No. 24-1238

In the Supreme Court of the United States

SHAWN MONTGOMERY,

Petitioner,

v.

CARIBE TRANSPORT II, LLC, ET AL.,

Respondents.

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

BRIEF OF AMICI CURIAE INTERESTED FREIGHT BROKERS IN SUPPORT OF RESPONDENTS

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INTEREST OF THE AMICI CURIAE[1]

Amici Curiae include the following freight brokers:

- ArcBest Corporation
- Anderson Trucking Service, Inc.
- CRST The Transportation Solution, Inc.
- J.B. Hunt Transport Services, Inc.
- NFI Industries, Inc.
- Saia Motor Freight Line, LLC

Brokers, on behalf of owners of goods, contract with motor carriers for transportation of goods. Motor carriers, in turn, sign the bill of lading, take physical possession of the cargo, and provide the actual transportation of goods.

Amici are entities who, either directly or through their subsidiaries, either operate both freight brokers and affiliated motor carriers or possess dual authority as brokers and motor carriers in the same entity. Amici work with brokers and motor carriers on a daily basis.

Amici have a strong interest in this issue because preemption raises important and recurring questions concerning the extent to which States may interfere with the price, routes, and services of interstate freight brokers. Amici, either directly or through their subsidiaries, serve shippers directly as motor carriers

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[1] No counsel for a party authored this brief in whole or in part, and no person other than Amici or their counsel made a monetary contribution intended to fund its preparation or submission.

and also rely on the services of other motor carriers in their day-to-day business as brokers. The transportation industry affects nearly every business in the United States, whether directly or indirectly, as well as every American consumer. As the district and circuit courts in this case recognized, federal preemption is necessary so that both brokers and motor carriers can continue to compete freely and efficiently with prices, routes, and services dictated uniformly by the marketplace instead of through inconsistent state regulation.

Amici also have a strong interest in protecting the business of small motor carriers that they rely upon as brokers, as well as the millions of people they employ and serve, all of whom are very likely to suffer loss of business and livelihood if this Court reverses the ruling of the Seventh Circuit. Thus, affirming the principle of federal preemption would ensure that, consistent with Congress' goals, individuals and businesses continue to enjoy a full range of services at prices determined only by the free market.

Amici submit this brief to assist the Court by explaining (1) the historical development and economic role of freight brokers, (2) the fundamentally different federal regulatory regimes governing brokers and motor carriers, as evidenced by the former Interstate Commerce Commission's ("ICC") position on brokers and the Federal Motor Carrier Safety Administration's ("FMCSA") Small Entity Compliance Guide for Broker Operations, (3) the soundness of the Federal Aviation Administration Authorization Act of 1994's ("FAAAA") preemption provision and the misapplication of the FAAAA's "safety exception" by tort plaintiffs, and (4) the significant disparate impact on small motor carriers

that would result if brokers were exposed to state tort liability for carrier selection.

SUMMARY OF ARGUMENT

This case turns on issues taught in high school civics classes across the country.[2] Congress has the power "to regulate Commerce . . . among the several states . . . "[3] [4] The Constitution further provides that the "Laws of the United States" are "the supreme Law of the Land . . . [, the] Laws of any State to the Contrary notwithstanding."[5] One of the "Laws of the United States" is 49 U.S.C. § 14501, known as the FAAAA.

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[2] State tort law that Petitioner seeks to apply to brokers like Respondent is tantamount to a tax on a load entering, in this case, Illinois.

[3] U.S. Const. art. I, § 8, cl. 3.

[4] This Court has held that the "negative" or "dormant" interpretation of the Commerce Clause (*i.e.*, the Dormant Commerce Clause) also "prevents the States from adopting protectionist measures and thus preserves a national market for goods and services." *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 514 (2019); *see also H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 537-38 (1949) (holding "[t]his principle that our economic unit is the Nation, which alone has the gamut of powers necessary to control of the economy, including the vital power of erecting customs barriers against foreign competition, has as its corollary that the states are not separable economic units."); *and see Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 527 (1935) (holding "[w]hat is ultimate is the principle that one state in its dealings with another may not place itself in a position of economic isolation.").

[5] *Supra*, note 3, at art. VI, § 2.

