No. 25-03

In the Supreme Court of the United States

MALCO ENTERPRISES OF NEVADA, INC.,
PETITIONER,

v.

ALELIGN WOLDEYOHANNES,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA

BRIEF FOR THE RESPONDENT IN OPPOSITION

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REFRAMED QUESTION PRESENTED

The carve-out section of the Graves Amendment, 49 U.S.C. § 30106(b)(2), saves from preemption state laws "imposing liability" on rental car companies for failure to meet the "liability insurance requirements under State law." Here, the Supreme Court of Nevada—interpreting the state minimum insurance law, N.R.S. 482.305—affirmed the lower court's finding that Petitioner violated Nevada's liability insurance requirements when it failed to insure one of its rental cars for the state minimums of $25,000 for bodily injury to one person and $20,000 in property damage. Consistent with the saving clause of the Graves Amendment, the Supreme Court of Nevada affirmed the lower court's imposition of civil tort liability against Petitioner in the amount of $37,886.82 for this failure.

Reframing Petitioner's Question Presented, the right question is: Once a court finds that a rental car company has failed to meet state liability insurance requirements with respect to a vehicle involved in a collision, does the Graves Amendment prohibit the court from imposing joint and several liability on the rental car company based on that failure?

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STATUTORY PROVISION: 49 U.S.C. § 30106

RENTED OR LEASED MOTOR VEHICLE SAFETY AND RESPONSIBILITY

(a) In General.—An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if—

(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

(b) Financial Responsibility Laws.—Nothing in this section supersedes the law of any State or political subdivision thereof—

(1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or

(2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law.

STATEMENT

Nevada requires car owners to carry insurance. *Salas v. Allstate Rent-A-Car, Inc.*, 116 Nev. 1165, 1169 (2000) (holding that "every owner of a motor vehicle" must "provide insurance in the minimum amounts"). By statute, the insurance must cover both the owner "and any other person who uses the vehicle with the owner's permission." *Federated Am. Ins. v. Granillo*, P.2d 803, 804 (Nev. 1992). Carrying this minimum insurance is a legal requirement. *Hall v. Enter. Leasing Co.-West*, 122 Nev. 685, 689 (2006).

The amount of insurance Nevada requires is low: $25,000 for the first person injured, another $25,000 for the second, and $20,000 for property damage. N.R.S. 485.185(1); N.R.S. 482.305(1). Rental car companies are held to the same amounts as everyone else. *See id.* If a driver leasing a rental car already has insurance that will cover state minimums, the rental car company doesn't need to provide any coverage (so long as the driver signs a written waiver form). *Hall*, 122 Nev. at 690 n.10.

Nevada's minimum insurance requirement reflects the State's "strong public policy interest" in making sure crash victims "have a source of indemnification." *Hartz v. Mitchell*, 107 Nev. 893, 896 (1991). Because Nevada takes this requirement seriously, the State enforces it with an appropriate penalty: If a rental car causes an accident, and the company has failed to carry minimum insurance, then it is "jointly and severally liable" for "any damages caused." N.R.S. 482.305(1).

In 2005—long after Nevada enacted its statutory scheme—Congress passed the Graves Amendment so that small rental car companies would not risk "being

put out of business because their customers drove into a state that imposed unlimited vicarious liability." (Pet. at 2.) As Petitioner admits, the law targeted state laws allowing vehicle owners to be "held liable in unlimited amounts." (Pet. at 4.) The uncertainty "as to the ceiling on risk" had raised premiums. (*Id.*) New York was a special target of the bill, where unlimited vicarious liability had cost rental car companies billions. (*Id.* at 5.)

But Representative Graves was clear that his bill would not preempt laws enforcing minimum insurance requirements. When asked about minimum insurance requirements, he responded: "Every single rental vehicle out there has to meet the State's minimum requirements for insurance." 151 Cong. Rec. H1200 (daily ed. Mar. 9, 2005).

