No. 24-1238

In the Supreme Court of the United States

SHAWN MONTGOMERY,

Petitioner,

v.

CARIBE TRANSPORT II, LLC, YOSNIEL VARELA-MOJENA, C.H. ROBINSON WORLDWIDE, INC., C.H. ROBINSON COMPANY, C.H. ROBINSON COMPANY, INC., C.H. ROBINSON INTERNATIONAL, INC., and CARIBE TRANSPORT, LLC,

Respondents.

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

BRIEF OF *AMICI CURIAE* STATES OF NEBRASKA AND GEORGIA IN SUPPORT OF RESPONDENTS

MICHAEL T. HILGERS
Attorney General of Nebraska
CODY S. BARNETT
Solicitor General of Nebraska
2115 State Capitol
Lincoln, NE 68509

FREDERICK R. YARGER
Counsel of Record
KEVIN D. HOMIAK
WHEELER TRIGG O'DONNELL LLP
370 17th St., Suite 4500
Denver, CO 80202
(303) 244-1990
yarger@wtotrial.com

Counsel for Amicus Curiae State of Nebraska
(*Additional Counsel Listed at End of Brief*)

January 21, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Other Authorities

STATEMENT OF INTEREST

For good reason, the Constitution empowers Congress, not individual States, to regulate interstate commerce. While federalism is indeed a core concern of Amici, and while Amici agree that the "tension" between "federal and state power" is an essential feature of our constitutional system, Amicus Br. of Ohio, et al. at 1 (quoting *Gregory* v. *Ashcroft*, 501 U.S. 452, 459 (1991)), the States' economies—and, consequently, the well-being of their residents—depend on the unimpeded flow of goods across state lines. A patchwork of laws that regulate matters critical to interstate commerce but "vary from state to state," including tort doctrines that attempt to dictate the nature and character of services performed by freight brokers, may be the preference of a subset of States. Amicus Br. of Ohio, et al. at 4. But this kaleidoscope-style regulatory regime would ultimately be self-defeating to state interests, and it is far removed from the kind of "energetic fission," *id*. at 3, that arises when States pursue policy choices without fragmenting the national economy.

Contrary to the assertions of Petitioner and his amici, preemption under the Federal Aviation Administration Authorization Act of 1994 ("FAAAA") *promotes* state interests; it does not harm them. The FAAAA establishes uniform national law governing the flow of interstate truck shipments. By insulating critical facets of the cross-state transportation industry from multifarious, conflicting state and local legal requirements—while preserving traditional state regulation of motor vehicles and road safety—the FAAAA ensures that a subset of States cannot

foist onerous requirements through their "[r]obust tort systems," Amicus Br. of Ohio, et al. at 4, on a nationwide industry whose efficient functioning is necessary to the well-being of the entire country.

Multifarious state regulation of freight broker services through tort liability imposes significant barriers to interstate trade, disrupting an industry critical to States' economies. Nebraska, for example, is home to many world-class logistics companies. Those companies employ thousands of the State's residents. One in twelve Nebraskans works in the trucking industry, making it the State's third-largest employment sector.[1] Moreover, truckers carry more than 80 percent of all freight in Nebraska, and "about half of the state's communities get everything they need only from a truck."[2] Without reliable, efficient interstate trucking, those communities quite literally cannot function.

Amici submit this brief to demonstrate that the States are not monolithic in desiring to regulate interstate freight brokers using the threat of tort liability and to explain why the careful balance struck by the FAAAA's preemption provisions is of crucial importance to themselves, their economies, and their communities. Through the FAAAA, Congress drew a line between permissible and impermissible subjects of State regulation: States retain authority to regulate commercial trucks and road safety, as they have long

---

[1] Neb. Trucking Ass'n, *Homepage* (Jan. 29, 2024), https://perma.cc/LL-42-W9EZ.

[2] *Ibid.*; see also Neb. Trucking Ass'n, *Nebraska Trucking Fast Facts* (Jan. 2025), *available at* https://nebtrucking.com/wp-content/uploads/2025/11/ATRIFastFacts_2025_NE-web.pdf.

done through traditional state police powers, but they cannot regulate the services provided by other participants in interstate transportation—including freight brokers, whose roles are at least a step (or more) removed from the actual operation of motor vehicles on state roadways.

SUMMARY OF ARGUMENT

I. The FAAAA preempts state-law tort claims that attempt to dictate the nature and manner of the "services" interstate freight brokers perform as part of the national transportation logistics industry. 49 U.S.C. 14501(c)(1) (prohibiting States from "enact[ing] or enforc[ing] a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any … broker … with respect to the transportation of property"). Congress enacted the FAAAA with the aim of ensuring national uniformity; essential to that goal are the FAAAA's preemption provisions, which prohibit a patchwork of state-level regulations whose "sheer diversity," H.R. Conf. Rep. No. 103-677, at 87, would severely burden the interstate transportation of goods to the detriment of the States, their residents, and the national economy.

