’t of Transp. (May 23, 2024), <https://tinyurl.com/52m46vxx>.

Under federal law, the BASIC percentile scores are not publicly available. Fixing America’s Surface Transportation (FAST) Act, Pub. L. No. 114-94, § 5223(a), 129 Stat. 1312, 1541 (2015). But carriers can access their own scores and share them during the on-boarding process for a broker’s carrier network. *SMS Help Center: Using the SMS Website*,

FMCSA, <https://tinyurl.com/y9jjf3x8>. More fundamentally, federal law requires most safety data underlying the BASIC scores to be publicly accessible. FAST Act § 5223(c), 129 Stat. at 1541; *see also* *FMCSA Data Dissemination Program*, FMCSA (Oct. 8, 2025), <https://tinyurl.com/42467azs>.⁹

Brokers need not crunch the data themselves. Third-party data aggregators offer services that compile and present safety data to brokers, including by calculating scores comparable to the BASIC percentiles. *See, e.g., Everything Carriers & Brokers Need to Know About CSA Scores*, truckstop.com (Aug. 27, 2025), <https://tinyurl.com/434ftr3r> (describing SaferWatch’s service for calculating and monitoring BASIC-equivalent scores); *Carrier411 Overview: Qualify Carriers & Automatically Monitor Changes*, Carrier411, <https://tinyurl.com/4r636few>. Similar services help brokers identify chameleon carriers. *See How to Avoid “Chameleon” Carriers and Other Scammers*, DAT Freight & Analytics (Aug. 13, 2012), <https://tinyurl.com/ma99e4zz>. Bottom line: the data exists, as do services that help analyze it, facilitating its use by brokers making decisions about which carriers to hire to carry freight on the roads.

Brokers know about this data, although they may not always act on it. Cases illustrate both brokers’ awareness of carrier safety deficiencies and

⁹ Congress mandated the publication of a disclaimer that safety conclusions should not be drawn solely from the BASIC system. FAST Act § 5223(d)(2), 129 Stat. at 1542. Any dataset or methodology may have some errors. But the agency encourages use of the data for safety-related decisions, *see supra* p.13 & n.7, and studies confirm that at minimum, the data can raise safety flags for further inquiry.

their failure to act on such knowledge. For example, in *Miller v. C.H. Robinson Worldwide*, 976 F.3d 1016 (9th Cir. 2020), the broker hired a carrier that had “red flags” in its safety record—including that “over 40% of their trucks have been deemed illegal to be on the road when stopped for random inspections” and double the national-average rate of out-of-service violations. *Id.* at 1021. Worse still, the broker’s own database contained information that indicated the carrier was a chameleon carrier. *Miller v. Costco Wholesale Corp.*, No. 3:17-cv-00408, 2022 U.S. Dist. LEXIS 30504, at *6-9 (D. Nev. Feb. 22, 2022). Yet the broker hired the carrier anyway, with tragic consequences. *Miller*, 976 F.3d at 1020. Besides cases, recent news reports have highlighted brokers’ knowing use of non-domiciled drivers who often lack valid commercial drivers’ licenses, despite the safety risks. See Adam Wingfield, *Are Some Brokers Willingly Using Known Non-Domiciled Drivers to Save Margins?*, FreightWaves (Oct. 27, 2025), <https://tinyurl.com/3vphjasp>.

Given the extent and probative force of these safety records and indicators, one way that States can govern motor vehicle safety is to hold brokers accountable for considering whether the carriers they are hiring can safely operate motor vehicles before putting those carriers on the road. This form of regulation is effective because when brokers hire safer carriers, it directly reduces the likelihood of devastating truck crashes.

II. Longstanding State Common Law Duties Are the Only Meaningful Mechanism Governing Brokers' Key Role in Motor Vehicle Safety.

A. Congress did not disturb the pre-existing common law regime under which States regulate motor vehicle safety by imposing duties of care on brokers.

