No. 25-145

IN THE

Supreme Court of the United States

TOTAL QUALITY LOGISTICS, LLC,

Petitioner,

v.

ROBERT COX,

Respondent.

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

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

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus Curiae Transportation Intermediaries Association, Inc. ("TIA") is a not-for-profit trade association that has, for over 40 years, provided leadership, education and training resources, and public policy advocacy to the $343 billion per year third-party transportation and logistics industry, which includes those who broker the transportation of freight.[1] TIA has over 1,700 member companies, ranging from start-ups to international shipping companies, including large and small freight brokers.

TIA members' core service is to provide "freight brokerage" by arranging for the interstate transportation of goods at the request of their shipper customers. Freight brokers perform this service by retaining interstate motor carriers to transport the goods from origin to destination.

The Interstate Commerce Act defines a "broker" 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." 49 U.S.C. § 13102(2).[2] At

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[1] Pursuant to Rule 37.2 of this Court's Rules of Practice, TIA states that all counsel of record received notice of TIA's intent to file this brief more than ten days before its due date, and that all counsel of record have consented to its filing. 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.

[2] Brokers are also more colloquially referred to in the industry as freight brokers, truck brokers, property brokers, load brokers,

the request of shippers or others seeking the transportation of goods (collectively, "shippers"), brokers arrange transportation of goods from one point to another, either within or across multiple states or 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, and typically involve movements across multiple states, and frequently, multiple nations. In short, brokers might be described as "travel agents for freight" and, thus, TIA members are intermediaries between and deal directly with shippers and motor carriers on a daily basis.

TIA and its members have an interest in the issues before this Court, as these issues will have a profound effect on the manner in which brokers perform their core service of selecting and arranging motor carriers to transport freight and the rates associated therewith. Indeed, the issues present a particularly acute, existential threat to smaller freight brokers that comprise much of TIA's membership. Of note, over 70% of TIA's members generate under $15 million in annual revenue.

TIA thus submits this brief to provide the Court with information regarding the operations and activities of brokers, the legislative background of the Federal Aviation Administration Authorization Act ("FAAAA"), and the practical, adverse effects that tort lawsuits like the one that is the subject of this case have on brokers, especially smaller brokers and new entrants to the broker and intermediary markets.

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third-party logistics providers, etc. For the balance of this brief, TIA simply refers to these businesses as "brokers."

INTRODUCTION AND SUMMARY OF ARGUMENT

When Congress passed the Federal Aviation Administration Authorization Act, it preempted a broad swath of state laws and regulations governing the surface transportation industry. No dispute exists on this point. The deregulatory goal of the FAAAA was to facilitate interstate commerce by eliminating the patchwork quilt of conflicting state laws and regulations that was hampering the operations of motor carriers and brokers. 49 U.S.C. § 14501(c)(1). And in fact, every Circuit Court of Appeals to address that issue has agreed: The FAAAA largely preempts state laws and regulations.

That is where the agreement ends. As is often the case in law, the "General rule," *id.*, came with exceptions—or "matters not covered," as the statute puts it, *id.* § 14501(c)(2). And, at issue here is the meaning of the so-called "safety exception," a savings clause that provides that the FAAAA does not "restrict the safety regulatory authority of a State **with respect to motor vehicles**." *Id.* § 14501(c)(2)(A) (emphasis added). That straightforward text seems clear enough: Under the FAAAA, states retain regulatory authority over motor vehicles, despite the otherwise broad preemption language in the statute. Stated another way, the savings clause allows states to continue to regulate the safety of motor carriers, trucks, and cars operating in the state.[3]

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[3] As a savings clause, the so-called safety exception simply preserves the states' pre-existing authority (and the limits of that authority) to regulate motor carriers. *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 439 (2002) (noting that statute's language preserves the "preexisting and traditional state police power over safety."). As the Motor Carrier Act of 1935

Yet, the Circuit Courts of Appeal are deeply divided over one part of the statute's meaning. Stretching the law's text to its breaking point, creative plaintiff lawyers have argued that the phrase "with respect to motor vehicles" permits states not only to exercise safety regulatory authority over motor carriers (who obviously operate motor vehicles) but to exercise similar authority over brokers (who do *not* operate motor vehicles). In other words, plaintiffs have used their novel and expansive reading of the statute to bring state tort claims against brokers alleging negligent hiring of motor carriers.