Freight brokers play a distinct role in interstate trucking: They act under their own federal registrations to "arrange" transportation by connecting shippers with federally licensed motor carriers. 49 U.S.C. 13102(2). But they do not themselves transport goods or own, operate, or maintain commercial motor vehicles—that is the role of motor carriers—and federal law does not contemplate freight brokers bearing "damages liability" for trucking accidents. *Prop. Broker Sec. for the Prot. of the Pub.*, 4 I.C.C.2d 358, 366 (Mar. 14, 1988). For that reason, federal safety regulations and liability insurance requirements apply to motor carriers and the vehicles they operate and maintain but not to the "matchmaking" services performed by freight brokers. See, *e.g.*, 49 U.S.C. 13906. The

negligent-selection tort theory that Petitioner is pursuing here disregards the legal distinctions between brokers and motor carriers, attempting to impose liability on freight brokers for conduct—the allegedly negligent operation of commercial motor vehicles—that Congress assigned exclusively to motor carriers.

Tort claims attempting to impose liability on freight brokers for the logistical services they perform are precisely the kind of state-level regulation Congress sought to preempt under the FAAAA. These claims can vary "dramatic[ally]" across jurisdictions and are "not uniform across all [States]." Amicus Br. of Ohio, et al. at 5, 13. They expose brokers to massive, unpredictable liability—"nuclear" verdicts exceeding $10 million are a particular problem in trucking accident cases. Operating in the shadow of this threatened liability would effectively force brokers to conform their nationwide operations to the most onerous standards imposed by a subset of States, or even a single outlier. This regulation-by-lawsuit regime allows a lone State, or even an individual state-court judge or jury, to dictate how freight brokers operate across the country, defeating Congress's goal of a "standard way of doing business" in interstate transportation. H.R. Conf. Rep. No. 103-677, at 87.

The FAAAA's safety exception, which leaves in place "the safety regulatory authority of a State with respect to motor vehicles," 49 U.S.C. 14501(c)(2)(A), does not save negligent-selection tort claims from preemption. That exception preserves traditional state police power to enact and enforce true "rules of the road" that govern actual operation of motor

vehicles when they travel on roadways. Amicus Br. of Ohio, et al. at 4. But when freight brokers provide upstream logistics services (typically nationwide), they never touch a vehicle or a roadway. Extending the safety exception to negligent-selection torts against freight brokers would erase any meaningful limit on the exception. Such an expansive reading would "swallow … whole" the FAAAA's express preemption of state laws related to a price, route, or service of a freight broker. *Mays* v. *Uber Freight, LLC*, No. 5:23-CV-00073, 2024 WL 332917, at *4 (W.D.N.C. Jan. 29, 2024).

Preempting negligent-selection claims against freight brokers does not impair highway safety. Federal law already comprehensively regulates motor carriers, drivers, and vehicles, and States both participate in enforcing those regulations and retain authority to enforce and supplement them through their traditional road-safety laws. What States may not do is impose disparate tort duties on freight brokers and thereby interfere with the uniform federal regulation of interstate transportation logistics.

II. Negligent-selection claims against freight brokers would impose substantial economic costs on the interstate transportation system—and, by extension, on State economies—by subjecting freight brokers to open-ended, unpredictable liability under a constantly shifting mosaic of state-law tort doctrines dictated by state legislatures, judges, and juries. Faced with the prospect of ruinous verdicts and as many as 50 different standards of care, brokers would be forced either to conform their nationwide operations to the most onerous state-imposed rules or

to withdraw from certain markets altogether. Compliance would require brokers, for each shipment, to anticipate how judges and juries in all 50 States might retrospectively assess their carrier-selection decisions—a near-impossible task that would sharply increase transaction costs, complicate shipments, and deter hiring of smaller or newer motor carriers. Those burdens would inevitably be passed on to shippers, consumers, and communities that depend on efficient interstate trucking for the flow of essential goods.

Congress enacted the FAAAA to avoid these consequences, intending to replace a fragmented state regulatory framework with a uniform federal policy of "maximum reliance on competitive market forces" to drive "rates, routes, and services" in the interstate trucking sector. Cf. *Rowe* v. *N.H. Motor Transp. Ass'n*, 552 U.S. 364, 370–71 (2008). Permitting regulation-by-lawsuit of interstate freight-brokering services would undo Congressional policy and erode the economic benefits that national uniformity was designed to secure for the benefits of States, their residents, and the entire national economy.

