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 Eleventh Circuit

BRIEF OF THE TRANSPORTATION INTERMEDIARIES ASSOCIATION, INC. AS *AMICUS CURIAE* SUPPORTING RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

OTHER AUTHORITIES Page(s)

TABLE OF AUTHORITIES—Continued

STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Curiae Transportation Intermediaries Association, Inc. ("TIA") is a not-for-profit trade association that has, for nearly fifty years, provided leadership, education and training resources, and public policy advocacy to the $343 billion per year third-party transportation logistics industry, which includes freight brokerage.[1] TIA has over 1,700 member companies, ranging from small start-ups to international shipping companies, including large and small freight brokers. Over 70% of TIA's members generate under $15 million in annual revenue.

TIA members' core service is to provide "freight brokerage" by arranging for the interstate transportation of goods on behalf of their shipper customers. Freight brokers perform this service by retaining federally-licensed interstate motor carriers to transport the goods from origin to destination. Brokers arrange transportation of goods on behalf of shippers from one point to another, either within or across multiple states or even internationally, according to the specific needs of the shipper. These services may involve the use of more than one transportation mode, such as air, rail, truck, and ship. In short, brokers are roughly akin to travel agents for freight.

TIA and its members have an interest in this case as its outcome will have a profound effect on the way brokers perform their core service of selecting motor

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[1] Pursuant to Rule 37.6, amicus curiae affirms that no counsel for any party authored this brief in whole or in part and that no party, party's counsel, or third-party (other than TIA and its members) made any monetary contribution intended to fund the preparation or submission of this brief.

carriers to which they tender loads on behalf of their shipper customers. TIA thus submits this brief to inform the Court regarding the legislative and regulatory framework governing brokers and motor carriers and the real-world, adverse effects that tort lawsuits like Petitioner's lawsuit have on brokers.

SUMMARY OF ARGUMENT

This case vividly illustrates how Plaintiffs' personal injury attorneys have wrongfully manipulated state tort law in an attempt to supplant the federal government's exclusive and sacrosanct role in determining whether a given interstate motor carrier should be permitted to operate in a given jurisdiction at any given time.

Every day, a business needs a load moved from origin to destination. That business hires a broker. The broker selects a federally-licensed interstate motor carrier to perform the transportation. On rare occasions, the motor carrier is involved in a highway accident, and someone is injured. The injured party sues not only the motor carrier involved in the accident but the broker who selected that motor carrier, claiming that the broker was negligent in choosing that particular motor carrier in the first place. No matter how the claim is couched, the injured party effectively asserts that the motor carrier in question should never have been on the public roads transporting goods in the first place.

However, since at least 1935 with the passage of the Motor Carrier Act, Congress has designated the federal government as the *exclusive* gatekeeper of which motor carriers may operate in interstate commerce. Even before 1935, the Court recognized that certain state-law regulations of motor carriers were unconstitutional since they interfered with

interstate commerce. Thus, for nearly one hundred (100) years, states have had no authority to determine which interstate motor carriers may operate on the public roads. To allow judges and juries to hold brokers liable under state law for engaging an interstate motor carrier that the federal government has already deemed fit to operate on the public roads is to allow states to establish fitness standards through their tort systems despite the states being prohibited from doing so through legislation or regulation.

Consider an analogy to illustrate this point. A travel agent arranging a flight is not expected to evaluate whether a federally-licensed airline has safe hiring practices, is not expected to scrutinize whether that federally-licensed airline has a safe maintenance and repair program, and has no duty to assess if the federally-licensed airline operates more safely than other airlines. A travel agent knows that a given airline is safe to use because the federal government has deemed that airline fit to operate. The same holds true with respect to a broker's use of federally-licensed motor carriers.

The express preemption provision of the Federal Aviation Administration Authorization Act ("FAAAA") reaffirms this sensible national policy. Under the FAAAA, states are prohibited from conscripting brokers to serve as *de facto* inspectors general charged with investigating the federal government's decision to license a given motor carrier to operate in interstate commerce.

This brief explains the broad, all-encompassing scope of Congress' regulation of interstate motor carriers (and brokers) and demonstrates that states have never had the authority to determine safety fitness standards for interstate motor carriers. As a

result, state common law cannot impose liability on brokers for their selection of a motor carrier that has been deemed fit to operate by the federal government. The FAAAA's so-called "safety exception," as a savings statute, can—at best—only preserve states' authority that existed prior to the FAAAA's enactment. Prior to the FAAAA, states had no authority to second-guess the federal government's own safety fitness determinations for motor carriers. Therefore, they cannot do so today.

In short, a savings statue cannot preserve what did not exist in the first place.

ARGUMENT

I. The Savings Statute Cannot Preserve What Did Not Exist: Personal Injury Claims Against Brokers.

The federal government has long been the exclusive arbiter of whether a given interstate motor carrier may operate on the public roads. While states register individual motor vehicles and license individual drivers pursuant to federal standards, and while state (and federal) courts may enter tort judgments against negligent motor carriers, the federal government has never allowed states to suspend or revoke interstate motor carrier operating authority, whether pursuant to a state statute or through judicial disposition of a tort claim. The so-called "safety exception" to the FAAAA is a savings clause that merely preserves the limited, historical role of the states. It does not empower states to fashion and enforce new claims against brokers that require brokers to avoid using certain federally-licensed interstate motor carriers.