To this end, Representative Graves touted the saving clause in his bill. The key language reads: "Nothing in this section supersedes the law of any State … imposing liability on [rental car companies] for failure to meet the … liability insurance requirements under State law." 49 U.S.C. § 30106(b)(1). The Short Trial judge found, and the Supreme Court of Nevada affirmed, that Petitioner violated the liability insurance requirements of Nevada state law. The federal question remaining, then, is whether the saving clause's language—which allows imposing "liability"—includes imposing joint and several liability.

The only thing the Graves Amendment preempts are laws holding a rental company jointly and severally liable with a driver in the absence of negligence or wrongdoing on the company's part. 49 U.S.C. § 30106(a). The presence of the saving clause suggests that at least *some* forms of joint and

several liability are preserved. *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 868 (2000) (reasoning that the presence of a saving clause "assume[s]" that there is something "to save").

Here, if the saving clause does not save Nevada's law, it does no work whatsoever. A saving clause must save *something*. As one lower court (interpreting a different statute) succinctly put it, "If [a statute's] savings clause is interpreted as meaning that it preserves only those claims not addressed in [the statute], then one may wonder what purpose the savings clause serves." *In re Oil Spill by the Oil Rig "Deepwater Horizon,"* 496 F. Supp. 3d 989, 1003 (E.D. La. 2020).

Respondent challenges Petitioner and its amici to answer one question: What do they believe is covered by the express preemption clause in 49 U.S.C. § 30106(a), but is saved by subsection (b)? They cannot—and will not—answer this question on reply. If they did so, they would have to admit that the Supreme Court of Nevada got it right: The Graves Amendment preempts states from imposing joint and several liability on rental car companies except where—as here—the rental car company fails to comply with state insurance requirements.

Petitioner will likely claim that the saving clause really does save nothing, and that it was added as mere "belt-and-suspenders" surplusage. But any such claim is undermined by the fact that the Graves Amendment fits on a single page. This is not a case where Congress felt the need to add surplusage at the end of a lengthy bill, just to clarify or prevent misreadings of a complex statutory scheme. The saving clause here comprises nearly half of the statutory text, and it was the focus of the legislative

debates. 151 Cong. Rec. H1199–1202 (daily ed. Mar. 9, 2005). Surely it saves *something*.

Where does that leave us? Petitioner has only one argument left: That the saving clause cannot mean what it says, because this would create a "loophole" that would repeal the Graves Amendment. (Pet. at 27–28.) It is true that a few lower courts—interpreting quite different State statutory regimes—have voiced this concern. But the answer to that concern is not to read the saving clause entirely out of the statute. Instead, if a state is truly attempting to create a loophole to evade an important Congressional purpose, then a court may turn to obstacle preemption to strike it down (even if it is not expressly preempted). *See Geier v. Am. Honda Motor Co.*, 529 U.S. 861 (2000).

With this background, we turn to Respondent's argument. First, if the Court accepts the writ, it should carefully limit the question presented to avoid wading into the morass of Nevada insurance law. While Petitioner wishes to bait this Court into considering state law issues, this Court should resist. *Johnson v. Fankell*, 520 U.S. 911, 916 (1997).

Second, Petitioner's split of authority is manufactured. Other than one poorly-reasoned trial court decision, *Subrogation Div. Inc. v. Brown*, 446 F. Supp. 3d 542 (D.S.D. 2020), no split exists. The only other court to consider Nevada's minimum insurance law agreed with the Supreme Court of Nevada: The Graves Amendment's saving clause spares Nevada's joint and several liability law from preemption. *Lancer Ins. v. Malco Enters. of Nev., Inc.*, No. 2:10-CV-588 TS, 2012 U.S. Dist. LEXIS 32808, at *8 (D. Utah Mar. 9, 2012), *recons. denied*, 2012 U.S. Dist. LEXIS 98786 at *4. The Court should deny the writ.