ARGUMENT

I. The FAAAA preempts state-law negligence claims that attempt to regulate the services of freight brokers.

This lawsuit seeks to impose state-law negligence standards on the services of a freight broker that arranged for the interstate transportation of goods by a motor carrier from Ohio to Arkansas and Texas. J.A. 16. The tort theory on which Petitioner relies—which, to the extent States recognize it, varies significantly across jurisdictions—is incompatible with the FAAAA's mandate of national uniformity in the transportation industry and lies well beyond the States' traditional police power to regulate the safety of motor vehicles operating on their roadways. If a single State's tort doctrine can reach beyond its borders to dictate how an interstate freight broker provides its services, Congress's vision of a consistent "standard way of doing business" in the transportation industry collapses.

A. In enacting the FAAAA, Congress sought to facilitate a "standard way of doing business" in the interstate transportation industry and avoid "[t]he sheer diversity of [state] regulatory schemes."

Interstate transportation of goods is, in a very real sense, the foundation of the United States economy and thus the foundation of the economies of the individual States. Ground shipment via interstate trucking is especially important, contributing more to the national gross domestic product than any other

transportation sector.[3] The vast majority of freight in the United States—over 70% by weight and over 80% by cost—is transported by truck. Am. Trucking Ass'n, *Economics and Industry Data*;[4] Am. Trucking Ass'n, *Truck Freight Tonnage and Revenues Rise in 2022* (July 19, 2023).[5]

Nebraska's experience illustrates the vital importance of trucking. "Nebraska's economic vitality and quality of life depend in great part on how well the State's freight transportation network moves goods regionally, nationally, and internationally."[6] It is "situated in the heart of the United States, making it an ideal hub for transportation and logistics" and allowing for "efficient distribution to any part of the country within a couple of days."[7] The transportation and logistics industry itself is a critical component of Nebraska's economy. Many world-class logistics

---

[3] United States Dep't of Transp., Bur. of Transp. Stat., *Freight Transportation & the Economy* (explaining that "[t]rucking contributed the largest amount of all the freight modes" to national gross domestic product), *available at* https://data.bts.gov/stories/s/Freight-Transportation-the-Economy/6ix2-c8dn/.

[4] *Available at* https://www.trucking.org/economics-and-industry-data.

[5] *Available at* https://www.trucking.org/news-insights/truck-freight-tonnage-and-revenues-rise-2022-according-report.

[6] Neb. Dep't of Transp., *2023 Neb. State Freight Plan Executive Summary* at 1 (May 2023), *available at* https://dot.nebraska.gov/media/0ohd0caf/ne-sfp-executive-summary.pdf.

[7] Neb. Pub. Power Dist. Econ. Dev. Dep't, *Transportation & Logistics*, *available at* https://sites.nppd.com/transportation-and-logistics/.

companies, which employ thousands of workers, call the State home. The trucking industry alone employs one in twelve Nebraskans, making it the State's third-largest industry.[8] Nearly half of Nebraska's communities rely solely on trucking for "everything they need."[9]

Given the importance of interstate trucking to communities across the country, Congress has concluded that uniform regulation of this key transportation sector is critical and requires a stable national policy. State-level regulation "causes significant inefficiencies," "increase[s] costs," "curtails the expansion of markets," and "inhibit[s] … innovation and technology." H.R. Conf. Rep. No. 103-677, at 87. Congress thus determined that "preemption legislation [was] in the public interest" and was "necessary to facilitate interstate commerce." *Ibid.*

The FAAAA implements this policy by streamlining and nationalizing the regulation of interstate commercial transportation. Its preemption provisions were predicated on Congress's conclusion that the inevitably conflicting regulations of 50 different States would create an "unreasonable burden" on interstate commerce, in turn saddling "American consumers" with "unreasonable cost." 49 U.S.C. 11501, note. FAAAA preemption ensures that interstate companies "attempting to conduct a standard way of doing business" are not thwarted by

---

[8] *Nebraska Trucking Ass'n*, https://perma.cc/LL-42-W9EZ.

[9] *Ibid.*

"[t]he sheer diversity of [State] regulatory schemes." H.R. Conf. Rep. No. 103-677, at 87.

B. The FAAAA prohibits a subset of States from using tort liability to dictate the manner in which freight brokers provide services.

As the FAAAA explicitly recognizes, 49 U.S.C. 13102(2) and (14), motor carriers—i.e., entities that own, operate, and maintain the commercial motor vehicles that are used to transport goods—are not the only players in interstate trucking, *Aspen Am. Ins. Co.* v. *Landstar Ranger, Inc.*, 65 F.4th 1261, 1264–65 (11th Cir. 2023) (noting that the "trucking industry consists of several players, including the shipper, the broker, and the motor carrier"). Freight brokers are key participants, and their services are crucial to transportation logistics. Without brokers, shipping goods from one part of the country to another becomes more expensive and less efficient.