A. The Rise of the Motor Carrier Industry.

In 1887, Congress enacted the Interstate Commerce Act ("ICA") to regulate the railroad industry. Among other things, the ICA created the Interstate Commerce Commission ("ICC").

Naturally, the ICC did not initially regulate the motor carrier industry because motor carriers did not exist at the time; the first modern automobile had only just been invented. But the trucking industry began to grow in the early 20th century. As the industry grew, shippers recognized the convenience and flexibility of trucking, which could often be quicker and less expensive than rail transit.

By 1914, at least thirty-nine (39) states had passed laws regulating common carriers of property; thirty-four (34) states had enacted laws regulating contract carriers. Report of the I.C.C. on Coordination of Motor Transp., 182 I.C.C. 263, 371 (1932); *see Levinson v. Spector Motor Serv.*, 330 U.S. 649, 657–58 (1947). In its 1932 report recommending that Congress take action to regulate the motor carrier industry, the ICC examined the scope of state regulation, observing that "[s]tate regulation is more or less demoralized by the presence of interstate motor carriers, and it is believed that this difficulty would be to some extent at least removed by Federal regulations similar in some respects to that adopted in the several states." Report of the I.C.C. on Coordination of Motor Transp., 182 I.C.C. 263, 371–73 (1932) ("In the States where there is a density of population that promotes an extensive use of motor vehicles, State boundaries become insignificant and the interstate character of the operations vitiates effective State regulations.").

Similarly, prior to the federal overhaul of motor carrier regulation, thirty-seven (37) states required vehicles "carrying property for hire" to obtain a state-issued certificate or permit before providing intrastate services. *Id.* Many states issued safety, size, and vehicle weight regulations, such that it was "generally recognized" that a need for more "uniform rules and regulations" existed in this area. *Id.* at 373. The states also attempted to regulate liability insurance for interstate motor carriers, but a state "could not require a motor carrier operating exclusively in interstate commerce to carry . . . insurance against loss or damage to cargoes." *Id.* (citing *Sprout v. South Bend*, 277 U.S. 163 (1928); *Clark v. Poor*, 274 U.S. 544 (1927)).

Recognizing the need for uniformity in the regulation of interstate motor carriage, Congress enacted the Motor Carrier Act of 1935 ("MCA"), which granted the ICC authority to regulate the motor carrier industry. This new authority allowed the ICC to determine which companies could safely operate as interstate motor carriers.

B. Early Preemption of Certain State Regulation of Motor Carriers.

Even before the enactment of the MCA, courts had begun to strike down certain state regulations of interstate motor carriers as preempted by the Interstate Commerce Clause. For instance, in *Buck v. Kuykendall*, the Court invalidated a Washington statute that prohibited common carriers from operating on certain Washington highways "without having first obtained from the director of public works a certificate declaring that public convenience and necessity require such operation." 267 U.S. 307, 312–13 (1925). The Court held that "the provision of the Washington statute is a regulation, not of the use of its own

highways, but of interstate commerce. Its effect upon such commerce is not merely to burden, but to obstruct, it. Such state action is forbidden by the commerce clause." *Id.* at 316.

The Court affirmed the holding of *Buck* in *George W. Bush & Sons Co. v. Malloy*, a case involving a similar Maryland statute. 267 U.S. 317 (1925). In *Bush*, the Court rejected the argument that *Buck*'s holding did not apply because the Maryland highways in question "were not constructed or improved with federal aid," unlike the highways in *Buck*. *Id.* at 324 ("The federal aid legislation is of significance not because of the aid given by the United States for the construction of particular highways, but because those acts make clear the purpose of Congress that state highways shall be open to interstate commerce."). Similarly, the *Bush* Court assigned no significance to the fact the Maryland regulators applied their discretion to refuse to issue a permit, unlike in *Buck*, in which the denial of a permit was dictated by "a mandatory provision of the state statute." *Id.* The statutes in both *Bush* and *Buck* were unconstitutional because they "invaded a field reserved by the commerce clause for federal regulation." *Id.* at 325.

After the passage of the MCA, the Court recognized the independently preemptive scope of the MCA in *Castle v. Hayes Freight Lines*, in which the Court invalidated an Illinois statute barring interstate motor carriers from using Illinois roadways as punishment for repeated violations of state highway regulations. 348 U.S. 61, 62 (1954). The Court recognized that "Congress in the Motor Carrier Act adopted a comprehensive plan for regulating the carriage of goods by motor truck in interstate commerce" that was "so all-embracing that [sic] former

power of states over interstate motor carriers was greatly reduced." *Id.* at 63. The Court observed that a state could not enact a law "amounting to a suspension or revocation of an interstate carrier's commission-granted right to operate." *Id.* at 64.

Allowing courts to apply state tort law to force brokers to eliminate certain motor carriers from the marketplace creates the very same mischief prohibited by *Castle*.

C. The Federal Government's Exclusive Authority to Determine Motor Carrier Safety Fitness Standards.

The MCA of 1935 delegated authority to the ICC to establish economic and safety regulations governing the motor carrier industry. Pub. L. No. 74-255, 49 Stat. 543. Specifically, the MCA stated that the ICC would, "regulate common carriers by motor vehicle" and "establish reasonable requirements with respect to . . . qualifications and maximum hours of service of employees, and safety of operation and equipment." *Id.* at § 204(a)(1), (2), 49 Stat. 546.