1. Freight brokers are subject to some federal safety-related rules, but they are minimal. For example, Congress required the Secretary of Transportation to “prescribe regulations on commercial motor vehicle safety” that ensure that brokers cannot “coerce” “an operator of a commercial motor vehicle ... to operate a commercial motor vehicle in violation” of federal safety regulations. 49 U.S.C. § 31136(a)(5). Even that limited broker rule is rarely enforced, however: FMCSA reports just thirteen closed enforcement cases involving brokers in the past seven years (out of a universe of nearly 30,000 brokers). *Summary of Closed Enforcement Cases*, FMCSA (Oct. 31, 2025), <https://tinyurl.com/3m7h65kn>; Pocket Guide, *supra*, at 10.

Congress’s exceedingly light exercise of federal safety regulatory authority over brokers is consistent with its overall statutory design to leave States free to exercise their pre-existing and longstanding authority to regulate motor vehicle safety. 49 U.S.C. § 14501(c)(2). As Petitioner explains, when “Congress completed the deregulation” of the trucking industry “by expressly preempting state trucking regulation,” *Dan’s City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 256 (2013), its target was state *economic* regulation of

trucking. Pet. Br. 23-25. It expressly saved from preemption “the safety regulatory authority of a State with respect to motor vehicles.” 49 U.S.C. § 14501(c)(2)(A).

2. The background state safety regulation against which Congress enacted this provision had long included common law negligent hiring claims. For decades before the safety exception’s enactment, such claims had imposed liability on those who failed to exercise reasonable care when hiring independent contractors for work that involves a risk of physical harm, including when hiring carriers to transport freight.

The Restatement of Torts (First) in 1934 illustrated the tort of “negligent hiring” with a freight example remarkably like a modern broker’s role. The example was based on a builder (Company A) hiring Company B to haul material, knowing “that B’s trucks are old and in bad condition and that B habitually employs inexperienced and inattentive drivers.” Restatement (First) of Torts § 411 cmt.d, illus.4 (1934). The illustration explained that if bystander “C is run over by a truck ... driven by one of B’s employees,” then A (who hired the carrier) “is liable to C if the accident is due either to the bad condition of the truck or the inexperience or inattention of the driver.” *Id.*

Thirty years later, the Second Restatement reiterated the same tort principles again using a freight-hauling illustration, whereby Company A hired Company B to “haul large logs over the public highway.” Restatement (Second) of Torts § 411 cmt.a, illus.2 (1965). The Restatement explained that if, during transport, a log fell “onto C’s passing car,

injuring C,” Company A (who did the hiring) would be liable to injured C if “[w]ith reasonable inquiry,” Company A “could have discovered that B Company’s only equipment ... [was] unsuitable for safely hauling such logs.” *Id.* Consistent with these deep roots, the “overwhelming majority of states” recognize the tort. *Soto v. Shealey*, 331 F. Supp. 3d 879, 886 (D. Minn. 2018). Most follow the same basic criteria from Restatement § 411. *See, e.g., Basic Energy Servs., L.P. v. Petroleum Res. Mgmt.*, 343 P.3d 783, 790 (Wyo. 2015) (collecting cases). Nothing in the Federal Aviation Administration Authorization Act of 1994 purports to displace these bedrock tort duties that regulate motor vehicle safety and its express safety exception preserves them.

As applied to brokers, the gravamen of the tort is the failure to exercise reasonable care when hiring a carrier—though of course plaintiffs must prove additional elements, including that the broker’s hiring failure proximately caused their injuries. *See, e.g., Jones v. C.H. Robinson Worldwide, Inc.*, 558 F. Supp. 2d 630, 641-42 (W.D. Va. 2008).

The duty of reasonable care requires just that—reasonableness. Rather than reflecting prescriptive state regulation, the tort of negligent hiring allows brokers flexibility in approaches to carrier selection, so long as they act reasonably when doing so. The tort reflects the central pillar of tort law that the “safest way to secure care is to throw the risk upon the person who decides what precautions shall be taken.” Oliver Wendell Holmes, Jr., *The Common Law* 117 (1881). Brokers decide which precautions will be taken when hiring carriers. Those precautions (or the lack thereof)—such as taking account of crash-predictive

public safety data or choosing to ignore it—alter the likelihood of unsafe vehicle conditions and operation on the roadways, and therefore the risk of life-altering truck crashes. Requiring brokers to pay for the harm resulting from crashes proximately caused by their negligent carrier hiring is one way States regulate—*i.e.*, “govern[] conduct and control[] policy,” *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012)—regarding “safety ... with respect to motor vehicles,” 49 U.S.C. § 14501(c)(2)(A).