Freight brokers are, simply put, matchmakers: they connect shippers (those who need goods transported) with motor carriers (those who actually transport the goods). 49 U.S.C. 13102(2) (defining "broker" as someone who is not itself a motor carrier but instead "arrang[es]" for "transportation by motor carrier").[10] While their services are sometimes confined to a single State, they play a particularly important role in *interstate* trucking; goods shipped

[10] See also *Prop. Broker Sec. for the Prot. of the Pub.*, 3 I.C.C.2d 916, 917 (I.C.C. July 10, 1987) (explaining that "brokers arrange … for the transportation of property by authorized motor carriers" and "receive money from a shipper, from which they must pay the motor carrier for providing the transportation").

with the assistance of brokers typically cross state lines. See Robert D. Moseley & C. Frederic Marcinak, *Federal Preemption in Motor Carrier Selection Cases Against Brokers and Shippers*, 39 Transp. L.J. 77, 90 (2012).

Freight brokers do not transport goods themselves, nor do they own, operate, or maintain commercial motor vehicles.[11] That is why federal law imposes minimum liability insurance requirements on motor carriers but not on brokers, see 49 U.S.C. 13906, and why it requires a broker to be separately licensed as a motor carrier to operate as one, 49 U.S.C. 13904(d). Indeed, registered brokers are required to rely on federally registered motor carriers that are subject to these minimum liability insurance requirements when performing their matchmaking role in interstate transportation. 49 C.F.R. 371.2 and 371.3. Because performing services as a registered freight broker "do[es] not require operation of vehicles nor the transporting or otherwise handling of cargo," "brokers are not exposed to bodily injury, property damages or cargo loss and damage liability"—unlike motor carriers themselves. *Prop. Broker Sec. for the Prot. of the Pub.*, 4 I.C.C.2d 358, 366 (Mar. 14, 1988).

The "negligent selection" tort claim that Petitioner is pursuing here ignores the distinctions in federal law between brokers and motor carriers and directly challenges national uniformity in the

---

[11] See, *e.g.*, Fed. Motor Carrier Safety Admin, *FAQ: What are the definitions of motor carrier, broker and freight forwarder authorities?*, *available at* https://www.fmcsa.dot.gov/faq/what-are-definitions-motor-carrier-broker-and-freight-forwarder-authorities.

regulation of freight brokers. Petitioner seeks to hold a freight broker financially responsible for the results of alleged negligence by a motor carrier and its driver in operating a commercial motor vehicle. J.A. 5–14 (alleging that the motor carrier and its driver failed to comply with federal safety regulations imposed on motor carriers).[12] He is attempting to transform the provisions of the contract between the broker and carrier into a common-law tort duty, based on the broker's selection of the motor carrier to transport a shipment of goods from Ohio to Arkansas and Texas. J.A. 16–18, 20–27. This lawsuit thus directly targets interstate freight broker services and attempts to dictate, in hindsight, how the broker should have carried them out. This form of "damage liability" against freight brokers was never contemplated by the federal regulatory framework. *Prop. Broker Sec. for the Prot. of the Pub.*, 4 I.C.C.2d at 366; 49 U.S.C. 13906.

Tort liability against freight brokers is the antithesis of national uniformity. Amicus Br. of Ohio, et al. at 5 (explaining that the tort of "negligent selection … is not uniform across all [States]"). State tort law "is a field of dramatic state experimentation" that "varies based on state values." *Id.* at 13. Indeed, "variations in state law are a feature of our dual-sovereign system." *Id.* at 12. That, however, is precisely the problem. Multifarious state regulation of freight broker services—including through tort

[12] No party contends that the FAAAA preempts personal-injury tort claims against motor carriers or their drivers, like the claims Petitioner himself pleaded in addition to the negligent-selection claim against Respondents. Resp. Br. at 25 n.6.

lawsuits—is exactly what Congress sought to prevent when it enacted the FAAAA. Given their "sheer diversity," H.R. Conf. Rep. No. 103-677, at 87, varying state-law tort doctrines pose a "huge problem" for "national and regional" transportation companies "attempting to conduct a standard way of doing business," *City of Columbus* v. *Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 440 (2002). They place an "unreasonable burden on interstate commerce" and, in turn, inflict "unreasonable cost" on "American consumers." 49 U.S.C. 15501, note.