Two Circuits have accepted plaintiffs' interpretation and allowed state tort law claims to proceed against brokers. Two other Circuits have rejected that approach, holding that the so-called safety exception covers only motor carriers, not brokers, meaning that claims against brokers remain preempted. District courts and state courts, too, have issued differing opinions. The resulting landscape leaves brokers and shippers subject to a dizzying array of conflicting standards across the country—and no chance of consensus is on the horizon. The lower courts are irreconcilably at odds.

This fracture among the Circuit courts comes with serious consequences for the nation. After all, the transportation and supply chain industry plays a critical role in the nation's economy. From furniture to food, computers to cars, America's products move via the country's roadways—in trucks. And each haul

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eliminated the states' power to determine which motor carriers were permitted to operate in interstate commerce, 49 U.S.C. §§ 301–327, the states likewise remain without that power to determine (through jury verdicts or otherwise) which motor carriers a broker is permitted to use in interstate commerce.

brings crucial goods and products to consumers from coast to coast. Totaled up, the transportation industry represents hundreds of billions of dollars in revenue, arranges billions of tons of freight transported via trucks, and employs millions of hardworking Americans.

But all of that is increasingly threatened without this Court's intervention. Indeed, the split among the lower courts is currently undermining a critical industry on which so many Americans rely. Brokers are left guessing as to their responsibility and potential liability, which has a tremendous negative effect on their prices and services. Congress intended the FAAAA to do just the opposite. The statute reflected Congress's longstanding commitment to deregulating the trucking industry. Specifically, Congress well understood that without clear rules, companies in the brokerage and trucking industry would face haphazard regulatory schemes that would impede competition, raise prices, affect routes, alter services, and harm the country's economy. That is the inevitable result of denying review on this issue.

In short, it is hard to overstate the exceptional importance of the Question Presented to the brokerage industry (and, by extension, to the overall supply chain and the economy). America's economy moves on interstate highways and roads where all manner of goods are shipped from California to Connecticut, Alabama to Alaska. Almost every physical good is ultimately moved by truck. That industry cannot be sustained and thrive without clarity in the law. And only this Court can provide the answers that brokers, shippers, and plaintiffs need.

Lest there be any doubt: Without this Court's intervention, the transportation industry in general

and the brokerage industry in particular will continue to be mired in confusion, leading to inefficient service, unknown responsibilities and obligations for brokers, and a weaker American economy. As explained further below, these effects are simply devastating for all brokers and particularly for small brokers as well as others who desire to enter the market. This is all the more important in light of the unprecedented freight recession that has been ongoing since 2022. The trucking industry and brokerage industry will suffer. Competition will erode. And ultimately, American consumers and the rule of law will pay the price. *See, e.g.*, *Thompson v. Dallas City Attorney's Office*, 913 F.3d 464, 470 (5th Cir. 2019) (noting "the Rule of Law's foremost virtues: clarity, certainty, and consistency.").

The petition should be granted.

REASONS FOR GRANTING THE PETITION

I. This case presents an issue of enormous importance to the transportation industry and American economy.

A. *Brokers Are Essential Links in U.S. Supply Chains*.

To understand the urgent importance of the Question Presented here, one must first appreciate the fundamentals of the transportation industry and, in particular, the trucking industry.

