No. 21-194

IN THE

Supreme Court of the United States

CALIFORNIA TRUCKING ASSOCIATION, INC., *et al.*,

Petitioners,

v.

ROB BONTA, ATTORNEY GENERAL OF CALIFORNIA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF 48 STATE TRUCKING ASSOCIATIONS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

PHILIP A. TALMADGE
Counsel of Record
TALMADGE/FITZPATRICK
2775 Harbor Avenue SW,
3rd Floor, Suite C
Seattle, WA 98126
(206) 574-6661
phil@tal-fitzlaw.com

Counsel for Amici Curiae

307057

COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

The *amici* here are the state trucking associations of all fifty states with the exception of California and Minnesota. *See* Appendix. California's association is a party and Minnesota's is submitting its own brief. The *amici* would be happy to provide the Court with individual historical information on each association, if it so requires. These associations share common characteristics that form the basis for their status as *amici curiae*. They all represent the trucking industry before state and federal legislative, regulatory and enforcement agencies, and serve as the industry's primary voice on transportation and other public policy issues in their respective States. They are member-driven organizations dedicated to representing the trucking industry by advocating for laws and regulations that enhance the safety, efficiency, and profitability of that industry. They strive to enhance the industry's public status and the business climate in their respective States. They regularly appear as a party or *amicus curiae* on trucking industry issues before state and federal courts.

Amici each have members who regularly contract with independent owner-operators. Their members sometimes conduct operations in the State of California, particularly if they are in States geographically proximate

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1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission. The parties were provided proper notice and have consented to the filing of this brief.

to California. Their members operate in the other States throughout the United States as well. Thus, they have an acute interest both in the preservation of the independent owner-operator model in the trucking industry, and in ensuring that the Congressional policy establishing a deregulated trucking industry is not undermined by a patchwork of State-level impediments to the safe and efficient flow of commerce.

SUMMARY OF ARGUMENT

Owner-operators are vital to the modern American trucking industry, but California's Assembly Bill 5 ("AB-5") makes the use of owner-operators in California's trucking industry impossible by its utilization of the so-called ABC test as to whether an employment or independent contractor relationship exists. That decision will have repercussions for all the *amici*.

AB-5 is preempted by 49 U.S.C. § 14501(c)(i), the Federal Aviation Administration Authorization Act ("FAAAA"). The application of the FAAAA by the United States Court of Appeals for the Ninth Circuit is contrary to this Court's FAAAA precedents. California has, in effect, restructured the California trucking industry by foreclosing the use of owner-operators, affecting prices, routes, and services in a federally-regulated industry. AB-5 is preempted by the FAAAA accordingly.

ARGUMENT

(1) Introduction

The *amici curiae* ask this Court to grant the California Trucking Association's ("CTA") petition because AB-5

enacted by the California Legislature, and the decision of the United States Court of Appeals for the Ninth Circuit in *California Trucking Ass'n v. Bonta*, 996 F.3d 644 (9th Cir. 2021) below determining that AB-5 is not preempted by the FAAAA, have such a profound adverse impact on them and the American trucking industry generally. It is noteworthy that every state trucking association in America agrees with this concern.

Congress de-regulated the trucking industry to establish national standards for that industry, rather than a patchwork quilt of local regulations. Extensive federal regulations govern the relationship between trucking carriers and independent contractors known in the industry as owner-operators. AB-5 effectively bars the traditional owner-operator relationship in that industry, a relationship that is essential in an industry where demand for services is cyclical. Nevertheless, the Ninth Circuit condoned what effectively amounts to California's restructuring of its trucking industry, an action having profound impact on the *amici's* members.

(2) Owner-Operators in the Trucking Industry

Owner-operators have long been important in the trucking industry. *See generally,* Douglas C. Grawe, *Have Truck, Will Drive: The Trucking Industry and the Use of Independent Owner-Operators Over Time,* 35 Transp. L.J. 115 (2008). They are used in most, if not all, sectors of the industry, including long-haul trucking, household-goods moving, and intermodal operations. Because demand in the contemporary American trucking industry fluctuates so dramatically, as the COVID pandemic has only confirmed, the industry is structured around these

independent owner-operators, who provide carriers with a flexible supply of trucking equipment. Given the cyclical nature of demand for carrier services, this only makes sense. It is uneconomic for carriers to invest in truck tractors and trailers, often involving an expense of tens of thousands of dollars,[2] only to have such expensive equipment languish unused in those carriers' yards in economic down times. Carriers contract with owner-operators, who own their own equipment, for the lease of their equipment in times of greater demand.