Petitioner's preferred form of regulation-by-lawsuit allows a subset of States to effectively dictate the standards by which freight brokers operate nationwide. The trucking industry is a ripe target for lawsuits: "About one in four auto accident trials that resulted in a verdict of $10 million or more involved a trucking company." U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* at 6 (Sept. 2022) (explaining that "cases involving trucks, primarily tractor-trailers, are particularly susceptible to nuclear verdicts," meaning verdicts of $10 million or more).[13] The average size of verdicts against trucking firms is exploding, despite decreases in the rate of fatal crashes involving commercial trucks per mile traveled. U.S. Chamber of Commerce Institute for Legal Reform, *Roadblock: The Trucking Litigation*

[13] *Available at* https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf.

Problem and How to Fix It at 6–8 (July 2023).[14] Given the possibility of massive damages awards in truck-accident cases, litigants increasingly target a widening circle of participants in the trucking sector, including freight brokers and shippers. See *id.* at 9; Robert D. Moseley & C. Frederic Marcinak, *Federal Preemption in Motor Carrier Selection Cases Against Brokers and Shippers*, 39 Transp. L.J. 77, 77–78 (2012).

If forced to operate in the shadow of a multitude of differing tort doctrines dictated by state legislatures, judges, and juries that often yield "nuclear" verdicts, freight brokers will be compelled to provide services in conformity with only the most onerous ones. Assume Ohio, for example, imposed the most stringent standard of care on freight brokers in the country through an exercise of "dramatic state experimentation." Amicus Br. of Ohio, et al. at 13. A broker seeking to arrange shipment across state lines would be compelled to comply with that particularly stringent standard, risking ruinous liability if it did not. The consequence is obvious: A mere subset of the States—or, indeed, a single outlier—could effectively regulate freight broker services across the national trucking network. That is the opposite of what Congress sought to accomplish through the FAAAA.

---

[14] *Available at* https://instituteforlegalreform.com/wp-content/uploads/2023/07/Roadblock-The-Trucking-Litigation-Problem-and-How-to-Fix-It-FINAL-WEB.pdf

C. Preempting state-law torts against freight brokers does not impede state authority to regulate the safe use of motor vehicles on state and local roads.

The FAAAA's safety exception—the statutory provision at the core of Petitioner's arguments, Pet. Br. at 18—does not grant state governments carte blanche to regulate the interstate transportation logistics industry. And it certainly does not empower States to impose conflicting, multifarious tort duties on freight brokers, which by definition do not own, maintain, or operate motor vehicles that travel on state and local roads.

When it comes to preemption, the FAAAA strikes a careful balance. The relevant preemption clause overrides state laws "related to a price, route, or service of … any … broker." 49 U.S.C. 14501(c)(1). The safety exception to this clause, meanwhile, preserves only "the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. 14501(c)(2). This combination of provisions ensures uniform, nationwide regulation of transportation logistics services, while accommodating the "traditional state police power[s]" through which States regulate "safety on municipal streets and roads." *Ours Garage*, 536 U.S. at 439–40.

Congress defines the term "motor vehicle" as a "vehicle, machine, tractor, trailer, or semitrailer … used on a highway in transportation." 49 U.S.C. 13102(16). By carving out from FAAAA preemption state safety regulations "with respect to motor vehicles," 49 U.S.C. 14501(c)(2)(A), Congress necessarily confined the safety exception to state and

local laws concerning the safe use of motor vehicles driven "on a highway in transportation." Freight brokers, however, do not "use[ ]" vehicles "on a highway for transportation." They neither own, nor operate, nor maintain motor vehicles—indeed, brokers never touch a motor vehicle in performing their services. Instead, their role is confined to "arranging" transportation "by motor carrier." 49 U.S.C. 13102(2). The "motor carrier" is the party that actually "provid[es] motor vehicle transportation." 49 U.S.C. 13102(14). It is the motor carrier that owns and maintains the motor vehicle, it is the motor carrier that hires and selects a driver, and it is the motor carrier's driver that ultimately "uses" the vehicle on a highway for transportation. So it makes sense for regulations of motor carriers to fall within the safety exception.

The sphere of state regulatory authority that falls within the safety exception—although it does not include the ability to regulate services provided by freight brokers—is substantial, leaving ample room for state police powers concerning motor vehicles and road safety. Imposing tort liability on freight brokers is not a necessary part of these police powers, given the many other provisions of federal and state law that directly regulate motor vehicles and their use on highways.

For one, the FAAAA operates alongside significant *federal* safety regulations. The Department of Transportation and the Federal Motor Carrier Safety Administration ("FMCSA") are required to establish minimum safety standards for commercial motor vehicles. See 49 U.S.C. 113 and 31136; 49 C.F.R.