In 1937, the ICC issued its inaugural Motor Carrier Safety Regulations, which contained safety requirements for motor carriers including: minimum driver age, English language proficiency, vehicle control, and accident reporting requirements. *See* Ex Parte No. MC-4, 1 M.C.C. 1, 7–17 (1936). "There had been no direct safety regulation governing carriers or their drivers and vehicles by a Federal agency until the [ICC] made the Motor Carrier Safety Regulations effective, beginning April 1, 1937." Ernest G. Cox, *One Third Century of Motor Carrier Safety Regulation*, 2 Transp. L. J. 173, 177 (1970). During this early period, most of the ICC's work involved evaluating and

determining applications for certificates of public convenience and necessity. *Id.* at 178. "[The ICC] deal[s] with basic accident cause factors peculiar to highway transportation, which only a Federal government agency can effectively control . . . Our function has to do, for example, with maximum hours of service, driver qualifications, and uniform vehicle design elements, as contrasted with enforcement of traffic regulations by State and local police." Interstate Com. Comm'n, 69th Annual ICC Report to Congress (1955).

In 1966, Congress enacted the Department of Transportation Act, which transferred the ICC's safety functions from the Secretary of Commerce to the Secretary of Transportation in the U.S. Department of Transportation (the "USDOT"). Pub. L. No. 89-670, 80 Stat. 931 (1966). The powers delegated to the USDOT were "first granted to the ICC in the Motor Carrier Act of 1935." 89 Fed. Reg. 90608 (Nov. 18, 2024). The regulations issued under this authority ultimately became known as the Federal Motor Carrier Safety Regulations ("FMCSRs"), codified at 49 Code of Federal Regulations (CFR) §§ 350–99. *Id*. at 90609.

Moving forward, the Motor Carrier Safety Act of 1984 created the statute that is now codified at 49 U.S.C. § 31144—"safety fitness of owners and operators," which authorizes the USDOT to "establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles." Pub. L. No. 98-554, 98 Stat. 2829; *see* 65 Fed. Reg. 50919 § 215(a) (Aug. 22, 2000). The Motor Carrier Safety Act of 1984 plainly provides that the safety fitness standards promulgated thereunder preempt state law. The statute explicitly encourages the USDOT, in issuing safety regulations, to "consider . . . State laws and regulations pertaining to commercial motor vehicle safety in order

to minimize unnecessary preemption of such State laws and regulations under this Act." *Id.* at § 206 (c)(2), 98 Stat. 2834.

In short, through a continuous line of legislation, regulation, and case law dating back to even before 1935, the federal government has had the exclusive legal authority to regulate motor carriers' safety fitness standards.

D. The Role of Brokers in the Motor Carrier Industry.

Although brokers have existed since the 1920's, they largely played an understated role in motor carrier transportation until the 1980's. Jeffrey S. Kinsler, *Motor Freight Brokers: A Tale of Federal Regulatory Pandemonium*, 14 Nw. J. Int'l L. & Bus. 289, 298 (1993–1994).

When the MCA was enacted, a "broker" was defined as "any person not included in the term 'motor carrier' and not a bona fide employee or agent of any such carrier, who or which, as principal or agent, sells or offers for sale any transportation subject to this part, or negotiates for, or holds himself or itself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation." Motor Carrier Act of 1935, Pub. L. No. 74-255, § 203(a)(18), 49 Stat. 543, 545. Under the MCA, brokers were required to obtain "brokerage licenses" demonstrating that they are "fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the license, is, or will be consistent with the public interest and the policy declared in section 202 (a) of this part; otherwise such

application shall be denied." *Id.* at § 211(a), (b), 49 Stat. 554. The MCA prohibited brokers from dealing with "any carrier by motor vehicle who or which is not the lawful holder of an effective certificate or permit issued as provided in this part." *Id.* at § 211(a).

For several decades, the ICC viewed brokers "as essentially nothing more than independent sales agents of carriers' services." *Dixie Midwest Express, Inc., Extension – General Commodities (Greensboro, AL)*, 132 M.C.C. 794, 814 (1982). Indeed, as of 1975, only seventy (70) property broker licenses even existed. *See* Kinsler, *supra* (citing Terrance A. Brown, *Freight Brokers and General Commodity Trucking*, 24 Transp. J. 4, 6 (1984).

However, brokers' prominence greatly increased after the ICC's 1982 decision in *Dixie Midwest Express, Inc., Extension – General Commodities (Greensboro, AL)*, which allowed a broker to contract with motor carriers in the broker's own name, rather than in the name of its shipper customers. This development laid the foundation for the pervasive role that brokers enjoy in interstate transportation today, in which large volumes of freight are arranged by brokers.

As the role of brokers in the marketplace has grown, plaintiffs' personal injury lawyers have increasingly attempted to blur the line between brokerage and motor carriage in order to impose motor carrier liability upon brokers. However, federal law has always drawn a sharp distinction between the two roles.

Crucially, brokers and motor carriers are creatures of federal law and, therefore, federal law—rather than state law—defines their respective, mutually exclusive roles. As explained above, federal law defines a broker as a person "*other than a motor*

carrier" that arranges for transportation by motor carrier for compensation. 49 U.S.C. § 13102(2) (emphasis added). 49 U.S.C. § 13904, which currently establishes the requirements for a person to operate as a broker, expressly prohibits a broker from operating as a motor carrier without first obtaining a motor carrier's license. 49 U.S.C. § 13904(d)(1). ("A broker for transportation may not provide transportation as a motor carrier unless the broker has registered separately under this chapter to provide transportation as a motor carrier."). Similarly, federal law also bars a motor carrier from operating as a broker without first obtaining a broker's license. 49 U.S.C. § 13902(a)(6) ("A motor carrier may not broker transportation services unless the motor carrier has registered as a broker under this chapter."). Federal regulations further drive home the distinct roles of brokers and motor carriers. *See*, *e.g.*, 49 C.F.R. § 371.7(b) ("A broker shall not, directly or indirectly, represent its operations to be that of a carrier.").