Owner-operators are generally small businesses whose owners value their independence.[3] Those individuals prefer to be independent businesses rather than trucking carrier employees. In fact, owner-operators protested the enactment of AB-5. As evidence of the owner-operators' desire for independence, the San Francisco *Chronicle* from November 6, 2019 reported on one driver's opinion:

> "I don't want to work under someone else anymore," said Parmjit Singh of Pittsburg, who

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2. The district court here noted that a tractor, the main "truck" of a traditional semitruck, could cost in excess of $100,000. *California Trucking Ass'n v. Becerra*, 433 F. Supp. 3d 1154, 1158 (S.D. Cal. 2020). That expense does not include the trailer on which the cargo is actually carried. The expense of such a trailer can range from $30,000 for used trailers to $60,000 or more for a new one, according to an OOIDA survey.

3. A national organization, the Owner-Operator Independent Drivers Association ("OOIDA") has 167,000 members nationally who value their business independence. https://www.ooida.com/WhoWeAre/. OOIDA estimates that there may be 350,000 or more owner-operators in the United States. https://www.ooida.com/wp-content/uploads/2021/03/Trucking-Facts.pdf ("OOIDA Facts").

> paid $215,000 two years ago for his 10-wheeler Peterbilt dump truck, capable of hauling 18 tons. "Now if I don't like (a potential job), I can say no. If it's in San Jose, I say that's too far for me. If you're an employee, you cannot say no."

https://www.sfchronicle.com/business/article/Truckers-protest-California-gig-work-law-that-14815249.php.

Becoming an owner-operator is also frequently an avenue for minority-owned businesses to enter the trucking industry. Paul Enos testified for the Nevada Trucking Association, Inc. at a 2021 Nevada legislative committee hearing, confirming the opportunity owner-operator status offered minorities:

> Minorities make up 41.5 percent of our truck drivers. I do not know if you have noticed as you travel up and down the interstates and stop at truck stops, but you can get some of the best Indian food today. This is actually in Fernley. They are serving the drivers out there on the highway.
>
> It is really interesting to me when talking to my members about the immigrant experience and the folks who are coming to America from India, Eastern Europe, and South America. Some of those folks want to be company drivers, but most of them want to be independent contractors, so we have a tremendous number of owner-operators. Why do they want to come to America and be an owner-operator? Because they can set their own schedule. If they can

> work ten months out of the year, they still have two months when they can go home to see their families. It really is a great place for someone who still wants to have that connection to their home country to be able to come over here, become an owner-operator, and then decide when they are going to work.

https://www.leg.state.nv.us/Session/81st2021/Minutes/Assembly/G1/final/281.pdf at p. 28.

OOIDA reports that 6% of owner-operators are women, 21% are minorities, and 34% are veterans. OODIA Facts. This is consistent with Census Bureau data. https://www.census.gov/library/stories/ 2019/06/america-keeps-on-trucking.html. Indeed, a significant array of minority trucking associations, such as the National Minority Trucking Association, Women in Trucking, the Laredo Motor Carriers Association, and the North American Punjabi Trucking Association, have owner-operator members.

For owner-operators, an independent-contractor relationship is beneficial. In this era of increased shipping demand because of internet shopping, today's shippers are sophisticated and now look for "one stop" shopping for their shipping needs. It would thus be extremely difficult for an individual owning a single truck to compete. By contracting with large trucking carriers, owner-operators can overcome this obstacle and still maintain a small business. The firms give owner-operators access to higher-paying freight than they would have access to if they operated under their own authority and make it easier for owner-operators to obtain insurance.

In sum, owner-operators are essential for the *amici's* members, the relationship is beneficial to owner-operators, and the relationship is vital to America's trucking industry.

(3) The Relationship Between Carriers and Owner-Operators Is Strictly Regulated by Federal Law and Supervised by Federal Agencies

Not only do the United States Department of Transportation ("USDOT") and the Federal Motor Carrier Safety Administration ("FMCSA") regulate trucking generally, federal law specifically governs the terms of the relationship between trucking carriers and owner-operators.