Drive on any of America's interstates today—from Interstate-90 in Washington to Interstate-75 in Florida—and truckers hauling America's goods line the road. These loads do not move by accident. Moving freight requires hard work. Three key players ensure that goods arrive at their destination: (1)

shippers, (2) motor carriers, and (3) brokers. Shippers sell and seek to move goods. Motor carriers perform the transportation (*i.e.*, they operate the physical trucks). And brokers act as matchmakers—arranging motor carriers to transport goods at the request of shippers in both short- and long-range transit

Although transportation is a complex business, the fundamental principles that drive the industry are rather straightforward. Sellers want to ship products to buyers in other areas of the country or the world. And, in almost every instance, moving those products involves, whether in whole or in part, transportation by truck. Trucks can navigate various terrains and areas of the country inaccessible to other modes of transportation. Plus, trucks transport all types of goods—small, large, oversized, fragile, perishable, and all things in between. And, to top it off, trucks often offer the most cost-effective way to get a product from Point A to Point B. In short, trucking just makes sense for many shippers of goods.

Brokers make theory become reality. Shippers often lack the institutional knowledge or experience to contract with motor carriers directly. But brokers have it. Indeed, they have been doing so for decades. Brokers' relationships with shippers and carriers are the best and sometimes only means through which small and medium sized motor carriers can access freight from medium and larger shippers. In fact, approximately 95.5% of motor carriers registered with the Federal Motor Carrier Safety Administration ("FMCSA") operate ten trucks or less. *Economics and Industry Data,* AMERICAN TRUCKING ASSOCIATIONS, www.trucking.org/economics-and-industry-data (last visited Sept. 3, 2025).

So, when sellers want to find a motor carrier, they turn to brokers. Brokers act as intermediaries to arrange transportation by placing those shipments with motor carriers for actual transportation from origin to destination. Said more simply, shippers hire brokers to find motor carriers. This process is vital to make sure America's goods get to retailers, distributors, and other businesses and consumers across the country. *See Aspen Am. Ins. Co. v. Landstar Ranger, Inc.*, 65 F.4th 1261, 1264–65 (11th Cir. 2023) (explaining that the "domestic trucking industry consists of several players, including the shipper, the broker, and the motor carrier.").

Laws recognize the role of brokers in the logistics business. Under the Interstate Commerce Act, a broker is "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." 49 U.S.C. § 13102(2). Brokers' services often include arranging transportation of goods within a single state or across multiple states, depending on the needs of the shipper. *See* 49 C.F.R. § 371.2 ("Broker means a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier."); *id.* (defining "brokerage service" as "the arranging of transportation . . . of a motor vehicle or of property . . . on behalf of a motor carrier, consignor, or consignee."). Sometimes, transportation occurs by multiple modes—air, rail, ship, and on a truck. Other times, shipment moves across multiple countries. But at all times, brokers deal directly with motor carriers.

Like brokers, motor carriers are vital to the transportation industry. A "motor carrier" is "a person providing motor vehicle transportation for compensation." 49 U.S.C. § 13102(14). Brokers—and other industry players—rely on the predictability and stability provided by motor carriers. When motor carriers raise prices, brokers must do so, too, for their shipper customers—such as manufacturers, distributors, and retailers. Those higher costs are ultimately borne by consumers. The symbiotic relationship among shippers, carriers, and brokers creates an effective industry, provides stability in the supply chain, and contributes to an overall healthy economy.

In summary, shippers, brokers, and carriers, each hold vital and specific roles in ensuring products get where they need to go. They all help contribute to an efficient transportation industry. And that industry plays a leading role in today's economy. After all, in 2023 in North America, more than 14 million trucks moved more than 11 billion tons of freight and collected more than $987 billion in revenue. *See* American Trucking Associations, *ATA American Trucking Trends 2024* (Sept. 11, 2024), https://www.trucking.org/news-insights/ata-american-trucking-trends-2024. Trucking employs some 8.5 million people, and the industry moves more than two-thirds of cross-border trade between the U.S. and Canada, and nearly 85 percent of goods across the Mexican border. *Id.* Brokers themselves have a large role in the overall sector, as they are pivotal players in the $343 billion per year third-party transportation and logistics industry. In short, the country depends on shippers using brokers to find truckers in order keep the American economy moving.