The FAAAA expressly preempts state laws "related to a price, route, or service of any motor carrier . . . or broker . . . with respect to the transportation of property."[6] However, Petitioner and similarly situated plaintiffs across the country continue to attempt to circumvent these provisions of the Constitution, the FAAAA, and congressional authority by alleging that state tort law, not Congress, should regulate freight brokers of transportation in interstate commerce. Amici submit this brief to demonstrate for the Court how this misguided theory runs afoul of the FAAAA and the Government's history of regulating brokers.

A freight broker is defined as "a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation."[7] "Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport."[8]

Brokers serve the market by searching for spot quotes, and they can survey the vast motor carrier market to obtain the most efficient transportation option. For example, a driver sitting in Dallas who

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6 49 U.S.C. § 14501(c)(1).

7 49 U.S.C. § 13102(2).

8 49 C.F.R. § 371.2.

needs to go to Chicago for home time or to pick up other goods there can be connected with a shipper that needs freight moved to Chicago. Brokers help promote an efficient market by connecting shippers and motor carriers who have common interests.

Essentially, freight brokers are the middlemen in the transportation industry. They utilize their connections with shippers and motor carriers to connect the shippers who need to move product and the motor carriers who are looking to move product so that the product can be delivered to consignees and be made available to the American consumer. The value of a freight broker lies in market aggregation, rate negotiation with carriers and shippers, and logistical coordination. The value of a broker does not lie in oversight of motor vehicle or driver safety protocols, as those responsibilities rest and should remain with motor carriers and the FMCSA.

Despite their connection to each other, freight brokers and motor carriers operate as distinct actors within the transportation industry. For decades, Congress and the FMCSA have regulated freight brokers and motor carriers as distinct economic actors with distinct legal responsibilities. Motor carriers are subject to extensive federal safety oversight governing drivers, vehicles, and operations and comprehensive federal safety regulations. Freight brokers, by contrast, are regulated primarily for *financial responsibility and market transparency*, not safety oversight.[9] This distinction in the regulation of these transportation actors reflects Congressional intent and historical precedent

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[9] *See* 49 U.S.C. §§ 13901–13906 (broker registration and financial responsibility); 49 C.F.R. pts. 371, 387.

that operational safety of motor vehicles lies with motor carriers, not freight brokers. The FAAAA codified that distinction by expressly preempting state laws "related to a price, route, or service of any motor carrier . . . or . . . broker . . . with respect to the transportation of property."[10]

Should this Court reverse the judgment of the lower courts, the Amici will effectively have the same responsibilities for motor vehicle safety as brokers as they have as motor carriers. Placing the same responsibilities on these distinct businesses is not only inconsistent with and preempted by the [FMCSA], but it will also have a significant impact on the market efficiency gained by keeping these businesses distinct.

The FAAAA expressly preempts state laws "related to a price, route, or service of any motor carrier *or broker*."[11] State-law negligent-selection claims against brokers directly target the broker's core service—arranging transportation—and would impose non-uniform duties that Congress deliberately declined to create.

Allowing such claims would have predictable economic consequences. Brokers would rationally restrict their carrier networks to a narrow group of large, well-insured carriers, thereby *excluding thousands of small motor carriers* that rely on brokers for access to interstate freight markets. Empirical data confirm that the trucking industry is overwhelmingly composed of small carriers, making these effects both foreseeable and severe for the United States' economy and Amer-

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[10] *Supra*, note 6.

[11] *Id.*

ican consumers, as well as the thousands of individuals employed by small motor carriers.

Preemption is consistent with the FMCSA's regulations applicable to brokers[12], which create no obligation for brokers to manage motor carrier safety. Additionally, the FMCSA's *Small Entity Compliance Guide for Broker Operations*, [13] (the "Guide") issued pursuant to the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), underscores Congress' and the agency's recognition that brokers—many of them small businesses—operate under a distinct, limited compliance regime that does not include carrier-style safety duties. This Court should utilize that Guide as a framework for its analysis of the FAAAA and the historical regulation (or lack thereof) of brokers and find that the FAAAA preempts claims like those of Petitioner against freight brokers like Respondent C.H. Robinson.

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[12] 49 C.F.R. pt. 371.

[13] Fed. Motor Carrier Safety Admin., *Small Entity Compliance Guide: Broker Operations* (last updated 2015) (available at: https://www.fmcsa.dot.gov/protect-your-move/resources-and-regulations/brokers-small-entity-compliance-guide) (last visited Jan. 15, 2026); 5 U.S.C. § 601 et seq.; Pub. L. 104-121.