Congress directed USDOT to regulate lease agreements between carriers and owner-operators. 49 U.S.C. § 14102(a). The federal government requires all motor carriers to engage owner-operators through a written lease agreement, as provided in 49 C.F.R. Part 376, colloquially known as the Truth-in-Leasing regulations. *Owner-Operator Independent Drivers Ass'n v. Swift Transportation Co., Inc.*, 367 F.3d 1108, 1110 (9th Cir. 2004) (referencing regulation in 49 C.F.R. Part 376 as Truth-in-Leasing regulations); *In re Arctic Express, Inc.*, 636 F.3d 781, 796 (6th Cir. 2011) (same; noting ICC promulgation of initial Truth-in-Leasing regulations in 1979). These regulations not only require a written lease contract, but also specify actual mandatory terms to be included in any equipment lease agreement between carriers and owner-operators. *See, e.g.*, 49 C.F.R. §§ 376.11, 376.12, 382.601. In addition to specifying specific compensation terms for owner-operators, in the interest of public safety,

the regulations mandate that owner-operators operate exclusively under a carrier's federal license granted by the USDOT and that the owner-operator be insured by the carrier (although the owner-operator must pay for that insurance). They require owner-operators' drivers to undergo mandatory drug testing. They require carriers to give written authorization for owner-operators to have passengers in a truck, or to lease equipment to other carriers. These requirements promote the federal interest in public safety on America's roadways by ensuring that all trucks are covered by adequate insurance and by facilitating the collection of safety data for carriers. *See generally*, Jessica Goldstein, *The Lease and Interchange of Vehicles in the Motor Carrier Industry*, 32 Transp. L. J. 131 (Spring 2005).

The lease agreements usually also provide that the owner-operator has complete control over the selection of drivers or laborers for the trucks, and over the selection of the routes for the delivery of the cargo the carriers ask them to deliver. The owner-operators also determine employee hours, stops/rest breaks, attendance and performance standards, and general working conditions. The owner-operators may reject loads offered to them by the carriers. Critically, although the carriers might advance expenses to the owner-operators as a convenience, as federal regulations permit, 49 C.F.R. § 376.12(h), the owner-operators are ultimately responsible for the cost of the operation of their equipment including general vehicle maintenance, insurance, permits, base plates, license fees, taxes, fuel, lubricants, cold weather protection, tie-down gear and cargo protection equipment, tires, tolls, fines, and driver wages and payroll taxes. The owner-operators area often paid a percentage of the fee paid to the carrier

by the customer. *See, e.g.*, *Coffman v. Unigroup, Inc.*, 2019 WL 3323369 (M.D. Fla. 2019).

Not only is trucking a *national* industry, as Congress has determined, the relationship between trucking carriers and owner-operators is predominantly governed by federal law.

(4) Preemptive Effect of the FAAAA

As CTA's petition notes at 6-8, when Congress deregulated interstate trucking in 1980 and intrastate trucking in 1994, it sought to remove obstacles to "national and regional carriers attempting to conduct a standard way of doing business." *Cole v. City of Dallas*, 314 F.3d 730, 734 (5th Cir. 2002) (quoting H. R. Conf. Rep. No. 103-677, at 87, *reprinted in* 1994 U.S.C.C.A.N. at 1759). It enacted the FAAAA's express preemption to make sure market forces would prevail and that national interests would govern the industry; local jurisdictions would not re-regulate the trucking industry in a "patchwork of state-service determining laws, rules, and regulations." *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 367-68, 370-71, 378 (2008).

The FAAAA's preemptive language bars states from "enacting or enforcing a law, regulation, or other provision . . . *related to a price, route, or service*" of any carrier with respect to the transportation of property. 49 U.S.C. § 14501(c)(1) (emphasis added). This Court has mandated that FAAAA preemption must be construed *broadly*, consistent with its expansive interpretation of similar preemptive language enacted by Congress for airline deregulation. *Rowe*, 552 U.S. at 370-71 (Congress

adopted FAAAA preemptive language knowing of broad construction of same language); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383-84 (1992). In fact, this Court specifically rejected a non-statutory categorical exemption for local policies that uphold "public health." *Id.* at 374 ("The Act says nothing about a public health exception.").

Given this broad federal preemption and the importance of owner-operators to the trucking industry, every time a state or local government has attempted to *directly* ban owner-operators in the industry, courts have held such efforts to be FAAAA-preempted.[4] Indeed, the Ninth Circuit in *Cal. Trucking Ass'n v. Su*, 903 F.3d 953, 964 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 1331 (2019), observed that it was an "obvious proposition that an 'all or nothing' rule requiring services to be performed by certain types of employee drivers and motivated by a State's own efficiency and environmental goals was likely preempted."

