No.

In the Supreme Court of the United States

CALIFORNIA TRUCKING ASSOCIATION, INC.; RAVINDER SINGH; AND THOMAS ODOM,

Petitioners,

v.

ROBERT BONTA, IN HIS OFFICIAL CAPACITY AS THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

ROBERT R. ROGINSON
ALEXANDER M. CHEMERS
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
400 South Hope St.
Suite 1200
Los Angeles, CA 90071
(213) 239-9800

CHARLES ROTHFELD
Counsel of Record
EVAN M. TAGER
MIRIAM R. NEMETZ
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
crothfeld@mayerbrown.com

Counsel for Petitioners

QUESTION PRESENTED

The Federal Aviation Administration Authorization Act ("FAAAA") expressly preempts state laws "related to a price, route, or service, of any motor carrier." 49 U.S.C. § 14501(c)(1). The question presented is whether the FAAAA preempts the application to motor carriers of a state worker-classification law that effectively precludes motor carriers from using independent owner-operators to provide trucking services.

PARTIES TO THE PROCEEDING

The parties in the court of appeals were plaintiffs-appellees California Trucking Association, Inc., Ravinder Singh, and Thomas Odom; defendants-appellants Robert Bonta in his official capacity as the Attorney General of the State of California, Andre Schoorl in his official capacity as the Acting Director of the Department of Industrial Relations of the State of California, and Julie A. Su in her official capacity as Labor Commissioner of the State of California, Division of Labor Standards Enforcement (the State Defendants); and intervenor-defendant-appellant International Brotherhood of Teamsters.

CORPORATE DISCLOSURE STATEMENT

California Trucking Association, Inc., a California nonprofit corporation, has no parent corporation and no publicly traded corporation owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

California Trucking Ass'n, et al. v. *Xavier Becerra, in his official capacity as Attorney General of the State of California, et al.*, No. 3:180cv-02458-BEN-DEB (S.D. Cal.) (order granting preliminary injunction filed on January 16, 2020).

California Trucking Ass'n, et al. v. *Robert Bonta, in his official capacity as Attorney General of the State of California, et al.*, Nos. 20-55106 and 20-55107 (9th Cir.) (opinion filed on April 28, 2021, rehearing denied on June 21, 2021).

There are no other related proceedings in state or federal courts, or in this Court.

TABLE OF CONTENTS

Page

Question Presented i
Parties to the Proceeding ii
Corporate Disclosure Statement ii
Statement of Related Proceedings ii
Opinions Below 1
Jurisdiction 1
Statutory Provisions Involved 1
Introduction 2
Statement 4
- A. The role of owner-operators in the trucking industry 4
- B. Deregulation of the trucking industry 6
- C. California's adoption of the "ABC" test and its implications for owner-operators 8
- D. Proceedings below 10

Reasons for Granting the Petition 14
I. The Lower Courts are Divided Over When the FAAAA Preempts State Worker-Classification and Other Workforce-Related Laws 15
- A. Under the Ninth Circuit's approach, the FAAAA preempts only state worker-classification laws that bind a carrier to particular rates, routes, or services. 16
- B. Other courts reject the Ninth Circuit's narrow approach to the FAAAA. 17

II. The Ninth Circuit's Decision is Wrong 23

A. The Ninth Circuit's view that the FAAAA preempts only laws that "bind, compel or otherwise freeze into place a particular price, route, or service" conflicts with this Court's decisions. 24

1. The FAAAA preempts state laws that affect rates, routes, or services even indirectly. 24

2. The Ninth Circuit's standard rests on a misreading of this Court's ERISA decisions. 28

B. The FAAAA preempts laws of general applicability.. 30

III. The Petition Presents an Issue of Exceptional Importance 32

Conclusion 36

Appendix A – The Ninth Circuit's decision (April 28, 2021).................... 1a

Appendix B – The district court's decision (January 16, 2020)........................... 51a

Appendix C – The Ninth Circuit's order denying rehearing en banc (June 21, 2021) 80a

Appendix D – The Ninth Circuit's order granting motion to stay the mandate (June 23, 2021)................. 82a

TABLE OF AUTHORITIES

Page(s)

Cases

Air Transport Association v. *City & County of San Francisco*, 266 F.3d 1064 (9th Cir. 2001) 29

Alvarez v. *XPO Logistics Cartage LLC*, 2018 WL 6271965 (C.D. Cal. Nov. 15, 2018) 23

Am. Trucking Ass'ns v. *United States*, 344 U.S. 298 (1953) 4

American Trucking Ass'ns, Inc. v. *City of Los Angeles*, 660 F.3d 384 (9th Cir. 2011) 29

B&O Logistics, Inc. v. *Cho*, 2019 WL 2879876 (C.D. Cal. Apr. 15, 2019) 23

Bedoya v. *Am. Eagle Express Inc.*, 914 F.3d 812 (3d Cir. 2019) 15, 21, 22

Bernstein v. *Virgin Am., Inc.*, 990 F.3d 1157 (9th Cir. 2021) 35

Brindle v. *Rhode Island Dep't of Labor & Training*, 211 A.3d 930 (R.I. 2019) 20, 21