3. Nor do brokers act in a standardless vacuum. Numerous industry guides already exist to help brokers in determining what is reasonable. The Transportation Intermediaries Association (TIA), which represents the brokerage industry, explains on its website that two of the four “cornerstones for carrier vetting” are to “develop standards for carrier safety” and “implement a carrier review program.” Andrew Johnson, *Unlocking Success: The Key Elements of Carrier Vetting and Managing Liability*, TIA (Aug. 1, 2024), <https://tinyurl.com/mr272rep>. The Association publishes a Carrier Selection Framework to assist its members with carrying out those tasks. *See* TIA, *Carrier Selection Framework* (2023), <https://tinyurl.com/rwtwwfx3>. Although the Framework eschews reliance on BASIC scores, it advises brokers to investigate potential chameleon carriers and probe for more details about safety for carriers with a “conditional” rating or new entrants. *Id.* at 36-39.¹⁰

¹⁰ The questions of whether BASIC scores are predictive of safety and whether it is reasonable to consult them are questions for state courts and juries resolving negligent hiring suits. What

The Framework is not the only guidance. To give just a few examples, Respondent (C.H. Robinson) publishes a White Paper explaining how to conduct “due diligence” on carriers, including evaluation of safety data beyond the formal safety ratings in some situations. CHR White Paper, *supra*, at 5. Additional guidelines come from industry service providers that provide real-time monitoring of carriers’ safety compliance. See *Carrier Vetting: 7 Ways Brokers Can Verify Quality Carriers*, truckstop.com (Aug. 12, 2021), <https://tinyurl.com/56zpj9sw>. Reasonable carrier vetting is not a novel and unknowable undertaking. Brokers advertise that such vetting is part of their process. See *North America Truckload Services that Strengthen Your Supply Chain*, C.H. Robinson, <https://tinyurl.com/2vkbhpr> (advertising “the largest network of vetted, high-quality carriers in North America”).

In sum, longstanding and near universal state law requires brokers to exercise reasonable care when making decisions that are directly relevant to “safety ... with respect to motor vehicles.” 49 U.S.C. § 14501(c)(2). For example, should a single-truck carrier with a history of past crashes, failure to complete required inspections, and repeat violations forcing them out-of-service for faulty brakes and tires be assigned a cross-country load? The freight broker is the first line of defense in preventing that from happening. But if a broker does hire that carrier, the result is thousands of miles driven by an unsafe truck that might otherwise be sitting on the sidelines.

is crucial here is the link between broker vetting and vehicle safety, such that requiring brokers to reasonably vet carrier safety records is a means to regulate motor vehicle safety.

Brokers are well-informed and well-positioned to keep the roads safe, by making choices that can prevent unsafe vehicles from carrying freight. State regulation obliging brokers to use reasonable care when hiring carriers is state motor vehicle safety regulation.

B. The alternative to state regulation would be no regulation, which would degrade motor vehicle safety.

Respondents' cramped interpretation of the safety exception would wipe nearly a century of well-developed, important motor vehicle safety law off the books. And replace it with—almost nothing. No state safety regulation and no obligation to exercise reasonable care. Creating that sort of regulation-free-zone would be highly unusual, to say the least.

Congress sometimes sets federal minimum safety standards while permitting States to impose more stringent ones (or additional remedies). *See, e.g., Wyeth v. Levine*, 555 U.S. 555, 578-579 (2009). That is the approach Congress took here, requiring regulations to set “minimum safety standards,” including rules related to brokers. 49 U.S.C. § 31136(a)(5); *see also* Pet. Br. 8-10. And sometimes Congress sets (or authorizes agencies to set) federal safety standards that completely displace state tort remedies. *See, e.g., Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 875 (2000). But under Respondents' approach, the statute here would do something else entirely: it would dictate that brokers, despite their integral role in motor vehicle safety, are exempt from any state law duty of care, *without* Congress having established a full set of federal safety standards.