AB-5 represents nothing but a backdoor effort to ban owner-operators in the trucking industry.

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4. *E.g.*, *American Trucking Ass'ns, Inc. v. City of Los Angeles*, 596 F.3d 602, 604-05 (9th Cir. 2010) (local regulation developed in the guise of promoting port environmental policies prohibiting use of independent contractor drivers at port was preempted); *In re Federal Preemption of Provisions of the Motor Carrier Act*, 566 N.W.2d 299, 308–09 (Mich. App. 1997), *review denied*, 587 N.W.2d 632 (Mich. 1998), *cert. denied,* 525 U.S. 1018 (1998) (striking down as FAAAA-preempted a regulation mandating that a truck be operated only by persons who were employees of the trucking carrier).

(5) AB-5 Effectively Eliminates the Owner-Operator Business Model in the Trucking Industry in Violation of the FAAAA

AB-5 regulates trucking carriers' relationship with owner-operators by codifying the so-called ABC test adopted by the California Supreme Court in *Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903, 416 P.3d 1 (2018) for determining if an employer-employee relationship is present. The B element of the test makes it virtually *impossible* for an owner-operator to ever be an independent contractor because it presumes a worker is an employee unless the worker performs work outside the usual course of the hiring entity's business. Obviously, trucking carriers invariably hire owner-operators to perform trucking services so that the B element of the ABC test can never be met.[5]

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5. The district court here pointedly observed that the ABC test effectively made owner-operators *invariably* carrier employees:

> During the January 13, 2020 hearing, the Court repeatedly invited Defendants to explain how the ABC test was not an "all or nothing" test. Specifically, the Court invited them to explain how a motor carrier could contract with an independent owner-operator as an independent contractor, rather than as an employee, under the ABC test. Neither the State nor Intervenor could provide an example. Instead, Defendants repeatedly asserted that a broker company that did not perform trucking work could plausibly contract with an independent owner-operator. Brokers, however, are *not* motor carriers. Accordingly, the Court observes that the ABC test appears to be rigged in such a way that a motor carrier *cannot* contract with independent contractor owner-operators without classifying them as employees.

433 F. Supp. 3d at 1165 n.9 (court's emphasis).

California has effectively deprived a federally-regulated industry of the right to use the owner-operator business model.[6] As such, the State's actions affect prices, routes, and services in the industry. California's AB-5 is no different than the outright ban of owner-operators by the Ports of Los Angeles/Long Beach or the Michigan Legislature.

California's AB-5 will have an enormous effect on the *amici*'s member trucking carriers and the American trucking industry generally. As the State with the most powerful economy, California will affect *amici*'s carriers traveling to and from California. *The Trucker* newspaper reports on its website in discussing California's trucking industry that its proximity to Mexico and the Pacific, its connections with Oregon, Arizona, and Nevada, its powerful state economy, and its ports all make California a gateway to America. "Of the western states, none has

6. Ultimately, at its most basic, under the analysis that is at the core of the FAAAA's express preemptive language, AB-5 re-regulates (and makes illegal) what federal law specifically has determined is legal in the trucking industry (the owner-operator business model). *Hillman v. Maretta*, 569 U.S. 483, 490 (2013) (a conflict is present "when compliance with both federal and state regulations is impossible."). Stated another way, preemption is required if the state law is an obstacle to the accomplishment of the purposes and objectives of Congress. *Id.* at 1950. *See also*, *Remington v. J.B. Hunt Transport, Inc.*, 2016 WL 4975194 (D. Mass. 2016) (claim that the deduction of expenses for repairs, cargo losses, insurance, or administrative fees from owner-operator compensation constituted "control" by carriers where the owner-operator regulations of 49 C.F.R. Part 376 *authorized* such deductions was preempted; as the court succinctly observed: "What is explicitly permitted by federal regulations cannot be forbidden by state law." *Id.* at *4.).

a greater impact on the U.S. economy …" https://www.thetrucker.com/truck-driving-jobs/resources/states/california.