1.87. The allegations of the complaint in this case are replete with references to these standards. J.A. 5–14. Federal regulations, for example, impose standards for commercial drivers' licenses, 49 C.F.R. part 383; limits on drivers' hours of service, 49 C.F.R. part 395; and requirements covering the actual "driving of commercial motor vehicles," 49 C.F.R. part 392. These requirements include provisions on drug and alcohol use, texting while driving, and compliance with speed limits, *id*. 392.4, 392.5, 392.6, and 392.80. Commercial motor vehicles themselves are subject to extensive regulations addressing inspection, repair, and maintenance, 49 C.F.R. part 396, and they must be equipped with specified safety features, 49 C.F.R. part 393. Federally registered motor carriers that violate these regulations can have their registrations revoked. See 49 U.S.C. 31144; 49 C.F.R. 385.5, 385.7, and 385.13(e).

The States themselves "work in partnership" with the federal government, Pet. Br. at 43, and they coordinate with the FMCSA to enforce federal safety standards, see 49 U.S.C. 31102; 49 C.F.R. 350.201. Indeed, many States expressly incorporate federal safety regulations into their own laws. Ohio, for example, incorporates by reference FMCSA regulations governing drug and alcohol testing, minimum insurance coverage requirements, hours-of-service limitations, and driving safety standards. Ohio Admin. Code 4901:2-5-03. Tellingly, none of these federal standards, or the state regulations that incorporate them, pertains in any way to the services of freight brokers.

As Ohio's amicus brief highlights, state power to regulate motor vehicles and road safety extends significantly beyond minimum federal safety requirements, and state-level "[s]tatutes and regulations governing roadways often account for local considerations." Amicus Br. of Ohio, et al. at 12. Rules mandating "tire chains in winter" are common in Rocky Mountain states. *Ibid*. (citing Colo. Rev. Stat. § 42-4-106(E) and 8 C.C.R. 1507-1:MCS 7). Dense cities often subject commercial vehicles to "additional weight, size, and route restrictions." *Ibid*. (citing municipal laws of New York City). Again, none of these examples remotely attempts to regulate freight brokers, and not a single one of them would be preempted by the FAAAA.

That is because the defining feature of these various motor vehicle safety regulations is that they "focus[] on motor vehicles," *Colo. Motor Carriers Ass'n* v. *Town of Vail*, 153 F.4th 1052, 1061 (10th Cir. 2025), not on interstate logistics services. For example, a local ordinance titled "Vehicular Traffic" that generally prohibits "vehicular traffic" on pedestrian malls while creating exceptions for certain types of "vehicular traffic" is exactly the kind of state or local motor-vehicle regulation that "likely satisfies the requirements for the safety exception[]" to the FAAAA. *Id*. at 1058.

"Negligent selection" torts against freight brokers, in contrast, are not mere "rules of the road." Amicus Br. of Ohio, et al. at 4. They strike at the heart of FAAAA preemption because they are "directly relate[d] to the services" that freight brokers provide. *Schriner* v. *Gerard*, No. CIV-23-206-D, 2024 WL

3824800, at *5 (W.D. Okla. Aug. 14, 2024); *Aspen*, 65 F.4th at 1267–68. These claims attempt to "interfere at the point" in the transportation logistics process where brokers perform their services, "impos[ing] an obligation on brokers" when "they arrange for transportation." *Miller* v. *C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016, 1024 (9th Cir. 2020). They seek to influence the selection of a carrier, which falls within the core of the "service" a broker provides. 49 U.S.C. 13102(2). Indeed, the entire purpose of the negligent-selection tort is to "change how [freight brokers] conduct their services." *Ye* v. *GlobalTranz Enters.,* 74 F.4th 453, 459 (7th Cir. 2023). This form of liability also attempts to dictate brokers' selection of motor carriers licensed to transport goods in interstate commerce—a licensing scheme with which the States lack the power to interfere. See *Castle* v. *Hayes Freight Lines*, 348 U.S. 61, 63 (1954) (prohibiting States from barring roadway access to licensed interstate motor carriers).

Petitioner and his amici claim that negligent-selection torts "are a paradigmatic example of safety regulation" and imply that this tort is necessary to ensure the safety of state roadways. Pet. Br. at 25, 39. But not every State recognizes the tort, and the tort "is not uniform across [jurisdictions]." Amicus Br. of Ohio, et al. at 5. Nebraska, for example, does not recognize negligent-selection claims against freight brokers. *Sparks* v. *M&D Trucking, L.L.C.*, 921 N.W.2d 110, 130–31 (Neb. 2018) (affirming summary judgment for a freight broker in part because the functions that freight brokers perform as "third-party logistics compan[ies] with the responsibility of coordinating shipment of the freight relative to …

customer[s'] needs," do not include duties to "hire[], train[], or supervise[]" motor carriers or their drivers). Likewise, for several years, States in the Seventh and Eleventh Circuits have operated under the rule that these claims are preempted. *E.g.*, *Ye*, 74 F.4th at 459; *Aspen*, 65 F.4th at 1268, 1270–72. Neither Nebraska nor the States within these federal jurisdictions have suffered an erosion of highway safety; their motor-vehicle and highway safety laws remain in place.