ARGUMENT

I. FREIGHT BROKERS HAVE LONG SERVED AS MARKET INTERMEDIARIES DISTINCT FROM MOTOR CARRIERS.

Freight brokers serve a valuable purpose in achieving efficiency in the transportation and logistics industry. Brokers exist to *facilitate transactions* between shippers and authorized motor carriers. However, unlike motor carriers, they do not own trucks, employ drivers, or control the manner in which freight is transported. That functional distinction between motor carriers and brokers has existed for more than a century and has been consistently recognized by Congress and federal regulators.[14]

Prior to 1980, the government regulated the trucking industry through the ICC, which was established in 1887 and given authority to regulate the motor carrier industry in 1935.[15] The Motor Carrier Act of 1935 gave the ICC authority to regulate carriers and separately defined and regulated a broker as an entity "not included in the term 'motor carrier' . . . that "sells, provides, furnishes, contracts, or arranges for such transportation."[16] The ICC consistently

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[14] *See Crowley Gov't Servs. v. Gen. Servs. Admin*, 143 F.4th 518, 539 (D.C. Cir. 2025) (citing ICC, *Practices of Property Brokers*, *Ex Parte No. MC-39,* 49 M.C.C. 277, 278 (1949)).

[15] *See* Samuel P. Delisi, *Interstate Commerce Comm'n Regulation, 1887-1987: The Carrier Viewpoint*, 54 TRANSP. PRAC. J. 262 (1987).

[16] Motor Carrier Act of 1935, ch. 8, § 303(a)(18), 49 Stat. 543.

emphasized that brokers were not transportation providers and exercised no operational control over safety-critical aspects of transportation.[17]

The ICC's regulation of the transportation industry included the regulation of rates charged by motor carriers. As a result of the ICC's regulation, rates were severely inflated, and there was no viable market for freight brokers.[18] Prior to 1980, transportation brokers were "barely a blip on the screen."[19] Only a few dozen freight brokers were licensed to operate in the United States prior to 1980.[20] Indeed, prior to deregulation, as few as five of the licensed brokers actively operated in the freight industry.[21] Nonetheless, despite the paucity of brokers in the industry, the ICC made it clear that brokers were not liable for trucking accidents because they did not operate vehicles or otherwise handle cargo in a manner to expose them to such liability when it said:

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17 *See* ICC, *Practices of Property Brokers, Ex Parte No. MC-39*, 49 M.C.C. 277, 278 (1949).

18 *See* Jeffrey S. Kinsler, *Motor Freight Brokers: A Tale of Federal Regulatory Pandemonium*, 14 NW. J. INT'L L. & BUS. 289, 290 (1994).

19 Wesley S. Chused, *A Half-Century Game Changer That Rocked the Transportation World:* Dixie Midwest Express, Inc., Extension—General Commodities (Greensboro, AL), 132 M.C.C. 794 (1982)), 19, THE TRANSP. LAWYER (2017).

20 *See* Kinsler, *supra*, note 18, at 298.

21 *See* Terrance A. Brown, *Transportation Brokers: History, Regulation and Operations*, 64 (1992); John P. Martell, *Brokers in Transportation*, 9 (1984).

> [t]he 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.[22]
>
> Because the broker and motor carrier industries are distinct, with the operations and risks associated with each quite different, we think that it would be impractical and unnecessary to implement such a self-insurance program for brokers. Self-insured motor carriers must maintain programs which will allow them to satisfy their obligations for bodily injury, property damage or cargo liability. Such programs include, but are not limited to one or more of the following: minimum net worth requirements, reserves, third party financial guarantees and sureties. Self-insured carriers are subject to detailed scrutiny on a continuing basis and may be required

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[22] *Property Broker Security for the Protection of the Public*, 49 C.F.R. Part 1043, S.T.B., 3 I.C.C.2d 916, 918, 1987 WL 97298 (1987).