Just as political pressure resulted in AB-5's enactment by the California Legislature, legislatures in other States will face pressure to enact counterpart statutes. Courts in other States will be inclined to follow the rationale of the California Supreme Court in *Dynamex*.[7]

At a minimum, even if not all States follow California's approach, a patchwork of local laws governing a crucial relationship in the national trucking industry is the result. Massachusetts enacted a statute akin to AB-5. Courts interpreting it have held that it is FAAAA-preempted with regard to its second statutory element, or the B element of the ABC rule, as it relates to the trucking industry because it affects prices, routes, or services by effectively eliminating a particular employment or business model in the trucking industry, and creating a patchwork of state laws, contrary to the deregulation intent of Congress. *See Sanchez v. Lasership, Inc.*, 937 F. Supp. 2d 730 (E.D. Va. 2013); *Massachusetts Delivery Ass'n v. Coakley*, 769 F.3d 11, 17 (1st Cir. 2014); *Schwann v. FedEx Ground Package Sys., Inc.*, 813 F.3d 429 (1st Cir. 2016); *Mass. Delivery Ass'n v. Healey*, 821 F.3d 187 (1st Cir. 2016).

Although New Jersey has a statute prescribing the elements of the employer-employee relationship, the Third Circuit in *Bedoya v. American Eagle Express, Inc.*, 914 F.3d 812 (3d Cir. 2019) held that the FAAAA

7. State courts may, of course, choose to import the ABC test into their common law.

did not preempt it because its element B provided that an independent contractor relationship could be present if the service could be performed outside all of the places of business of the hiring entity for which the contractor's services were performed. Thus, the statute was unlike Massachusetts' law that "bound the carrier to provide its services using employees and not independent contractors." *Id.* at 822. The New Jersey test did not categorically bar carriers from using independent contractors. *Id.* at 824. AB-5 does so.

And a patchwork of state laws is not mere rhetoric. Like California after AB-5, Washington state courts have determined that carriers must pay unemployment compensation taxes for owner-operators. *Swanson Hay Co. v. State Emp. Security Dep't*, 1 Wn. App. 2d 174, 404 P.3d 517 (2017), *review denied*, 191 Wn.2d 1004, *cert. denied*, 139 S. Ct. 605 (2018). Washington State's neighboring states, Oregon and Idaho, however, have held carriers to be exempt from unemployment compensation taxation for owner-operators. *See CEVA Freight, LLC v. Employment Dep't*, 279 Or. App. 570, 379 P.3d 776, *review denied*, 360 Or. 751 (2016); *Home Transp., Inc. v. Idaho Dep't of Labor*, 318 P.3d 940 (Ida. 2014). Thus, a trucking carrier whose owner-operators drive in Washington must cover them for unemployment compensation but not when the owner-operators are operating in those neighboring states, a headache for Northwest trucking carriers.

And if owner-operators must invariably be treated as carrier employees, this fact has enormous economic consequences for trucking firms. As noted *supra*, such a determination subjects carriers to State unemployment compensation taxation. Similarly, State worker

compensation laws may apply to the relationship requiring carriers to pay premiums for owner-operators. *See*, *e.g.*, *Delivery Express, Inc. v. Sacks*, 728 Fed. Appx. 730 (9th Cir. 2018); *Henry Industries, Inc. v. Dep't of Labor & Indus.*, 195 Wn. App. 593, 381 P.3d 172 (2016). Carriers may also be required to observe state wage and hours laws as to owner-operator employees. *See*, *e.g.*, *Costello v. BeavEx, Inc.*, 810 F.3d 1045 (7th Cir. 2016), *cert. denied*, 137 S. Ct. 2289 (2017) (Illinois wage laws); *Dilts v. Penske Logistics, LLC*, 769 F.3d 637 (9th Cir. 2014), *cert. denied*, 575 U.S. 996 (2015) (California meal and rest break laws); *Bostain v. Food Express*, 159 Wn.2d 700, 153 P.3d 846, *cert. denied*, 552 U.S. 1040 (2007) (Washington overtime wage laws). The financial ramifications for carriers are extraordinary.

The reality of AB-5's effective ban on the owner-operator model for trucking carriers is that such carriers will be put to a choice. They can restructure their business and make all drivers company employees.[8] If they do so, the impact on prices, routes, or services is manifest. Trucking companies will face the expense of permanent compensation and benefits for drivers as employees, even when there are times when such permanent drivers are unneeded due to the cyclical nature of service demand for such companies. They will be obliged to pay state-mandated unemployment compensation taxes and worker

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8. But that argument is unrealistic, and impractical as the district court in *Healey* noted in rejecting a similar argument. Such an approach was a "significant burden," that could be found *nowhere* in actual practice. *Mass. Delivery Ass'n v. Healey*, 117 F. Supp. 3d 86, 95 (D. Mass), *aff'd*, 821 F.3d 187 (1st Cir. 2016).

compensation premiums.[9] Most critically, if trucking carriers cannot use owner-operators, they will need to purchase equipment for company drivers. Such equipment is expensive and may often sit idle as cargo needs fluctuate. These are *real* costs, and they will impact *prices*.