The federal government takes these distinctions seriously. In fact, a person or company who purports to provide the federally regulated services of a broker without a federal license is subject to a private, federal cause of action as well as a $10,000 civil penalty for each violation. 49 U.S.C. § 14916(c). This exposure even extends to the individual officers, directors, and principals of a company unlawfully engaged in brokerage. 49 U.S.C. § 14916(d). In short, brokers and motor carriers perform entirely separate, independently licensed functions and therefore have disparate duties and responsibilities. Brokers *arrange* for transportation; motor carriers *provide* transportation.

The fundamental distinction between the role of a motor carrier and the role of a broker is plainly illustrated by the very different financial responsibility requirements established by the federal government for each of them. Federal law requires motor carriers to maintain at least $750,000 in auto liability insurance in order to pay any final judgment that may be taken against the motor carrier for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of a motor vehicle, or for loss or damage to property, or both. *See* 49 U.S.C. § 13906(a)(1); 49 C.F.R. § 387.9. In contrast, the only financial responsibility requirement imposed upon a broker is to post a surety bond in the amount of $75,000 (or to deposit that amount in trust), which serves as security for payment of motor carrier freight charges that the broker agreed to pay pursuant to contract. *See* 49 U.S.C. § 13906(b)(1); 49 C.F.R. § 387.307(a). Federal law does not require brokers to maintain *any* form of insurance, let alone liability insurance to protect against bodily injury or death. *Id.*

The reason for these distinct financial responsibility requirements is evident: brokers are not responsible for personal injuries caused by the motor carriers they retain. Indeed, in 1987, the ICC itself recognized that brokers are *not* liable for personal injury claims when it issued its decision in *Property Broker Security for the Protection of the Public*:

> The operations and risks associated with the property brokerage business are quite different from those associated with motor carriage. Brokers do not operate vehicles nor do they transport or otherwise handle cargo under their ICC licenses. *Thus the broker is not exposed to bodily injury, property damage, or*

> *cargo loss or damage liability.* The brokerage business does not require a large investment in vehicles, terminals, and personnel. Basically, brokers arrange (contract) for the transportation of property by authorized motor carriers. They often receive money from a shipper, from which they must pay the motor carrier for providing the transportation.

3 I.C.C.2d 916, 918, 1987 WL 97298, at *2 (July 10, 1987) (emphasis added). The ICC's decision the following year reiterated that brokers are not liable for personal injuries arising out of truck accidents. 4 I.C.C. 2d 358, 366, 1988 WL 225581, at *7 (Mar. 14, 1988) ("there is no need, nor do we deem it appropriate or workable, to implement a self-insurance program for brokers similar to that in place for motor carriers.").

Congress is necessarily aware of these administrative decisions and has never legislatively overruled them. Indeed, Congress enacted the Moving Ahead to Progress in the 21st Century Act ("MAP-21") Pub. L. No. 112-141, 126 Stat. 405 in 2012 and, in the course of doing so, reviewed and increased the financial responsibility requirements for brokers. Congress presumably would have imposed an auto liability insurance requirement upon brokers in MAP-21 if it intended brokers to be liable for negligently selecting motor carriers involved in highway accidents. It did not do so.

In sum, federal law has long drawn a sharp distinction between brokers and motor carriers based on their respective federal licenses and qualitatively different roles in the interstate transportation market. As further explained below, the FAAAA was crafted with these longstanding distinctions in mind. The Court should reject Petitioners' invitation to blur the same.

E. Deregulation of the Motor Carrier Industry and the FAAAA.

In 1978, Congress largely deregulated the domestic airline industry by enacting the Airline Deregulation Act of 1978 (ADA). Pub. L. No. 95-504, 92 Stat. 1705. Two years later, Congress extended deregulation to the trucking industry by enacting the Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793. *See Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 256 (2013). In 1994, "Congress completed the deregulation . . . by expressly preempting state trucking regulation." *Dan's City*, 569 U.S. at 256. Section 601(c), 108 Stat. 1606 of the FAAAA, which is now codified at 49 U.S.C. § 14501(c), closely "tracks the ADA's air-carrier preemption provision." *Id.* at 261.

Indeed, in 1994, Congress enacted the FAAAA to prevent states from regulating certain aspects of intrastate and interstate transportation provided by motor carriers. Pub. L. No. 103-305, § 601, 108 Stat. 1569, 1605 (1994), 49 U.S.C. § 14501; *see Ye v. GlobalTranz Enters., Inc.*, 74 F.4th 453, 457 (7th Cir. 2023) (Congress passed the FAAAA "as part of a greater push to deregulate interstate transportation industries.").