> to maintain additional security in the form of a trust fund or letter of credit, and may be subject to detailed claims and financial reporting requirements. Brokers, on the other hand, arrange for transportation of property by authorized motor carriers. The business does not require operation of vehicles nor the transporting or otherwise handling of cargo under a broker ICC license issued by this Commission. Thus, brokers are not exposed to bodily injury, property damage or cargo loss and damage liability as are motor carriers. Brokers merely act as intermediaries and in many cases receive money from a shipper from which they pay the motor carrier. Because their exposure is so different, 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.[23]

Despite the ICC's clear mandate that brokers had no liability and, accordingly, did not need liability insurance, tort plaintiffs continue to assert that brokers should be required to insure for the safety of distinct motor carrier operations that they do not control.[24]

The Motor Carrier Act of 1980 established the nation's policy of promoting competition and efficiency among carriers and brokers in order to achieve certain goals, including "meeting the needs of shippers, consign-

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[23] *Property Broker Security for the Protection of the Public,* 49 C.F.R. Part 1043, S.T.B., 4 I.C.C.2d 358, 366 (1988).

[24] *See* Brief of Petitioner, *Montgomery v. Caribe Transp. II, LLC*, No. 24-1238 (U.S. filed Dec. 1, 2025) at 34.

ees and consumers; allowing price flexibility; encouraging greater efficiency, particularly in the use of fuel; providing better service to small communities; and opening the market to minority groups."[25] "The purposes of the Act were to reduce unnecessary federal regulation, encourage competition, and overhaul the outmoded and archaic regulatory scheme imposed in 1935."[26] Indeed, deregulation allowed for more brokers to enter the field.[27] and allowed smaller carriers to compete more effectively with larger carriers. [28]

Subsequent deregulation preserved the distinction between the roles of motor carriers and freight brokers. The Motor Carrier Act of 1980 eliminated many economic controls to promote competition while leaving safety regulation firmly with motor carriers.[29] When Congress abolished the ICC with the ICC Termination Act of 1995, it again retained separate statutory definitions and regulatory treatment for brokers and carriers.[30]

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[25] Kinsler, *supra*, note 18, at 307.

[26] *Id*.

[27] *See id* at 304-308.

[28] *See id* at 307.

[29] *See* Motor Carrier Act of 1980, Pub. L. 96-296, 94 Stat. 793.

[30] *See* ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803.

II. REFLECTING THE HISTORY OF BROKERS IN THE TRANSPORTATION INDUSTRY, FEDERAL LAW REGULATES MOTOR CARRIERS AND FREIGHT BROKERS UNDER FUNDAMENTALLY DIFFERENT REGIMES.

A. Motor Carriers Are Subject to Comprehensive Federal Safety Oversight.

Motor carriers operate under an extensive federal safety regime administered by FMCSA. That regime includes regulations governing driver qualifications,[31] hours of service,[32] vehicle inspection and maintenance,[33] controlled-substances testing,[34] and minimum levels of financial responsibility tied to public safety risk.[35] It is the Secretary of Transportation, not freight brokers, who ultimately decides which carriers are "fit to operate safely commercial motor vehicles . . . "[36] The regulations lay out a detailed process for the FMCSA (as designee of the Secretary) to identify carriers struggling to meet safety requirements, and those who cannot meet those safety requirements are removed from the pool of authorized carriers.[37]

These requirements reflect Congress' judgment that *safety responsibility must rest with the entities that*

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[31] 49 C.F.R. pt. 391.

[32] 49 C.F.R. pt. 395.

[33] 49 C.F.R. pt. 396.

[34] 49 C.F.R. pt. 382.

[35] 49 U.S.C. § 31139; 49 C.F.R. pt. 387.

[36] 49 U.S.C. § 31144.

[37] *See* 49 C.F.R. pt. 385.

control drivers, equipment, and day-to-day transportation operations and, ultimately, with the Department of Transportation.

B. Freight Brokers Are Regulated for Financial Soundness and Market Integrity But Not for Safety Oversight.

Freight brokers are subject to a markedly different regulatory scheme than motor carriers. Federal law requires brokers to register with FMCSA,[38] maintain a surety bond or trust fund to protect carriers and shippers from nonpayment, [39] and refrain from holding themselves out as motor carriers.[40]

Motor carriers must maintain public liability insurance of typically at least $750,000 or $1 million.[41] The insurance requirements on motor carriers are directly tied to the operation of vehicles in interstate commerce in order to protect the public in the event of accidents.

In contrast, freight brokers must maintain only a $75,000 surety bond or trust (BMC-84/BMC-85) for purposes of protecting shippers and motor carriers from non-payment of freight charges.[42] This bond requirement is not for vehicle operations or injury

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[38] 49 U.S.C. § 13904.

[39] 49 U.S.C. § 13906(b).

[40] *See* 49 C.F.R. § 371.7.

[41] *See* 49 C.F.R. pt. 387.