This interference has a logical effect on *routes*. As the First Circuit in *Schwann* explained, independent contractors assume "the risks and benefits of increased or decreased efficiencies achieved by the selected routes," while employees would likely "have a different array of incentives that could render their selection of routes less efficient." 813 F.3d at 439. Forcing a carrier to treat owner-operators as employees relates to routes, in addition to prices and services.

Finally, the States' imposition of an unwanted business model – employees rather than owner-operators – on trucking firms impact trucking industry *services*.[10]

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9. The district court in *Healey* explained that the "potential logical, if indirect, effect of Section 148B is to increase [the carrier's] prices by increasing its costs." *Healey*, *supra* at 93. The court ruled that the logical relation to prices could not be averted simply by claiming that cost increases were slight. *Id*.

10. Such a State effort to supplant the owner-operator business model for trucking companies with a model of the government's choosing necessarily constitutes an effort to supplant market forces with State regulation, something the FAAAA was specifically designed to forestall. As the First Circuit noted in *Schwann*, whether to provide services through employees or through independent contractors is a significant business decision which "implicates the way in which a company chooses to allocate its resources and incentivize those persons providing the service." *Schwann*, 813 F.3d at 438. Local interference with

FAAAA preemption is intended to prevent States from substituting their "own governmental commands for 'competitive market forces' in determining (to a significant degree) the services that motor carriers will provide." *Rowe*, 552 U.S. at 372 (quoting *Morales*, 504 U.S. at 378). As the district court in *Healey* explained, if a carrier wishes to fulfill on-demand requests for unscheduled deliveries with employee drivers, it necessarily must have on-call employees available. "Retaining on-call employees forces [the carrier] to incur costs that translate into increased prices. . . . Conversely, if [the carrier] endeavors to maintain its current prices, then the practical effect of [the statute] is to force it to abandon a service now demanded by the competitive marketplace." 117 F. Supp. 3d at 93.

To remain competitive, California trucking firms, and firms in other jurisdictions employing the ABC test, that rely on owner-operators as a flexible supply of equipment will have to change how they do business, adopting some combination of: (a) reducing their capacity to respond to fluctuating demand for transportation services; (b) increasing their operating costs by adding new employees and equipment, which would sit idle during leaner times; or (c) raising prices to account for increased costs and/or taxes. Firms in other jurisdictions will of necessity be faced with an untenable choice: accommodating California regulations requiring employee drivers or abandoning operations in California

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carriers' decision to lease equipment would pose "a serious potential impediment to the achievement of the FAAAA's objectives because a court, rather than the market participant, would ultimately determine what services that company provides and how it chooses to provide them." *Id.*

altogether. Carriers will be compelled to increase prices to address California's requirements. Market demands will be ignored. Freight involving California will be delayed for lack of firms avoiding costly regulations. All of these changes from the owner-operator business model constitute a direct interference with carriers' services.

In sum, AB-5 affects carrier prices, routes, or services within the meaning of the FAAAA.

CONCLUSION

The Ninth Circuit misapplied this Court's FAAAA precedents in analyzing AB-5, creating an effective exemption for owner-operators from the express federal preemption of local laws affecting prices, routes, or services in the trucking industry enacted by Congress. In effect, California's AB-5 effectively bans owner-operators in that vital national industry. The FAAAA's language does not authorize an exception to Congressional preemption policy for owner-operators any more than it did "public health" as this Court ruled in *Rowe*.

A vital business structure for an entire industry is implicated by AB-5, as legislatures and courts in other jurisdictions will likely follow the California model. The use of owner-operators drives today's modern trucking industry. This Court should grant review of the Ninth Circuit's decision in order to vindicate the critical federal policy of deregulation in the trucking industry, and to avoid the effective state re-regulation of trucking.

Respectfully submitted,

Philip A. Talmadge
Counsel of Record
Talmadge/Fitzpatrick
2775 Harbor Avenue SW,
3rd Floor, Suite C
Seattle, WA 98126
(206) 574-6661
phil@tal-fitzlaw.com

Counsel for Amici Curiae