ARGUMENT

I. This Court Should Limit the Question Presented to Issues of Federal Law.

At the Supreme Court of Nevada, this car crash case concerned two questions. First, did Petitioner—a rental car company—violate Nevada's insurance laws when it self-insured its vehicles only for crashes caused by its own employees, rather than providing state minimum insurance no matter who was driving the vehicle? Second, if Petitioner did violate those laws, did the Graves Amendment prohibit the Short Trial judge[1] from imposing joint and several liability on Petitioner in the amount of $37,886.82?

The Supreme Court of Nevada answered "yes" to the first question and "no" to the second. The second question may one day be appropriate for certiorari, though (as explained in Section II, *infra*) this Court should wait to see if a true split of authority emerges. If the Court does grant certiorari, however, it should reframe the issue accepted for review to steer clear of the first question. This Court should state at the outset that it will not disturb the Nevada Short Trial Judge's finding that Petitioner violated Nevada's state minimum insurance laws.

Providing this clarity from the start is necessary here. Petitioner quietly asks this Court to wade into the quagmire of Nevada insurance regulation by rehashing its chief state law argument below: That it really *did* comply with Nevada's self-insurance scheme. *See* (Pet. at 18) (citing a Byzantine chain of

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[1] Because this case is worth less than $50,000, it was heard in Nevada's "Short Trial" program, a streamlined judicial process that operates in the borderland between small claims court and full-blown litigation

Nevada statutes about "evidence of insurance"). Petitioner's Question Presented also vaguely refers to Nevada imposing joint and several liability "through a provision governing insurance" rather than "for failing to comply with insurance standards." (Pet. at (I).) Rather than structure its Question Presented to track the language of the Graves Amendment, Petitioner uses vague phrasing to leave the door open for it to later argue that it complied with Nevada's self-insurance laws—even though the Supreme Court of that State shut the door on that state-law argument. Petitioner's wording does not set the stage for analytical precision before this Court.

The application of Nevada's self-insurance laws to Petitioner is better left to Nevada courts. *See Johnson v. Fankell*, 520 U.S. 911, 916 (1997) (explaining that this Court defers to a State's highest court on state law issues). Petitioner—a local business, Malco Enterprises of Nevada, Inc.—has tailored its business model to its own (misguided) reading of Nevada's insurance requirements. Rather than buy insurance for its vehicles, Petitioner points to a series of Nevada statutes to claim it "self-insures" them—but it then refuses to pay out state minimums unless one of its own employees causes a crash. In other words, Petitioner's business strategy (until now) was to rely on a supposed loophole in Nevada's insurance code to put rental cars onto the highway that were, for all practical purposes, uninsured.

Figuring out whether Petitioner's business model complies with Nevada's minimum insurance laws would require more than harmonizing N.R.S. 482.305, 485.034, 485.185, 485.307, and 485.380. It would also require applying Nevada's blended approach to statutory interpretation, which is tailored

to the needs of a state with a citizen legislature that meets for only four months every two years. Nev. Const. art. 4, § 2. In practice, Nevada's approach often consists of putting a judicial gloss on statutes to smooth over ambiguities or patch over loopholes when the plain language leaves something to be desired. *See McKay v. Bd. of Supervisors*, 102 Nev. 644, 650–51 (1986) (explaining that the intent of the legislature "will prevail over the literal sense of the words," and the Court must follow the "context and the spirit of the law"). This Court should not burden itself with determining the appropriate interpretive method for state law statutes. *Exxon Corp. v. Eagerton*, 462 U.S. 176, 181 n.3 (1983) (noting that the method for interpreting state statutes is a matter of state law).

Nor should this Court spend its time delving into the intricacies of Nevada's self-insurance laws, as doing so is unlikely to provide useful nationwide guidance on the Graves Amendment. Instead, this Court should accept the judicial glosses put on Nevada's statutory insurance scheme, and accept that the Short Trial judge found—and the Supreme Court of Nevada affirmed—that Petitioner violated Nevada's minimum insurance laws.

By doing so, this Court will ensure that the Question Presented will have analytical crispness needed to focus the parties on the language of the Graves Amendment, rather than the minutiae of Nevada's insurance requirements. The Question Presented should be: Given that Petitioner violated state insurance laws, did the Graves Amendment prohibit the court from imposing joint and several liability as a consequence of that violation?