[42] *See id* and 49 U.S.C. § 13906(b).

compensation but is instead in place to ensure that carriers are paid for transportation services.[43]

Critically, federal law does *not* require brokers to supervise drivers, inspect vehicles, or guarantee carrier safety performance. Congress has amended safety-related transportation statutes repeatedly[44] without imposing such duties, confirming that their absence reflects a deliberate legislative choice. Moreover, the Government has declined to require brokers to implement self-insurance programs.[45]

The agency tasked with oversight of the transportation industry has also spoken on the scope of the responsibilities of freight brokers, but it has remained noticeably silent on the safety oversight for which Petitioner claims freight brokers should be responsible.

The FMCSA has issued a *Small Entity Compliance Guide for Broker Operations* pursuant to SBREFA, which requires agencies to provide compliance assistance tailored to small businesses.[46] The Guide explains broker registration, bonding, and recordkeeping requirements but does not impose or suggest any safety-oversight duties analogous to those borne by motor

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[43] *See id*.

[44] *See Owner-Operator Indep. Drivers Ass'n v. Fed. Motor Carrier Safety Admin.*, 656 F.3d 580, 583 (7th Cir. 2011).

[45] *See supra*, notes 22 and 23.

[46] *See supra*, note 13.

carriers.[47] Indeed, the Guide is silent about a broker checking or vetting a motor carrier's safety statistics.[48]

The Guide reflects the FMCSA's understanding that brokers operate under *a distinct compliance framework*, one that Congress designed to minimize burdens on small entities while preserving market integrity. Imposing state-law safety duties through tort litigation would effectively nullify this federal compliance structure and expose small brokers—and the small carriers they serve—to regulatory obligations Congress never authorized.

III. NEGLIGENCE-BASED CLAIMS AGAINST BROKERS REGARDING CARRIER SELECTION ARE "RELATED TO" BROKER SERVICES UNDER THE FAAAA, AND TORT PLAINTIFFS' RELIANCE ON THE "SAFETY EXCEPTION" TO THE FAAAA IS MISGUIDED.

The FAAAA is the medium through which Congress chose to ensure uniformity and preclude states from holding brokers liable through accident-related tort claims, as it preempts state laws "related to a price, route, or service of any motor carrier . . . [or] broker . . . ."[49] This Court has repeatedly interpreted "related to" broadly to include state laws that have a "connection with or reference to" the regulated service.[50]

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47 *See id*.

48 *See id*.

49 *Supra*, note 6.

50 *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383–84 (1992).

Carrier selection and a broker's relationship with the carriers are the *core services* a broker provides. State-law claims alleging that a broker selected a carrier negligently directly regulate how that service is performed and inevitably affect broker pricing, risk allocation, and market participation. Courts applying this Court's precedents have, therefore, recognized that such claims fall within the FAAAA's preemptive scope.[51]

Imposing state-law negligent-selection duties on brokers would force them to comply with *varying and unpredictable state standards of care*, effectively transforming brokers into safety regulators.[52] That result conflicts with Congress' decision to limit broker obligations to economic and financial matters and to centralize safety regulation at the federal level with the FMCSA under the FAAAA, thus, preventing "a patchwork of state service-determining laws, rules, and regulations."[53]

Despite Congress' clear intent to preempt state laws related to the price, routes, and service of a broker through the preemption provision of the FAAAA, many tort plaintiffs argue that it should not apply due to the existence of a carveout found in 49 U.S.C. § 14501(c)(2)(A). Commonly referred to as the "safety exception", this carveout provides that the FAAAA "shall not restrict the safety regulatory authority of a

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[51] *See*, *e.g.*, *Aspen Am. Ins. Co. v. Landstar Ranger, Inc.,* 65 F.4th 1261, 1267–69 (11th Cir. 2023); *Ye v. GlobalTranz Enters.*, 74 F.4th 453, 464 (7th Cir. 2023).

[52] *See* Robert D. Moseley, Jr. & C. Fredric Marcinak, III, *Federal Preemption in Motor Carrier Selection Cases Against Brokers and Shippers*, 39 TRANSP. L.J. 77, 82-83 (2011).

[53] *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 373 (2008).