B. *Congress Enacted the FAAAA in order to Unleash the U.S. Economy.*

Before the FAAAA's preemption provision, brokers faced a potpourri of laws and regulations from states that imposed significant burdens. Seeking to bring stability to a sector of the economy long saddled with that crazy-quilt patchwork of state regulations, Congress passed and amended the FAAAA. Pub. L. 103-305, § 601, 108 Stat. 1569, 1605 (Aug. 23, 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."). Through the FAAAA, Congress sought to provide brokers predictability and clarity. This was a well-known fact. "Congress turned its attention to the trucking industry 'upon finding that state governance of intrastate transportation of property had become 'unreasonably burden[some]' to 'free trade, interstate commerce, and American consumers.'" *Ye*, 74 F.4th 453 at 457 (quoting *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 256 (2013)). Put plainly, Congress's intent in passing the FAAAA—and deregulating the transportation sector generally—was to permit the free flow of freight. Concerned with varying and disparate state laws imposing burdens on interstate transport, Congress sought to unshackle the industry from such restraints.

Stability, then, stood at the core of the FAAAA. State laws had long presented problems for trucking companies "attempting to conduct a standard way of doing business." *City of Columbus v. Ours Garage & Wrecker Servs., Inc.*, 536 U.S. 424, 440 (2002). Congress helped achieve its deregulatory goals in the FAAAA by preempting state laws—and thus

providing clarity and predictability to brokers. 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).

Indeed, 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. 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 Transport 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 (citations omitted).

Given this reality, this Court has held that the FAAAA's preemption provision must be read broadly to serve the underlying purposes. *Rowe*, 552 U.S. at 373. Preemption, this Court held, ensured that the "rates, routes, and services" in the transportation industry were governed by the "maximum reliance on competitive forces." *Id.* at 370–71.

The FAAAA worked. It helped eliminate vague and unnecessary burdens on transportation of goods. It led to the free flow of trade. And it provided clarity and

predictability by eliminating risk posed by state laws. The preemption provision plays a paramount role in the law's success.

C. *The Court's Intervention is Now Necessary to Preserve FAAAA Preemption.*

The proven effectiveness of the FAAAA is now at risk. Common-law negligence lawsuits against brokers have created the very instability that Congress sought to eliminate. And if this Court does not step in to resolve the issue, the FAAAA's text and purpose will be all for naught. Allowing a decision like *Cox* to stand effectively amounts to disguised, *de facto* state regulation of interstate brokers.

After all, lawsuits against motor carriers can end with multi-million-dollar verdicts. *See* U.S. Chamber of Commerce Institute for Legal Reform, *Roadblock: The Trucking Litigation Problem and How to Fix It* 2 (July 2023), https://instituteforlegalreform.com/wp-content/uploads/2023/07/Roadblock-The-Trucking-Litigation-Problem-and-How-to-Fix-It-FINAL-WEB.pdf (noting mean award of more than $27 million in trucking cases). And such lawsuits are on the rise. A study from the U.S. Chamber of Commerce included "an analysis of verdicts in the trucking industry from 2005 to 2019" that "found that the number of cases with verdicts over $1 million increased by 235 percent when comparing the latter half of that period (2012-2019) to the first half (2005-2011)." *Id.* at 6–7. The same study of verdicts over $1 million calculated an 867 percent increase in the average size of verdicts between 2010-2018. *Id.* at 7.

Brokers are just the latest target in plaintiffs' lawsuits. The reason is obvious: Brokers present additional "deep pockets" for personal injury cases

arising out of highway accidents caused by motor carriers. *See* U.S. Chamber of Commerce Institute for Legal Reform, *Roadblock: The Trucking Litigation Problem and How to Fix It* (July 2023), https://instituteforlegalreform.com/wp-content/uploads/2023/07/Roadblock-The-Trucking-Litigation-Problem-and-How-to-Fix-It-FINAL-WEB.pdf. And in recent years the number of lawsuits against brokers has only increased.

But subjecting brokers to such liability revives the very problems Congress sought to end. For one thing, states have various tort regimes with different duties, responsibilities, and potential liabilities. So, brokers would be forced to traverse a complex maze of dozens of regulatory and general tort-liability schemes, effectively nullifying any deregulatory goal Congress sought to achieve. The applicable standard of care for a broker that is selecting a motor carrier would vary state-by-state, case-by-case, judge-by-judge, and jury-by-jury. No "standard" way of performing business would exist. Indeed, it would be impossible for brokers even to begin to untie the Gordian knot presented by the disparate requirements imposed by all of the states, particularly when so many loads cross the boundaries of numerous states.