The motor vehicle safety exception cannot sensibly be read to generate such a topsy-turvy result. *See* Pet. Br. 18-23. The consequences for motor vehicle safety would be dire. Not only could brokers hire carriers with no safety vetting at all (never mind a reasonable inquiry), they could also select carriers with actual knowledge of major safety pitfalls—profiting from the carrier’s near-certain lower rates—and share no responsibility when that carrier kills or maims someone.

If that scenario seems far-fetched, consider economic incentives that would yield a race to the safety bottom if States are barred from imposing any duty of care on brokers. The absence of any duty of care will encourage brokers to select carriers only on price. *See* Nat’l Freight Advisory Comm., *Recommendations to U.S. Dep’t of Transp. for the Dev. of the Nat’l Freight Strategic Plan* 39 (2014) (minority report) (“The degree to which a company can be required to pay for the losses it causes has a direct relationship to the extent to which it is willing to spend funds to prevent crashes.”) (NFAC Report). Less safe carriers tend to charge less, because they are evading safety costs that compliant carriers incur. *See, e.g.,* CHR White Paper, *supra*, at 5 (“only choos[ing] motor carriers with a Satisfactory rating” means “costs could rise”); *See* Noi Mahoney, *ELD Loopholes Fueling Fraud, Driving Good Carriers Out of Business, Experts Warn*, FreightWaves (Nov. 12, 2025), <https://tinyurl.com/2er2y68z> (describing 50-cent difference in costs per mile between electronic-logging-compliant carriers and non-compliant ones). That means a broker’s increased spread from hiring a less safe, cheaper carrier is profit derived directly from avoiding safety costs that should have been

incurred. And who ultimately pays? Families like the Hahns and the Boehnes, with suffering that could and should have been avoided.

While one would like to imagine otherwise, if immunized from any responsibility for the safety of the vehicles they hire to drive on the roadways, some brokers will inevitably trade safety for lower rates (increasing their profit margin). That reality is evidenced by the facts here and in similar cases. *See* Pet. Br. 11-12. The economic pressures, in turn, would force ever more carriers to reduce some of their safety measures to better compete at lower prices. *See* Br. for Am. Truckers United as Amicus Curiae in Support of Pet'r 9-11; Wonmango Lacina Soro et al., *The Relationships between Financial Performance and Driver Compensation and Safety Outcomes in the Trucking Industry: A Systematic Review*, 45 Transp. Revs. 239, 240 (2025) (describing competitive pressures on carriers to “reduce safety investments”). The upshot is a destructive race to the bottom on safety.

C. Excluding brokers from the safety exception risks eviscerating state safety regulatory authority for motor carriers, too.

Worse yet, releasing brokers from exercising any duty of care will increasingly vitiate state authority to hold *carriers* to any duty of care for the negligence of their drivers. For starters, some of Respondents' arguments would undercut state negligence suits against carriers and drivers. *See* Pet. Br. 42-43. Beyond that, immunizing brokers will have knock-on effects that tend to minimize carrier responsibility for safety, too. Here's why:

Larger carriers have taken notice of the brokerage industry, and are increasingly setting up their own brokerage divisions. Joe McDevitt, *News and Analysis for Transportation Industry Shippers*, TLI (July 30, 2024), <https://tinyurl.com/mpthr9tj>. One reason is to reduce costs by bringing brokers' margins in-house. *Why Does a Motor Carrier Open a Freight Brokerage?*, Freight360 (Dec. 8, 2023), <https://tinyurl.com/533x6kcv>. But there is another advantage: Operating as both a carrier and broker provides opportunities to structure freight shipping transactions so that an entity appears as the broker rather than the carrier. *See, e.g., Dixon v. Stone Truck Line, Inc.*, No. 2:19-CV-000945, 2021 U.S. Dist. LEXIS 226414, at *52-53 (D.N.M. Nov. 23, 2021) (finding contractual ambiguity regarding whether entity was operating as broker or carrier for a particular shipment). Even now, the difference between carriers and brokers matters a great deal when there is a truck crash.