Stability in trucking was among Congress's key aims in enacting the FAAAA, given the finding that state laws presented problems for motor carriers "attempting to conduct a standard way of doing business." *City of Columbus v. Ours Garage & Wrecker Service, Inc.,* 536 U.S. 424, 440 (2002). Trucking and brokerage needed help. And Congress provided as much in the FAAAA by preempting certain state laws. Congress did so because it "believed deregulation would address the inefficiencies, lack of innovation, and lack of competition caused by non-uniform state

regulations of motor carriers." *California Trucking Ass'n v. Su*, 903 F.3d 953, 960 (9th Cir. 2018).

Congress expressly found that varying state regulations and laws addressing the transportation of goods had "imposed an unreasonable burden on interstate commerce," "impeded the free flow of trade, traffic, and transportation of interstate commerce," and "placed an unreasonable cost on the American consumers." Pub. L. No. 103-305, § 601(a)(1)(A)-(C), 108 Stat. 1569, 1605. "Congress' overarching goal" was to "help[] assure transportation rates, routes, and services . . . reflect 'maximum reliance on competitive market forces,' thereby stimulating 'efficiency, innovation, and low prices,' as well as 'variety' and 'quality,'" *Rowe v. New Hampshire Motor Transp. Ass'n,* 552 U.S. 364, 371 (2008) (citation omitted), and to avoid "a patchwork of state service-determining laws, rules and regulations" that would be "inconsistent with Congress' major legislative effort to leave such decisions, *where federally unregulated*, to the competitive marketplace." *Id.* at 373 (emphasis added) (citations omitted). To address these issues, Congress found that "certain aspects of the State regulatory process should be preempted." Pub. L. No. 103-305, § 601(a)(2), 108 Stat. 1569, 1605.

Then, on December 29, 1995, the U.S. Congress enacted the Interstate Commerce Commission Termination Act (ICCTA), effective January 1, 1996. Pub. L. No. 104-88, 109 Stat. 803, 804. ICCTA expanded federal preemption under the FAAAA to extend federal preemption to brokers specifically. H.R. Rep. No. 104-311, at 119–20 (1995), reprinted in 1995 U.S.C.C.A.N. 793, 831-32.

Accordingly, § 14501(c) currently provides that a state:

> . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

49 U.S.C. § 14501(c)(1). Congress also enacted several exceptions to that preemption provision. *See* 49 U.S.C. § 14501(c)(2)–(4). Relevant here, Congress included a savings statute that provides that the preemption created under 49 U.S.C. § 14501(c)(1) "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A).

This savings clause merely preserves the authority of the states to regulate the safety of *motor carriers* to the extent that the states were permitted to do so before the FAAAA. While personal injury tort claims against *motor carriers* are manifestly preserved by the FAAAA (since motor carriers operate motor vehicles), personal injury tort claims against *brokers* who select motor carriers are *not* preserved because (1) no such legally sound claims against federally-licensed brokers existed before the enactment of the FAAAA (and Petitioner cites none) and (2) to allow a judge or jury to dictate which motor carriers a broker may or may not use is the equivalent of allowing a judge or jury to determine which interstate motor carriers should be allowed to operate on the public roads. As described above, that function is the exclusive province of the USDOT.

F. The USDOT's Current Role in Regulating the Safety of Motor Carriers.

Today, consistent with all of the above, the USDOT, through the Federal Motor Carrier Safety Administration

("FMCSA"), has promulgated safety standards, including: extensive regulations governing motor carrier routing, 49 C.F.R. § 356; rules regarding applications for operating authority, *id.* § 365; standards for registration with states, *id.* § 367; passenger carrier regulations, *id.* Part 374; training requirements, *id.* § 380; commercial driver's license standards, *id.* § 383; safety fitness procedures, *id.* § 385; federal motor carrier safety regulations, *id.* § 390; qualifications of drivers and longer combination vehicle driver instructors, *id.* § 391; driving of commercial motor vehicles, *id.* § 392; parts and accessories necessary for safe operation, *id.* § 393; transportation of hazardous materials, *id.* § 397; and employee safety and health standards, *id.* § 398.

These comprehensive safety regulations and rules govern *motor carriers*, the parties tasked with acting safely on the country's roadways. A motor carrier is subject to stringent safety laws and regulations because it is the party actually operating motor vehicles. Indeed, a company may not provide transportation on the public roads as a motor carrier unless it first obtains a registration from the federal government. 49 U.S.C. § 13901. That registration is only available if the applicant demonstrates to the federal government that the applicant is able to comply with, among other things, safety regulations imposed by the federal government, the safety fitness requirements established by the federal government, and the minimum financial responsibility requirements imposed by the federal government. 49 U.S.C. § 13902.

To that end, the federal government administers a "New Entrant Safety Assurance Program" that closely monitors new motor carriers through inspection to ensure that the new entrant has basic safety management controls that are operating effectively; the

federal government also conducts a safety audit of new entrants. 49 C.F.R. § 385.1. For instance, motor carriers that cannot meet FMCSA safety requirements receive an "unsatisfactory" safety rating and may not operate. 49 C.F.R. § 385.13. In other words, the federal government screens motor carriers for their safety, and those carriers operating today have met federal safety regulatory requirements to the extent necessary to have the right to operate on the public roads.

In furtherance of its safety mission, the FMCSA has also developed a Safety Management System ("SMS"), which FMCSA uses to prioritize safety enforcement against motor carriers. However, the FMCSA is clear that the public (including brokers) should not draw conclusions about a carrier's competence to transport goods based on data in the SMS:

> The ⚠ symbol is not intended to imply any federal safety rating of the carrier pursuant to 49 USC 31144. Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system. Unless a motor carrier in the SMS has received an UNSATISFACTORY safety rating pursuant to 49 CFR Part 385, or has otherwise been ordered to discontinue operations by the FMCSA, it is authorized to operate on the nation's roadways.