State with respect to motor vehicles . . . "[54] The foregoing language expressly limits the carveout to laws with respect to motor vehicle safety. The statute says, "motor vehicles," not "motor carriers." The historical distinction between the regulation of motor carriers and freight brokers demonstrates that motor vehicle safety is not something that concerns a freight broker. Nonetheless, in direct contravention to the preemption provision of the FAAAA, plaintiffs like Petitioner continue to allege brokers are negligent in their selection of motor carriers or exercise control over carriers and that the safety exception should apply to preclude preemption of tort claims against brokers.

Many lower courts have struggled to apply the FAAAA as Congress intended and continue to allow claims like those of Petitioner—whether alleged in the form of negligent selection, negligent hiring, negligent brokering, negligent entrustment, negligent supervision, negligent maintenance, vicarious liability, agency, joint venture, joint enterprise—to survive preemption, often through application of the safety exception. The application of the safety exception makes sense as to claims against motor carriers because they operate vehicles. However, it makes no sense to apply the exception to claims against brokers when brokers are not regulated for motor vehicle safety and do not operate vehicles.

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[54] 49 U.S.C. § 14501(c)(2)(A).

Tort plaintiffs like Petitioner allege that brokers like C.H. Robinson should know that certain trucks should not be on the road and that certain motor carriers could not be relied on to safely provide transportation.[55] If so, the FMCSA could simply shut down those easily identifiable carriers. It is exactly this role of the FMCSA that Petitioner wants to foist onto brokers. Tort plaintiffs further allege that brokers should be vicariously liable for the actions of motor carriers and that the motor carriers and their drivers are the agents of brokers. However, these are merely strategies employed to try to circumvent the parameters of the FAAAA. The history of the regulation of brokers and carriers demonstrates that they are distinct actors in the transportation industry,[56] meaning a broker should not be vicariously liable for a carrier or a carrier's driver.

49 U.S.C. § 14501(c)(2)(A) provides an exception for things that must be governed by state or local authorities.[57] "[W]ith respect to motor vehicles" refers to speed limits and lane restrictions—things "concerning a 'vehicle, machine, tractor, trailer, or semitrailer . . . used on a highway in transportation'"[58] which must necessarily be governed locally. 49 U.S.C. § 14501(c)(2)(A) does not say with respect to "motor carriers."[59] That is because states and localities do not

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[55] *See supra*, note 24, at 25.

[56] *See supra*, notes 22 and 23.

[57] *Supra*, note 54.

[58] *Ye v. GlobalTranz Enters.*, 74 F.4th 453, 460 (7th Cir. 2023) (quoting 49 U.S.C. § 13102(16)).

[59] *Supra*, note 54.

regulate interstate motor carrier compliance—the FMCSA does that job. What brokers do in evaluating carriers for eligibility applies to "motor carriers," not "motor vehicles." The broker contracts with a carrier without regard to a particular "motor vehicle" or driver. This framework is the only logical conclusion of Congress' enactment of the FAAAA and its delegation of safety oversight to the FMCSA.

IV. ALLOWING CLAIMS LIKE THOSE OF PETITIONER AGAINST BROKERS LIKE RESPONDENT WOULD DISPROPORTIONATELY HARM SMALL MOTOR CARRIERS AND RESULT IN ADVERSE CONDITIONS IN COURTROOMS AND IN STORES.

The U.S. trucking industry is overwhelmingly composed of small businesses. According to the American Trucking Associations, approximately *91.5% of motor carriers operate fleets of ten trucks or fewer*, and more than *99% operate fewer than 100 trucks*.[60] Many of these carriers are owner-operators or family-run enterprises.

Small carriers depend heavily on freight brokers to obtain access to shippers and national freight networks. Industry data indicate that brokers arrange roughly *20% of U.S. truckload freight movements*, a share that is significantly higher for small carriers lacking direct shipper relationships.[61] Small carriers

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60 *See* Am. Trucking Ass'ns, *American Trucking Trends 2025* (2025) (available at: https://www.trucking.org/news-insights/ata-american-trucking-trends-2025) (last visited Jan. 15, 2026).

61 *See* Craig Fuller, *Freight recession unlike any other in history*, FreightWaves, Inc. (Oct. 15, 2023) (available at: https://www.freightwaves.com/news/freight-recession-unlike-any-other-in-history) (last visited Jan. 15, 2026).

do not employ sales staff or back office personnel necessary to get freight directly from shippers. These are the carriers that need the services of freight brokers and the carriers who will be most affected by a reversal of the Seventh Circuit's decision.