Cal. Trucking Ass'n v. *Su*, 903 F.3d 953 (9th Cir. 2018) 29

TABLE OF AUTHORITIES—continued

Page(s)

Californians for Safe & Competitive Dump Truck Transportation v. *Mendonca*, 152 F.3d 1184 (9th Cir. 1998) 29

Chambers v. *RDI Logistics, Inc.*, 65 N.E.3d 1 (Mass. 2016) 18, 20

Costello v. *BeavEx, Inc.*, 810 F.3d 1045 (7th Cir. 2016) 22

Dan's City Used Cars, Inc. v. *Pelkey*, 569 U.S. 251 (2013) 25

Dilts v. *Penske Logistics, LLC*, 769 F.3d 637 (9th Cir. 2014) 29

Dynamex Operations W., Inc. v. *Superior Ct.*, 416 P.3d 1 (Cal. 2018) 8

Egelhoff v. *Egelhoff*, 532 U.S. 141 (2001) 30

People ex rel. Harris v. *Pac Anchor Transportation, Inc.*, 329 P.2d 180 (Cal. 2014) 17

Henry v. *Cent. Freight Lines, Inc.*, 2019 WL 2465330 (E.D. Cal. June 13, 2019) 23

TABLE OF AUTHORITIES—continued

Page(s)

Mass. Delivery Ass'n v. *Healey*,
821 F.3d 187 (1st Cir. 2016) 19

Morales v. *Trans World Airlines, Inc.*,
504 U.S. 374 (1992)......................................*passim*

Nw. Inc. v. *Ginsberg*,
572 U.S. 273 (2014).......................................25, 31

Owner-Operator Ind. Drivers Ass'n, Inc.
v. *Swift Transp. Co.*,
367 F.3d 1108 (9th Cir. 2004)................................5

People v. *Superior Court of Los Angeles County*,
271 Cal. Rptr. 3d 570 (Ct. App. 2020).....17, 23, 33

Rowe v. *New Hampshire Motor Transp. Ass'n*,
552 U.S. 364 (2008)......................................*passim*

S.G. Borello & Sons, Inc. v. *Department of Industrial Relations*,
769 P.2d 399 (Cal. 1989)..8

Schwann v. *FedEx Ground Package Sys., Inc.*,
813 F.3d 429 (1st Cir. 2016) ....*passim*

Skidgel v. *Cal. Unemployment Ins. Appeals Bd.*,
234 Cal. Rptr. 3d 528 (Ct. App. 2018)...................8

TABLE OF AUTHORITIES—continued

Page(s)

Valadez v. *CSX Intermodal Terminals, Inc.*, 2019 WL 1975460 (N.D. Cal. Mar. 15, 2019) 23

W. States Trucking Ass'n v. *Schoorl*, 377 F. Supp. 3d 1056 (E.D. Cal. 2019) 23

Statutes and Regulations

28 U.S.C. § 1254 1

49 U.S.C.
§ 14501(c)(1) .... i, 1, 7
§ 41713(b)(1) 7

Aviation Infrastructure Investment Act of 1993, Pub. L. No. 103-305, 108 Stat. 1569 (1993) 7, 25, 28

Motor Carrier Act of 1980, Pub. L. 96-296, 94 Stat. 793 (1980) 6

49 C.F.R. § 365.101T 4

44 Fed. Reg. 4680, 4680 (Jan. 23, 1979) 6

Assembly Bill 5 (2019 Cal. Stat., ch. 296) .... *passim*

Assembly Bill 2257 (2020 Cal. Stat., ch. 38, § 2) 8

TABLE OF AUTHORITIES—continued

Page(s)

Cal. Lab. Code
§ 204 9
§ 226 9
§ 246 9
§ 1174(d) 9
§ 1197... 9
§ 2775... 2, 8, 9
§§ 2776-2784.. 8
§ 2802(a) 9
§ 2810.5.. 9
§ 3600... 9
§ 3700... 9
§ 6401.7.. 9

Cal. Unemp. Ins. Code § 976.. 9

Other Authorities

Assembly Floor Session (Sept. 11, 2019) (Statement of Assembly Member Lorena Gonzalez), https://tinyurl.com/6cmmczn8 32

Jennifer Cheeseman Day & Andrew W. Hait, *Number of Truckers at All-Time High*, U.S. Census Bureau (June 6, 2019), https://bit.ly/3tO3qbq................. 35

TABLE OF AUTHORITIES—continued

Page(s)

Douglas C. Grawe, *Have Truck, Will Drive: The Trucking Industry and the Use of Independent Owner-Operators Over Time*, 35 Transp. L.J. 115, 127 (2008) 6

H.R. Conf. Rep. No. 103–677 (1994) 7, 25, 28

H.R. Rep. No. 95-1812 (1978) 4, 6

Motor Carrier Act of 1980: Remarks on Signing S. 2245 Into Law, Pub. Papers of Jimmy Carter (July 1, 1980) 6

Owner-Operator Independent Drivers Ass'n, *Industry Facts*, https://bit.ly/3xsr7Y8 35

PETITION FOR A WRIT OF CERTIORARI

Petitioners California Trucking Association, Inc., Ravinder Singh, and Thomas Odom respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals in the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-50a) is reported at 996 F.3d 664. The opinion of the district court (App., *infra,* 51a-79a) is reported at 433 F. Supp. 3d 1154.