For another thing, brokers simply *cannot* screen motor carriers in the way plaintiffs imagine. Brokers, recall, are akin in many respects to travel agents. And just as a travel agent arranging a flight cannot evaluate whether a federally licensed airline has safe equipment or safe hiring practices, so, too, a broker arranging a load is not equipped to evaluate whether a particular federally-licensed motor carrier is "safe enough" to avoid tort liability. The federal government itself *already* licenses and rates carriers for

safety, and those that fail are not permitted to operate. 49 C.F.R. § 385.13. Imposing a common law duty on brokers to second-guess the federal government's determination that a given motor carrier is fit to operate on the public roads "would have a significant economic impact on . . . broker services." *Ye v. Global Sunrise, Inc.*, No. 1:18-CV-01961, 2020 WL 1042047, at *3 (N.D. Ill. Mar. 4, 2020). Most importantly, allowing courts to create such a duty flatly hinders the objectives of the FAAAA.

The practical challenge for small brokers is all the more catastrophic. A small brokerage business employing a handful of employees lacks the resources to "outsmart" the federal government's decision to authorize a motor carrier to operate on the public road. A small broker cannot collect, examine, and reach empirically sound, evaluative conclusions regarding whether a federally licensed motor carrier is safe to use. For example, a small broker cannot interview the motor carrier's drivers to determine whether they are competent, cannot assess whether the state should or should not have granted a given driver a commercial driver's license, cannot inspect the motor carrier's equipment to determine if it is adequately maintained and marked, and cannot otherwise evaluate the motor carrier's safety management culture. Indeed, since a broker is not in the business of operating a motor carrier, a broker lacks the technical skills and knowledge necessary even to determine what data to collect and what questions to ask. These tasks are difficult enough for the Federal Motor Carrier Safety Administration, a large federal agency in the United States Department of Transportation that employs well over 1,000 people across the country; these tasks represent an impossible undertaking for a small broker.

Similarly, consider the absurdity of a small broker instructing a large motor carrier that it cannot do business with the large motor carrier because the broker has somehow determined that the motor carrier is not "safe enough." In essence, the broker would be telling the motor carrier how to operate—what driver to hire, what safety rules to follow, what equipment to use, and more—when such motor carriers are already required by law to operate safely. A small broker in Ohio employing five (5) persons cannot realistically instruct a motor carrier—let alone UPS, FedEx, or any of the nation's largest motor carriers—how to operate their businesses. The largest motor carriers in the United States are publicly-traded, multibillion dollar enterprises with many thousands of employees managing highly sophisticated operations. Such carriers will not be tutored by a small broker regarding how to maintain equipment, how to hire and manage their workforces, or how to administer other best safety practices at their companies. Indeed, it strains credulity to think that such carriers would modify their enterprise-wide practices to accommodate a small broker that shares a perceived concern about that motor carrier's national approach to safety management.

Moreover, if brokers are held liable for their selection of particular motor carriers, new motor carriers will not enter the market, thereby imperiling competition. This is because brokers would be forced to do business with only the most established motor carriers, which would "effectively eliminate some motor carriers from the transportation market altogether." *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016, 1032 (9th Cir. 2020) (Fernandez, J., concurring in part and dissenting in part). The "inefficiencies, lack of innovation, and lack of com-

petition caused by non-uniform state regulations," though, was precisely what Congress wanted to *prevent* through the FAAAA. *California Trucking Ass'n*, 903 F.3d at 960. Similarly, the combination of these inconsistencies (which the FAAAA intended to eliminate) and the potential for catastrophic liability, discourages new brokers from entering the market. Eliminating new market entrants naturally stunts potential growth in a critical economic sector that serves as the backbone of the United States' economy. A growing domestic trucking marketplace is indispensable to the nation in light of the ongoing reshoring of supply chains and the increased production of goods within the United States.