A state-law tort claim that targets the services provided by freight brokers is not a "safety regulatory" law "with respect to motor vehicles." 49 U.S.C. 14501(c)(2)(A). Freight brokers do not own or operate commercial "motor vehicles" or hire drivers; thus, negligent-selection claims against brokers do not regulate the "vehicle [or] machine … used on a highway in transportation," the federal definition of a motor vehicle. 49 U.S.C. 13102(16). These claims target, and attempt to dictate, a broker's selection of a motor carrier to transport goods, which is a "service" that brokers provide. See *Ye*, 74 F.4th at 465. The connection between the matchmaking services provided by freight brokers and motor vehicle safety is far "too attenuated" to fall within the FAAAA safety exception. *Id.* at 462. See also *Aspen*, 65 F.4th at 1272.

If, as Petitioner contends, any state law that "concerns motor vehicles" is immune from preemption, Pet. Br. at 22 (cleaned up), the "safety exception" would swallow the FAAAA preemption clause itself. *Mays* v. *Uber Freight, LLC*, No. 5:23-CV-00073, 2024 WL 332917, at *4 (W.D.N.C. Jan. 29, 2024) (explaining that permitting tort claims against brokers under the FAAAA safety exception would "swallow the

preemption provision whole"). Every state law that affects the services of a freight broker in some sense "concerns" motor vehicles, because "motor vehicles are how motor carriers move property from one place to another," *Aspen*, 65 F.4th at 1271–72, and freight brokers play a key role in helping shippers move their goods. Indeed, it is hard to imagine what state-law tort claims—regardless of how far afield they are from motor vehicles or motor carriers—would *not* fall under Petitioners' vast interpretation of the safety exception. Everything from the provision of dispatch software to assistance with brokers' billing would be immune from FAAAA preemption and subject to state-level regulation.

Petitioner's reading of the safety exception thus fails to give the phrase "with respect to motor vehicles" any limitation that would allow the preemption clause to do real work or serve its purpose of deregulating the transportation industry. *E.g.*, *Ye*, 74 F.4th at 462 (explaining that a broad reading of the safety exception "offers no limiting principle"). "It is difficult to conclude that the same Congress that prescribed specific—often itemized—regulations for motor vehicle safety intended something broader than 'motor vehicle' in a safety exception that immediately follows an express preemption provision regulating 'motor carriers.'" *Ibid*. Moreover, the FAAAA expressly and specifically preserves state authority to "impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo," and it empowers States to impose regulations "with regard to minimum amounts of financial responsibility" of motor carriers. 49 U.S.C. 14501(c)(2)(A). Those specific carve-outs for state

regulations "would almost certainly be redundant" if they were never preempted in the first place. *Aspen*, 65 F.4th at 1272. Petitioner's construction of the FAAAA thus eviscerates the statute's express preemption of state laws relating to broker services and fails to harmonize the statute as a whole.

Petitioner's reading also inverts, and ultimately subverts, the FAAAA's preemption provisions, forcing them to do the opposite of what Congress clearly intended. In a separate provision, the FAAAA specifically preempts claims concerning "intrastate services of any … broker," and this preemption clause is not subject to any safety exception. 49 U.S.C. 14501(b)(1). Interpreting the FAAAA safety exception in section 14501(c)(2)(A) as extending to interstate regulations of brokers—thereby ejecting States from regulation within their borders while inviting them to extend their regulatory reach nationwide—would make no sense in the context of the statute as a whole. *Intrastate* regulation of freight brokers would be preempted, but not *interstate* regulation of the very same conduct by the very same entities. That bizarre arrangement directly undermines the very purpose of the FAAAA: to deregulate *interstate* transportation for the benefit of individual States, consumers that reside within them, and the national economy as a whole.

II. The FAAAA's policy of preempting state-law tort claims against freight brokers promotes the interests of the States and their residents by ensuring the free flow of commerce.