See SMS: Safety Management System, Fed. Motor Carrier Safety Admin., https://ai. fmcsa.dot.gov/SMS/Home/SMStoCrash.aspx (last visited Jan. 18, 2026). In other words, no broker (or member of the public) should be deemed negligent for using a motor carrier that the federal government has authorized to operate on the nation's highways.

II. The Practical Dilemma: What's a Broker to Do?

Brokers are essential to ensuring that the domestic transportation industry and supply chain runs smoothly. Brokers, however, cannot evaluate whether or not a motor carrier is "safe enough" more effectively than the federal government itself.

No valid way exists for a broker to compare and contrast motor carrier safety records in any consistent and meaningful way in order to yield uniform outcomes necessary for efficient interstate commerce. Even given identical facts, judges and juries across the nation's myriad state and federal jurisdictions would inevitably reach contrary and conflicting conclusions as to the adequacy of a broker's choice of federally-authorized motor carrier. *See Geier v. American Honda Motor Co., Inc.*, 529 U.S. 861, 871 (2000) ("[T]he rules of law that judges and juries create or apply in such suits may themselves similarly create uncertainty and even conflict, say, when different juries in different States reach different decisions on similar facts."). This is the very dilemma that Congress intended to eliminate in the FAAAA.

Consider the following practical problems:

- *Hiring Drivers*. Plaintiffs often allege that a broker should have evaluated a motor carrier's driver hiring practices. However, the motor carrier—rather than the broker—hires a motor carrier's drivers. Even if a broker wanted to second-guess a motor carrier's decision to hire a particular driver, a broker does not have the tools to do so. For instance, while motor carriers must check the federal Drug and Alcohol Clearinghouse in order to identify any prior

violations of drug and alcohol prohibitions and the status of return-to-duty compliance, a broker cannot even access the clearinghouse since it does not employ drivers. And, of course, a broker has no visibility to the other confidential information that the motor carrier may learn during the interview and pre-employment screening process. In fact, motor carriers are prohibited by federal regulations from disclosing such information since such information may only be used in deciding whether to hire the driver, and the motor carrier "must take all precautions reasonably necessary to protect the records from disclosure to any person not directly involved in the decision whether to hire the driver." 49 C.F.R. § 391.23(k). Further, little imagination is required to understand how impractical it would be for a small broker employing a handful of employees to begin evaluating the hiring practices of tens of thousands of motor carriers across the country and to reach sound decisions as to whether the motor carrier has "safe enough" hiring practices. This challenge is made exponentially more difficult when considering that judges and juries throughout the nation will each view such practices in the light of a given state's tort law. How would a broker ever meet such a burden? No one knows.

- *Driver Training.* Likewise, plaintiffs' attorneys often argue that brokers should have evaluated a motor carrier's driver training program. First, any driver holding a commercial driver's license has, by definition, already been trained. Second, if a motor carrier does provide overviews or updates of safety rules, a broker would have to

collect all of that information (*i.e.*, the motor carrier's curriculum, bulletins, announcements, etc.) and somehow make a judgment that the "training" was adequate enough to justify using the motor carrier. Again, how would a broker do so, and how often would such an evaluation need to occur before a broker would be deemed reasonable for tendering a load to the motor carrier? No one knows.

- *Driver Performance*. Even when willing to concede that a motor carrier's initial hiring and training is adequate, plaintiffs' attorneys nevertheless frequently allege that a broker should have known that a given driver developed a record of substandard performance and should have been terminated. However, a broker is not privy to the citations received by a given driver, a driver's hours-of-service logs, the driver's health status, or any other host of other data points that a motor carrier might take into consideration when deciding to keep a driver in its workforce. A small broker cannot be expected to ask a motor carrier to share all of this private information with the broker (so that the broker can independently evaluate the driver's competence) before the motor carrier assigns a driver to haul a given load. How would the broker's carrier procurement representative—a person who does not in fact hire drivers—ever be able to evaluate the data provided by the motor carrier (if it was ever provided), and to do so in a way that ensures that the broker is not deemed negligent in any jurisdiction in the nation? No one knows.

- *Equipment Maintenance*. Similarly, plaintiffs' personal injury lawyers often lament that a broker should have evaluated the motor carrier's equipment or equipment maintenance program. In other words, the broker would presumably be expected to ask for and receive photographs of the equipment being used to haul the load to make sure that, for instance, conspicuous reflective tape appears where dictated by federal law. Likewise, the broker would have to request and review all maintenance records for the motor carrier's equipment, including confirmation of the fact that the equipment in question underwent its annual periodic inspection. Even if this information could be readily provided by a motor carrier (a challenge in and of itself), how would a brokerage employee possibly be qualified to make subjective judgments about the quality of a motor carrier's equipment maintenance program and its own internal compliance with the same? No one knows.