Furthermore, Congress intended brokers to flourish in the marketplace as evidenced by the low barrier to market entry that Congress created. In order to obtain a license, a putative broker need merely to submit an application, pay a filing fee, and post a seventy-five thousand dollar ($75,000) surety bond that serves as security for payment of motor carrier freight charges.[4]

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[4] In contrast to its treatment of motor carriers, federal law does not require brokers to maintain any form of liability insurance. *See* 49 U.S.C. § 13906. Indeed, in a 1988 order, the Interstate Commerce Commission (the "ICC") explained that brokers were not subject to liability for trucking accidents. *Property Broker Security for the Protection of the Public*, 4 I.C.C. 2d 358, 366, 1988 WL 225581, at *7 (Mar. 14, 1988). The ICC expressly acknowledged that brokers do "not require operation of vehicles nor the transportation or otherwise handling of cargo," so "brokers are not exposed to bodily injury, property damage or cargo loss and damage liability as are motor carriers." *Id.* For that reason, the ICC stated, there was "no need" for a "self-insurance program for brokers similar to that in place for motor carriers." *Id.* The cost—and even the availability—of liability insurance to protect against a liability that Congress never intended brokers to bear presents another massive obstacle to

Indeed, as a result of the relative ease with which one may enter the brokerage market, small brokers have become a key lubricant for modern supply chains in the United States. By driving small brokers out of the marketplace and by discouraging new market entrants, decisions like *Cox* gum up those very supply chains that are so essential to a thriving American economy. While the regulatory steps for a broker to enter the market are simple, the potential for catastrophic liability creates a complex and colossal barrier to entering the brokerage market.

This is not an arcane question or issue outside the scope of this Court's typical review. To the contrary, this Court has routinely understood the importance of preemption in the FAAAA and similar statutes. *See* TQL, Pet. for Writ of Cert. at 22 (citing *American Trucking Associations, Inc. v. City of Los Angeles*, 569 U.S. 641 (2013); *Dan's City Used Cars v. Pelkey*, 569 U.S. 251 (2013); *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364 (2008); *Ours Garage & Wrecker Serv.*; *Northwest, Inc. v. Ginsberg*, 572 U.S. 273 (2014); *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992)).

No reason exists to deny *this* preemption question. Brokers and motor carriers need this Court to explain what liability might attach to private tort claims, and whether brokers can be held liable for selection of motor carriers. After all, brokers must be able to factor this type of potential "nuclear" liability exposure into their businesses (specifically, their rates and services) and their plans for the future. They cannot do so

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small brokers in particular who wish to enter or remain in the market.

without clarity—which is precisely what the FAAAA was designed to provide. This Court should grant the petition to address the exceptionally important issue.

II. This Court should grant the petition to address the deepening split among the Circuit Courts of Appeal.

Aside from the obvious national importance of this case, this Court should grant the petition based on the deep divide among the circuits. This court has denied review no fewer than three times in recent years to clarify the scope of FAAAA preemption—instead allowing the issue to continue to percolate among the lower courts.

Percolation has run its course. The impossible dilemma facing a freight broker when performing its core function (selecting and arranging motor carriers) becomes even more stark and more excruciating with each divergent opinion issued. The deep circuit split has made the fate of the freight brokerage industry progressively more precarious. Four Circuit Courts have directly addressed whether the FAAAA allows state common-law negligence selection claims against brokers. The split is over the meaning of the five words: "with respect to motor vehicles."[5] The score-

[5] TIA recognizes that Petitioner also disputes the meaning of "the safety regulatory authority of a State." However, no circuit split exists as to the meaning of that particular phrase, whereas the circuits are clearly split on the meaning of "with respect to motor vehicles." For its part, TIA maintains that *motor carriers* remain fully subject to common law negligence claims arising from their operations since such claims are an expression of "the safety regulatory authority of a State." TIA does not take the position that Congress intended the so-called safety exception, which is a savings statute, to immunize *motor carriers* from their own negligent acts and omissions.

board is tied at 2-2. The split is clear. The split is direct. No further consideration in the lower courts would be useful for this Court. The split presents an existential threat to freight brokers across the country for all of the reasons set forth above.