II. The Supreme Court of Nevada's Decision Harmonizes with Those of Other Courts.

Petitioner claims the opinion below conflicts with every other major decision on the Graves Amendment. Not so. The only other court to have considered Nevada's statutory regime also upheld it under the Graves Amendment's saving clause. *Lancer Ins. v. Malco Enters. of Nev., Inc.*, No. 2:10-CV-588 TS, 2012 U.S. Dist. LEXIS 32808, at *8 (D. Utah Mar. 9, 2012), *reconsideration denied*, 2012 U.S. Dist. LEXIS 98786 at *4.

While many courts have struck down state laws under the Graves Amendment, most of those have (explicitly or implicitly) suggested that at least some statutes that fall within the express preemption clause also fall within the amendment's saving clause. As the Supreme Court of Nevada correctly held, its State's law fits that bill.

The lead case on the Graves Amendment is *Garcia v. Vanguard Car Rental USA, Inc.*, 540 F.3d 1242 (11th Cir. 2008). There, the Eleventh Circuit held that a Florida law allowing injured motorists to hold rental companies jointly liable with drivers was preempted. But the Florida law was not tied to a state minimum insurance scheme. Rather, the plaintiff (dubiously) argued that the Florida law was protected by the Graves Amendment's saving clause because it would motivate rental car companies to get their own insurance, and was thus supposedly a "financial responsibility" law. *Id.* at 1248.

The Eleventh Circuit (rightly) rejected this argument, holding that "financial responsibility laws are legal *requirements*, not mere financial inducements imposed by law." *Id.* (emphasis added).

Because Florida's law didn't require rental car companies to get any minimum level of insurance (or include any insurance-like requirements), it couldn't fall within the scope of the Graves' Amendment's saving clause.

The opinion below is readily harmonized with *Garcia*. In contrast to Florida's laws, Nevada's laws do impose "legal requirements" on renters—not just "financial inducements." Even before the Graves Amendment, the Supreme Court of Nevada had characterized rental car companies' responsibility to comply with the State's insurance requirements as an "obligation"—that is, not something optional. *Hall*, 122 Nev. at 693. And N.R.S. 485.185 speaks in mandatory terms: Every vehicle owner "*shall* continuously provide" minimum coverage. N.R.S. 485.185(1) (emphasis added). Additionally, N.R.S. 482.305 requires rental car companies to have "complied" with minimum insurance requirements—once again, speaking in mandatory language. So, nothing in the opinion below conflicts with *Garcia*.

Turning to Petitioner's other cases, many of these courts have drawn the same distinction the *Garcia* court did: There is a difference between "legal requirements" and "financial inducements." For instance, in *Meyer v. Nwokedi*, the Supreme Court of Minnesota explained that laws that merely encourage rental car companies to buy more insurance—but do not actually require it—fall on the "inducements" side of the line (and are thus preempted). 777 N.W.2d 218, 225 (Minn. 2010).

In other words, if the language of the statute uses carrots rather than sticks, the Graves Amendment preempts it. *Id.* Thus, the *Meyer* court reasoned that if the legislature had simply used

mandatory language (such as "shall") when spelling out minimum insurance levels—rather than mere words of encouragement—then Minnesota's financial responsibility laws would not have been preempted. *Id.* at 225.

In Nevada, the State legislature did use mandatory language: Every vehicle owner "shall continuously provide" minimum coverage. N.R.S. 485.185(1). Thus, the opinion below harmonizes with *Meyer*, too.

Another of Malco's cases, *Rodriguez v. Testa*, 993 A.2d 955, 964 (Conn. 2010), is just like *Meyer*. In *Rodriguez*, nothing in Connecticut's law required "rental vehicle owners to maintain insurance in the designated amount." *Id.* at 964. Rather, the law used "the same conditional language used in the Florida and Minnesota statutes." So the court held that the "lack of the word 'shall' and the use of the word 'if'" was fatal to the law. *Id.* at 965.