- *Foreign Motor Carriers*. All of the foregoing practical challenges are compounded when a broker uses a foreign motor carrier that is licensed to perform long-haul transportation in the United States. For instance, in order for a Mexican motor carrier to operate in the United States, the FMCSA must first conduct a "Pre-Authorization Safety Audit" ("PASA") whereby the federal government confirms that the motor carrier has safety management systems in place to comply with the FMCSRs. The PASA is a comprehensive evaluation of the carrier's safety inspection, maintenance, and repair facilities or management systems, a determination of

> whether the carrier's drug and alcohol testing in Mexico is consistent with United States standards, verification of drivers' qualifications, including confirmation of the validity of the "Licencia Federal de Conductor" or commercial driver's license of each driver that the carrier will use, and the like. *See 9.2.3 The Pre-Authorization Safety Audit (PASA) Process*, Fed. Motor Carrier Safety Admin., https://csa.fmcsa.dot.gov/safetyplanner/MyFiles/SubSections.aspx?ch=26&sec=90&sub=202 (last visited Jan. 15, 2026) (describing the PASA process). Is a broker required to have staff members fluent in Spanish, familiar with Mexican governmental credentials, and otherwise knowledgeable about comparative employment regulations in the United States and Mexico so that it can determine, for instance, if the Mexican motor carrier's driver workforce is properly licensed? What must a broker do to determine whether a Mexican motor carrier is truly "safe enough" to use after it has passed its PASA and is otherwise authorized to operate in the United States? No one knows.

All of these examples illustrate that brokers do not have the ability to assess objectively the relative safety of different carriers. Brokers cannot pry into and evaluate all the minute operational details regarding a specific motor carrier. Requiring brokers to conceive somehow of every potential operational factor that could possibly implicate negligence under a given state's tort law would require brokers to be omniscient.

Even if it was legally possible for brokers to "outsmart" the FMCSA's decision to license an interstate motor carrier as safe, many brokers

(including the vast majority of TIA's own members) are small businesses without the resources or ability to do so. It would be near impossible for small brokers to impose safety demands—what driver to hire, what equipment to use, and more—upon larger motor carriers who are already required to operate safely under law.

For example, consider the impracticality of a small broker in Illinois that employs three persons telling UPS, FedEx, or any of the nation's other large motor carriers in the United States that the broker cannot tender a load until the motor carrier changes the way that it operates. The largest motor carriers in the United States are publicly-traded, multibillion dollar enterprises with many thousands of employees and highly sophisticated operations. A small broker cannot realistically be expected to instruct such motor carriers regarding how they should be maintaining equipment, managing their workforces, or otherwise administering best safety practices at their companies. Moreover, it strains credulity to think that such carriers would modify their enterprise-wide practices to accommodate a small broker that professes to have a concern about that motor carrier's national approach to safety management. In other words, imposing liability on brokers does not advance Petitioner's apparent goal of enhancing safety among motor carriers. Petitioner's expectations are wholly unrealistic.

To allow these lawsuits against brokers to fester will eventually grind freight shipping to a halt. *See Volkova v. C.H. Robinson Co.*, No. 16 C 1883, 2018 WL 741441, at *3 (N.D. Ill. Feb. 7, 2018); *Ye v. Global Sunrise, Inc.*, No. 1:18-CV-01961, 2020 WL 1042047, at *3 (N.D. Ill. Mar. 4, 2020) ("to avoid liability for a negligent hiring claim like plaintiff's, brokers would need to examine each prospective motor carrier's

safety history and determine whether any prior issues or violations would be permissible under the common law of one or more states."). "Enforcing such a claim would have a significant economic impact on . . . broker services." *Ye*, 2020 WL 1042047, at *3; *see also Lee v. Golf Transp., Inc.*, No. 3:21-CV-01948, 2023 WL 7329523, at *13 (M.D. Pa. Nov. 7, 2023) ("Application of the negligence law would require [brokers] to perform additional services such as hiring, retaining, and supervising a qualified driver in driving a commercial motor vehicle, which would in turn subject [brokers] to a patchwork of laws throughout the country; impose compliance with new regulations; carry a substantial financial consequence; and expose brokers to additional liability."). That approach, courts have recognized, would "hinder the objectives of the FAAAA." *Lee*, 2023 WL 7329523, at *13.

Moreover, whatever standard of care a broker might apply, a plaintiff will inevitably assert that the standard was too low and that the broker should have done more. As one court has emphasized, "it appears there is no single national standard of care." *Ortiz v. Ben Strong Trucking, Inc.*, 624 F. Supp. 3d 567, 586 (D. Md. 2022). Indeed, plaintiffs across the country have tried to capitalize on this very point by, with increasing frequency, naming brokers as a matter of course in nearly every truck accident case where a shipper used a broker. Such cases should be properly brought only against motor carriers. The cost of a broker's defense alone imposes extraordinary burdens on the brokerage industry.

And, at the very least, imposing upon brokers the duty to evaluate which of the nearly 750,000 federally-licensed interstate motor carriers should in fact be allowed to operate in any particular state would cause

brokers to select only the largest and longest-tenured motor carriers, undermining the FAAAA's deregulatory goal and destroying hundreds of thousands of small trucking companies that are the lifeblood of the modern domestic supply chain.[2] It would similarly chill new applicants from entering the motor carrier industry in the first place (since no one would use them for fear of liability). Alternatively, expecting brokers to evaluate the safety of federally licensed motor carriers even more effectively than the FMCSA would destroy tens of thousands of small brokerages. Those brokers are in no position to develop and deploy procedures, technologies, and other tools that mimic—let alone surpass—the extensive safety regulatory resources already deployed by the FMCSA in determining whether to license an interstate motor carrier in the first place or whether to allow that motor carrier to continue to operate as an interstate motor carrier.