Carriers are usually vicariously liable for their drivers' negligence. *See, e.g., Morris v. JTM Materials, Inc.*, 78 S.W.3d 28, 39 (Tex. App. 2002) (collecting cases). That result followed decades of struggle with creative carrier-driver arrangements. For example, rather than hire drivers as employees, carriers would permit truck owner-operators "to drive under the carrier's operating authority" and then rely "on standard independent contractor defenses to avoid liability." Michael Jay Leizerman & Rena Leizerman, *Litigating Truck Accident Cases* § 3:1.3 (2025).¹¹

¹¹ Owner-operators are small businesses that own at least one truck but typically lack their own motor carrier operating authority. *Id.*

Congress made several changes to address this issue. *Id.* One of the fixes was to authorize regulations making carriers “statutory employers” of their drivers, regardless of the form of the carrier-driver arrangement. *See id.* § 3.2; 49 U.S.C. § 14102(a); 49 C.F.R. § 390.5 (defining employer and employee). The imposition of this liability encouraged larger carriers, with assets potentially subject to tort judgments, to invest in safety. It encourages safety investment “not only because [the larger carriers] can afford to do so, but also because they cannot afford not to.” NFAC Report, *supra*, at 40.

Brokers, on the other hand, are not “statutory employers” under federal law. Thus, they are not generally vicariously liable for a truck driver’s negligence. Instead, as described above, brokers (at least now) are liable only for their own negligent acts—a harder standard to meet.

If, however, Respondents prevail, then brokers could not be held liable even for their own negligence. This immunity would only magnify the incentives to structure contractual arrangements so that larger carriers appear as brokers, with some other (presumably judgment-proof) entity as the nominal carrier. Such creative arrangements to further avoid liability would reinstate similar “difficulties of enforcing safety requirements and of fixing financial responsibility for damage and injuries to shippers and members of the public,” *Transamerican Freight Lines, Inc. v. Brada Miller Freight Sys., Inc.*, 423 U.S. 28, 37 (1975), that Congress has long strived to avoid for carriers. And it would vitiate “the safety regulatory authority of a State with respect to motor vehicles”

that Congress expressly excepted from preemption. 49 U.S.C. § 14501(c)(2)(A).

Allowing brokers to operate in a safety-regulation-free zone would create compounding risks for motor vehicle safety and render States powerless to do anything about it. The statute manifests no such intent to kneecap state regulation of motor vehicle safety in this way.

* * * * *

The many stories of lives irrevocably changed by truck accidents are heartbreaking: Jim Fuelling was a “gentle giant” of a man with a “big heart” on his way to work with a co-worker in a pickup truck when he stopped for road construction on I-85 on the way to Charlotte, North Carolina. He was killed by a truck that slammed into him at 55 miles per hour without braking. *Our Stories: Jim “Big Jim” Fuelling*, Truck Safety Coalition, <https://tinyurl.com/5cxumpdp>. The carrier involved was known to shirk safety—with two prior crashes in seven months and 31 safety violations in just a year and a half. Had the broker exercised reasonable care in hiring carriers, the carrier would not have been on the road, carrying that load, causing that crash, and leaving Angela Sims-Fuelling widowed.¹² State regulation requiring brokers to exercise reasonable care when hiring motor carriers is safety regulation “with respect to motor vehicles.”

¹² See *Fuelling v. Pratt Indus., Inc.*, No. 7:22-cv-00905, Am. Compl. ¶ 26, Dkt. No. 27 (D.S.C.); *Fuelling v. S&J Logistics LLC*, No. 7:22-cv-00905, 2024 U.S. Dist. LEXIS 207892 (D.S.C. Nov. 15, 2024) (holding negligent hiring claim against broker was preempted).

It makes the trucks on the road safer. It saves lives.
Congress did not preempt it.

CONCLUSION

The judgment should be reversed.

Respectfully submitted,

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