Other authorities Malco cites are also readily distinguishable, illustrating the lack of any split among lower courts. For instance, in *Puerini v. LaPierre*, the court held preempted a law making a vehicle owner jointly liable "regardless" of compliance with Rhode Island's "financial responsibility" law. 208 A.3d 1157, 1165 (R.I. 2019). The statute in question made all rental car companies jointly and severally liable with renting drivers. *Id.* By its terms, the statute applied equally to rental car companies which had "given proof of financial responsibility" and those which had "failed to give proof." *Id.* (quoting R.I. Gen. Laws § 31-34-4). Because even a compliant rental car company could be held jointly and severally liable, the court reasoned the Graves Amendment's saving clause could not spare the law. *Id.* But application of

Nevada's joint and several liability law does depend on a rental car company's compliance with state minimum insurance requirements, so *Puerini* can also be readily harmonized with the decision below.

Similarly, in *Enter. Rent-A-Car Co. of Bos., LLC v. Maynard*, a Maine statute imposing joint and several liability on rental car companies wasn't tied to insurance requirements or state minimums. No. 2:11-cv-00047-JAW, 2012 U.S. Dist. LEXIS 67021, at *22 (D. Me. May 14, 2012). As in *Garcia*, one side argued the statute, 29-A M.R.S. § 1652, was saved under the Graves Amendment's carveout because it was a "financial responsibility" law. *Id.* at *27. The court cited textualist cases like *Garcia*, *Rodriguez*, and *Meyer* to conclude that a state statute like Maine's—which bore no relation to rental companies' failure to meet "insurance-like requirements under state law"—didn't fit under the plain language of the saving clause. *Id.* at *28.

Indeed, the only case Petitioner cites that conflicts with the decision below is *Subrogation Div. Inc. v. Brown*, 446 F. Supp. 3d 542, 553 (D.S.D. 2020). South Dakota, like Nevada, holds businesses that "self-insure" to the same standards as other insurers—meaning a rental car company that self-insures its fleet must pay state minimums when a driver negligently causes a crash. *Auto-Owners Ins. v. Enter. Rent-A-Car Co.*, 663 N.W.2d 208, 211 (S.D. 2003). If the rental car company fails to do so, South Dakota case law makes the company jointly and severally liable with the driver. *Id.*

The federal trial court in *Brown* began by holding that South Dakota's rule "fits squarely within the savings clause" of the Graves Amendment. 446 F. Supp. 3d at 552. But going beyond the clause's plain

language, the trial court concluded it could not "endorse this outcome" because then it would be allowing South Dakota to impose joint and several liability on a rental car company under the "guise" of a state insurance requirement. *Id.* & n.10. The *Brown* court never addressed what purpose the saving clause could possibly have, however, if it did not save at least some state laws that impose joint and several liability on rental car companies.

The *Brown* court's outcome-driven analysis contrasts with the Supreme Court of Nevada's plain-language reading of the saving clause. But other than *Brown*, which is an outlier, no conflict exists. No conflict exists between the highest courts of any State, or between any federal appellate courts. All the courts Petitioner cites have applied a textual analysis to the Graves Amendment and its saving clauses. And this Court should not accept certiorari simply to correct *Brown* and admonish a single trial court for deciding a case based on what outcome it believed it could "endorse." This Court has already been sufficiently clear that a saving clause should not be unduly limited without a "textual basis" for doing so. *Chamber of Commerce v. Whiting*, 563 U.S. 582, 599 (2011). It need not take up this case to repeat itself.

CONCLUSION

If this Court accepts this case for review, it should reframe the Question Presented to limit it to a single issue of federal law. The Court should make clear at the start that it will not disturb Nevada's finding that Petitioner violated state minimum insurance laws. This will provide analytical clarity to both sides moving forward.

Better yet, the Court should deny the writ of certiorari because there exists no true split of authorities below, and because the decision below does not—as Petitioner claims—pose a threat to the rental car industry or to the Graves Amendment.

Respectfully submitted,

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