Most small carriers have $1 million in insurance coverage. While $750,000 is the requisite federal filing of financial responsibility for most carriers,[62] the market has set a practical minimum of $1 million in liability coverage that motor carriers have to obtain to get freight.[63] A ruling that does not recognize and preserve FAAAA preemption will move that minimum because it will place more burdens upon brokers who will, in turn, impose more insurance requirements on motor carriers. If the Court were to reject FAAAA preemption, brokers must react and require more insurance. Small carriers, who are constantly teetering on financial failure, will be forced to leave the market, which will result in consolidation and reduced competition.

If brokers face tort liability for motor carriers, economic incentives will lead them to restrict carrier networks to a small group of large, well-capitalized carriers with high insurance limits. This risk-avoidance strategy would *exclude small carriers regardless of their individual safety records*, raising barriers to entry and

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62 *See supra*, note 35.

63 *See* Great West Cas. Co., *Meeting Insurance Requirements as an Owner-Operator: What Regulators and Insurers Expect* (available at: https://blog.gwccnet.com/blog/meeting-insurance-requirements-as-an-owner-operator-great-west) (last visited Jan. 15, 2026).

accelerating consolidation in an industry Congress deliberately deregulated to promote competition.

Transportation economists have long recognized that increased consolidation in trucking leads to higher shipping costs and reduced service quality, particularly in rural and underserved markets.[64] The resulting contraction of opportunities for small carriers would therefore harm not only those carriers, but also shippers and consumers.

Placing additional regulation on freight brokers through the imposition of tort liability will squeeze smaller motor carriers out of business and drive up costs for shippers, the motor carriers that remain, and the American consumer. Petitioner will argue that preemption leaves tort plaintiffs without a remedy. Yet plaintiffs have a remedy against the carrier. If Petitioner wants carriers to have more insurance, they may seek changes from Congress or the FMCSA.

Moreover, from an evidentiary standpoint, the theory of broker liability runs afoul of state and federal rules of evidence. Should these cases proceed, essentially every claim against a broker will involve evidence of "other bad acts" of the motor carrier, which are generally prohibited in courts across the country.[65] Generally, the tort plaintiff would not be allowed to introduce evidence of prior violations of safety regulations, motor vehicle accidents, and other "bad acts,"

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64 *See* Tieming Liu and Chaoyue Zhao, *Study the Impacts of Freight Consolidation and Truck Sharing on Freight Mobility* (available at: https://rosap.ntl.bts.gov/view/dot/42413/dot_42413_DS1.pdf) (last visited Jan. 15, 2026) (2019).

65 *See* Fed. R. Evid. 404 (generally prohibiting evidence of other wrongs or acts as impermissible character evidence).

but under the guise of a negligent hiring claim, the Plaintiff attempts to introduce this evidence for the jury to consider against the broker. The idea of a broker facing allegations related to every motor carrier it selects to transport a load runs contrary to the rules of evidence.[66]

Additionally, the imposition of liability for carrier selection on brokers will not enhance safety on the nation's roads. Small carriers obtain loads from brokers. However, each new day might involve a small carrier working with a different broker. It could be Broker A that gave the load to the carrier that was safely delivered on Monday but Broker B that gave the load to the same carrier that was involved in an accident on Tuesday. Asking Broker B to pay the claim but not asking Broker A or the other ten brokers whose loads were on the same truck in the prior thirty days seems arbitrary. Taken to its conclusion, the truck stop that sold the carrier fuel, the truck dealer that sold the carrier a truck, and the mechanic that kept the truck running would all be viable defendants in this scenario. Should a customer be responsible for a UPS or FedEx driver's accident when she or he gave the package to UPS or FedEx? Taken to its extreme, Petitioner's theory of liability never ends.

Fifteen years ago, the undersigned warned against this attack on uniformity in interstate commerce.[67] Since that time, litigation against brokers and shippers based on their selection of motor carriers has exponentially proliferated. Should the Court overrule the

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66 *See id*.

67 *See* Moseley, Jr. & Marcinak, III, *supra*, note 52, at 77-96.

Seventh Circuit, that proliferation of litigation against brokers and shippers will continue, brokers and shippers will respond to the same, and small motor carriers will have to fold up shop.

CONCLUSION

For the foregoing reasons, the Court should hold that the FAAAA preempts state-law claims of any kind which seek to impose carrier-safety duties on freight brokers and should affirm the judgment of the district and circuit courts in favor of Respondent.

Respectfully submitted,

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