In sum, brokers have no practical ability to assess the comparative safety of federally-licensed motor carriers when tendering loads to them. It is impossible to evaluate motor carriers in the way that plaintiffs' attorneys suggest. Moreover, imposing a fluid standard that turns on the idiosyncratic determinations of a particular judge or jury on any given day in any given jurisdiction creates a substantial burden on interstate freight transportation, which is precisely what Congress intended to guard against by enacting the FAAAA.

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[2] Of note, approximately 91.5% of motor carriers registered with the FMCSA operate only ten (10) trucks or less. *Economics and Industry Data,* American Trucking Associations, www.trucking.org/economics-and-industry-data (last visited January 10, 2026).

For those reasons, the Court should reject plaintiff's argument and end the plague of private tort lawsuits against brokers.

III. The Text and Structure of the Savings Statute Demonstrate that it Does Not Preserve Claims Against Brokers.

In addition to the overarching historical context and the practical impediments identified above, the text and structure of the savings statute in question leave little room for doubt: it does not save claims against brokers from preemption. Respondents and others ably address these legal arguments, and TIA urges the Court to adopt the rigorous textual analyses provided by the Seventh and Eleventh Circuits.

In *Ye v. GlobalTranz Enterprises, Inc.*, a surviving spouse asserted a claim against a broker for negligent hiring of a motor carrier whose driver allegedly caused a fatal accident. 74 F.4th 453 (7th Cir. 2023). The Seventh Circuit affirmed the dismissal of the plaintiff's negligent hiring claim against the broker, holding that enforcing negligent hiring claims against brokers are expressly preempted by § 14501(c)(1). *Id.* at 460 ("Ye's claim strikes at the core of GlobalTranz's broker services by challenging the adequacy of care the company took—or failed to take—in hiring Global Sunrise to provide shipping services."). The *Ye* court considered whether the clause in question saved the negligent hiring claim from preemption. The court analyzed the phrase "with respect to motor vehicles" in the savings statute and properly determined that that language "massively limits the scope" of the clause based on this Court's own precedent. *Id.* (citing *Dan's City*, 569 U.S. at 261). Congress also "massively limit[ed] the scope" of the savings statute by employing the statutorily-defined term "motor vehicle." *Id.*

By limiting the clause to state laws "with respect to motor vehicles," Congress "narrowed the scope of the exception" to laws concerning a "vehicle, machine, tractor, or semitrailer . . . used on a highway in transportation." *Id.* (citing 49 U.S.C. § 13102(16)). The Seventh Circuit concluded that a negligent hiring claim is not one "with respect to motor vehicles" because "the exception requires a direct link between a state's law and motor vehicle safety." *Id.* ("We see no mention of brokers in the safety exception itself or in Congress's definition of motor vehicles, which suggests that such claims may be outside the scope of the exception's plain text.").

In *Aspen American Insurance Co. v. Landstar Ranger, Inc.*, the Eleventh Circuit considered the application of the savings statute to a claim for negligent hiring against a broker arising out of a cargo theft. 65 F.4th 1261 (11th Cir. 2023). The *Aspen* court held that the clause did not apply because the plaintiff's claim was not one "with respect to motor vehicles." *Id.* at 1270. Like the court in *Ye*, the *Aspen* court held that that statutory phrase significantly limits "the scope of the safety exception that follows." *Id.* at 1271. The *Aspen* court held that "if an indirect connection between a state law and a motor vehicle satisfied the safety exception, then the phrase 'with respect to motor vehicles' would have no meaningful operative effect." *Id.* The Court concluded that "a mere indirect connection between state regulations and motor vehicles will not invoke the FAAAA's safety exception." *Id.* at 1272 ("But we believe an indirect connection is all that exists between Aspen's broker-negligence claims and motor vehicles.").

These well-reasoned decisions relied upon not only the plain text of the statute but the structure of the

statute, legislative history, and public policy considerations in reaching their conclusions. For instance, these courts recognize that the phrases "related to" and "with respect to" are both used in the statute and, therefore, cannot be synonymous. This Court has recognized that, as a general rule, that Congress's use of "certain language in one part of the statute and different language in another" indicates that "different meanings were intended." *Sosa v. Alvarez–Machain,* 542 U.S. 692, 711, n. 9 (2004) (internal quotation marks omitted). Here, the phrase "related to" in § 14501(c)(1) broadly encompasses even *indirect* connections, whereas "with respect to" in the motor vehicle safety exception requires a *direct* connection. Similarly, as the Seventh and Eleventh Circuits held, any connection between brokers and motor vehicles is *indirect* at best (since brokers do not own or operate motor vehicles and do not employ drivers), so the motor vehicle clause does not apply here. Further, Congress omitted any comparable motor vehicle savings clause for *intrastate* shipments when addressing brokers but not motor carriers. § 14501(b). Congress surely did not preserve more state regulation of brokers in the context of *interstate* shipments than in *intrastate* shipments. To the contrary, the balance of § 14501 applies the motor vehicle savings statute to motor carriers, but not brokers.

In sum, the text of the FAAAA demonstrates Congress' intent: the scope of preemption is intentionally broad, and the savings clause in 49 U.S.C. § 14501(c)(2) does not save negligence claims against brokers.

CONCLUSION

For the foregoing reasons, and for all the reasons set forth in Respondents' brief, Amicus Curiae Transportation Intermediaries Association, Inc., respectfully urges this Court to affirm the holding of the U.S. Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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