Allowing States to saddle freight brokers with massive, unpredictable tort liability would compel

them to attempt to conform their services to a diverse array of extensive, onerous requirements. *E.g.*, J.A. 22–23. This would obliterate the distinct roles of motor carriers and brokers, as defined by federal law, forcing brokers to assume the responsibilities Congress has imposed on motor carriers. The downstream effects will be stark, impeding the ability of fledgling motor carriers to attract work from brokers facing "negligent selection" liability (the risks to brokers of hiring carriers without a documented safety history would be too great) and imposing high barriers to market access in the trucking industry. States and their consumers would ultimately suffer through increased prices and decreased availability of transportation services, even though they often rely exclusively on trucking to supply their communities with goods necessary for both commerce and everyday life. See p. 10 & n.9, *supra* (explaining that nearly half of Nebraska's communities rely on trucking to supply the goods they require).

The "overarching goal" of the FAAAA is "maximum reliance on competitive market forces"—not multifarious state regulation—to drive "rates, routes, and services" in the ground-based transportation industry. *Rowe* v. *New Hampshire Motor Transp. Assoc.*, 552 U.S. 364, 370–71 (2008) (comparing FAAAA preemption with preemption under the Airline Deregulation Act). Congress enacted the FAAAA to prevent States from undermining federal deregulation by imposing conflicting, varying state-law requirements that would inevitably increase costs and reduce efficiency. See *ibid.* Petitioner repeatedly attempts to draw a line between "economic" deregulation, on the one hand, and "safety"

regulation, on the other. Pet. Br. at 5. The statute itself says nothing about "economic" regulation: its text does not draw the distinction Petitioner attempts to draw. And, in any event, the notion that a tort lawsuit against a freight broker (a key player in transportation logistics) is categorically distinct from "economic" regulation is self-evidently wrong. Such lawsuits no doubt have "significant economic effects," directly contradicting the deregulation at the heart of the FAAAA. *Ye*, 74 F.4th at 459.

Tort lawsuits aimed at changing the services provided by freight brokers, and the manner in which they perform them, are a particularly expensive and damaging form of state regulation. As an initial matter, and as the State of Ohio highlights in its amicus brief, tort law differs enormously between the States. Amicus Br. of Ohio, et al. at 5. But variations in formal tort doctrine are only part of the problem. By its very nature, the sort of regulation-by-lawsuit that Petitioner and his amici endorse "create[s] uncertainty and even conflict" because "different juries in different States reach different decisions on different facts." *Geier* v. *Am. Honda Motor Co.*, 529 U.S. 861, 871 (2000). Indeed, even juries drawn from the *same* jurisdiction, applying the *same* law, can render vastly different verdicts. U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* at 12 (Sept. 2022) ("Nuclear verdicts were far more frequent in state courts than in federal courts.").[15]

---

[15] *Available at* https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf.

Because tort law develops state by state, court by court, and jury by jury, complying with these varying state legal requirements would force a freight broker, each time it provides matchmaking services between a shipper and motor carrier, to mine legal databases for up-to-date tort decisions and jury verdicts in every jurisdiction on the route through which a motor carrier might travel to deliver a particular load, in an attempt to divine what standards of care may apply. The efficiencies that Congress sought to realize through market forces would be dramatically reduced. This Court has acknowledged that Congress foresaw this inevitable result of state-level regulation and enacted the FAAAA's preemption provisions to prevent it. *E.g.*, *Rowe*, 552 U.S. at 367–68 (Congress enacted the FAAAA to "ensure that the States would not undo federal deregulation with regulation of their own" (quoting *Morales* v. *Trans World Airlines*, 504 U.S. 374, 378 (1992))).

Given that brokers play a particularly important role in interstate transportation of goods, regulation-by-lawsuit would destroy any possibility of a "standard way of doing business" across the country, H.R. Conf. Rep. No. 103-677, at 87, drastically affecting not only the "services" freight brokers perform but also the "price" for those services, 49 U.S.C. 14501(c)(1); *Ye* v. *Global Sunrise, Inc.*, No. 1:18-CV-01961, 2020 WL 1042047, at *3 (N.D. Ill. Mar. 4, 2020) (noting that negligence claims against freight brokers "would have a significant economic impact on … broker services"). That is exactly the kind of multifarious, conflicting, and burdensome regulation the FAAAA intended to preempt.

CONCLUSION

For the reasons above, the Court should affirm.

Respectfully submitted,

MICHAEL T. HILGERS
Attorney General of Nebraska
CODY S. BARNETT
Solicitor General of Nebraska
2115 State Capitol
Lincoln, NE 68509

FREDERICK R. YARGER
Counsel of Record
KEVIN D. HOMIAK
WHEELER TRIGG O'DONNELL LLP
370 17th St., Suite 4500
Denver, CO 80202
(303) 244-1990
yarger@wtotrial.com

Counsel for Amicus Curiae State of Nebraska

January 21, 2026

Additional Counsel

CHRISTOPHER M. CARR
Attorney General of Georgia