The Seventh Circuit and the Eleventh Circuit have held that the so-called safety exception does not "save" negligent selection claims against brokers. Those courts have instead ruled that the FAAAA's broad preemption in 49 U.S.C. § 14501(c)(1) bars private tort lawsuits against brokers for negligent hiring. Both Circuits explained that the key language of the statute—"with respect to motor vehicles"—requires some *direct* connection with motor vehicles. *Aspen Am. Ins. Co. v. Landstar Ranger, Inc.*, 65 F.4th 1261, 1272 (11th Cir. 2023) (explaining that brokers have an indirect connection to motor vehicles, so the safety exception didn't apply to negligent tort claim); *Ye v. GlobalTranz Enterprises, Inc.*, 74 F.4th 453, 462 (7th Cir. 2023) (claim against broker was "too attenuated" from motor vehicles).

The Sixth and Ninth Circuit hold the opposite view. In *Miller v. C.H. Robinson Worldwide, Inc.*, the Ninth Circuit held that the safety exception applies to claims against brokers because a state law's connection to motor vehicles need not be direct; instead, it must only "promote safety on the road." 976 F.3d 1016, 1030 (2020). And since that case arose out of a motor vehicle accident, it possessed the "requisite 'connection with' motor vehicles" to fall within the safety exception's scope. *Id.* at 1031.

The Sixth Circuit largely agreed with the Ninth Circuit. In the case below here— *Cox v. Total Quality Logistics, Inc.*, 142 F.4th 847 (6th Cir. 2025)—the Court explained that preemption does not apply when

the law "substantively concerns motor vehicles and motor vehicle safety." *Id*. at 858. And to make that determination, no "direct connection to motor vehicles" is required. *Id.* at 857. Thus, brokers can, under the Sixth Circuit's ruling, be subject to tort liability in negligent hiring lawsuits.

As noted above, this split has urgent, real-world implications for the freight brokerage community. Brokers operating today face different potential liabilities depending on the Circuit in which a motor vehicle accident occurs or a transaction occurs. A negligent selection claim in Evansville, Indiana is preempted, *Ye*, 74 F.4th at 462, but just across the Ohio River in Louisville, Kentucky, the same broker will be subject to liability on the same claim, *Cox*, 142 F.4th at 858. Thus, under today's Circuit split, a broker cannot predict what liability it might face. It largely all depends on how far the motor carrier made it down the road—and in which Circuit that road lies—when an accident occurs.

Without a single, uniform ruling about the meaning of the so-called safety exception in the FAAAA, brokers are simply left to guess about what law governs. This guesswork undercuts the FAAAA's core purpose and runs headlong into basic rule-of-law principles. *Cf. Doggett v. United States*, 505 U.S. 647, 669 (1992) (Thomas, J., dissenting) ("the law draws force from the clarity of its command and the certainty of its application."); *McGruder v. Bank of Wash.*, 22 U.S. 598, 602 (1824) ("Precision and certainty are often of more importance to the rules of law, than their abstract justice.").

The lower courts, in other words, have presented a clean split on a pure question of law that affects billions of dollars in the national economy. The case,

coupled with another petition pending before the Court, gives the Court an ideal vehicle to resolve the divide among the circuits and to protect the freight brokerage industry from further, debilitating uncertainty that undermines the nation's economy.[6]

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Petitioner's Petition for a Writ of Certiorari, Amicus Curiae Transportation Intermediaries Association, Inc., respectfully urges this Court to grant the Petition while consolidating it, grouping it, or otherwise linking it with the petition in *Shawn Montgomery v. Caribe Transport II, LLC,* Case No. 24-1238 (docketed June 4, 2025).

Respectfully submitted,

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[6] The case of *Shawn Montgomery v. Caribe Transport II, LLC, et al.*, Case No. 24-1238, similarly addresses the scope of the so-called safety exception under the FAAAA.