JURISDICTION

The judgment of the court of appeals was entered on April 28, 2021. Petitioners' timely petition for rehearing en banc was denied on June 21, 2021. This Court's jurisdiction rests on 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

The Federal Aviation Administration Authorization Act ("FAAAA"), 49 U.S.C. § 14501(c)(1), provides in relevant part:

> Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

California's "ABC test" for classifying workers as independent contractors or employees, California Labor Code § 2775(b)(1), provides:

> For purposes of this code and the Unemployment Insurance Code, and for the purposes of wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:
>
> (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for performance of the work and in fact.
>
> (B) The person performs work that is outside the usual course of the hiring entity's business.
>
> (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

INTRODUCTION

For decades, motor carriers across the United States have provided freight-transportation services through "owner-operators"—individuals who drive their own trucks and operate as independent contractors. Owner-operators play a critical role in interstate commerce—one that Congress has recognized and protected. This petition concerns an express conflict in the circuits on an exceptionally important question of federal law related to that commerce: Does the

FAAAA's preemption clause preclude states from adopting worker-classification rules that prohibit or substantially restrict motor carriers' use of owner-operators?

That question warrants review for several reasons:

First, the courts of appeals and state courts of last resort disagree about the answer. Here, the Ninth Circuit upheld California's worker-classification statute as it applies to motor carriers. In contrast, the First Circuit and the Massachusetts Supreme Judicial Court both have held an identical Massachusetts statute to be preempted by the FAAAA. The decisions of other courts also are in clear tension with the holding below. There is no doubt about this conflict: The Ninth Circuit here expressly refused to follow the First Circuit's holding.

Second, the decision below upholding California's statute is wrong. Congress used notably broad preemptive language in the FAAAA to avoid development of a patchwork of state service-determining laws, acting to ensure that trucking rates, routes, and services would reflect competitive market forces. The California law upheld by the Ninth Circuit cannot be reconciled with that statutory language and purpose.

Third, the issue here is one of tremendous practical significance. If applied to owner-operators, California's worker-classification statute will up-end the trucking industry's longstanding business model. It also will destroy the uniformity necessary for the free flow of interstate commerce and the operation of nationwide businesses. The Ninth Circuit's decision upholding that statute creates corrosive uncertainty for

the nation's hundreds of thousands of owner-operators. And the law will have destructive effects on the prices, routes, and services of carriers—just what Congress sought to avoid when it enacted the FAAAA. Review by this Court accordingly is in order.

STATEMENT

A. The role of owner-operators in the trucking industry

Motor carriers move property in interstate commerce by motor vehicle. See ER269; SER120, 142.[1] They operate pursuant to registration permits, issued by the Federal Motor Carrier Safety Administration, that confer federal "operating authority." 49 C.F.R. § 365.101T.

Many motor carriers provide trucking services by contracting with "owner-operators"—individual drivers who own and operate their own trucks. SER142; ER269-70; see also H.R. Rep. No. 95-1812, at 5 (1978) (describing the "independent owner-operator" as a "small businessman" who "owns and operates one, or a few, trucks for hire"). In many cases, owner-operators lack their own operating authority and instead "operat[e] under the * * * permit[s]" of the motor carriers with which they contract. *Am. Trucking Ass'ns* v. *United States*, 344 U.S. 298, 303 (1953). Many motor carriers, including most motor carriers in California, depend entirely on owner-operators to transport goods. SER121, 142. Other motor carriers own trucks and employ drivers but also contract with owner-operators to secure additional capacity or specialized services. SER142. "There are hundreds of thousands

[1] "ER" refers to the excerpts of record in the Ninth Circuit; "SER" refers to the supplemental excerpts of record.

of owner-operators in the United States, many of whom contract with various federally regulated motor carriers." *Owner-Operator Ind. Drivers Ass'n, Inc.* v. *Swift Transp. Co.*, 367 F.3d 1108, 1110 (9th Cir. 2004).

The owner-operator business model is central to the operation of the trucking industry, allowing motor carriers to efficiently satisfy fluctuating demand for trucking services. ER270. In many segments of the economy, the demand for trucking services varies over time (for example, increasing during the holiday season). *Ibid.* By using owner-operators, motor carriers are able to scale up their operations quickly in times of peak demand while avoiding the costs of maintaining idle equipment and employees when demand is lower. ER270-71; SER126-27.

Use of owner-operators also enables motor carriers to provide services that otherwise could not be economically offered (for example, using refrigerated or tanker trucks, or trucks used to transport hazardous materials). Motor carriers dependent on their own fleets and employee drivers "cannot keep infrequently used, specialized equipment on hand because of the capital costs associated with acquiring this equipment." SER127. But many owner-operators have invested in specialized equipment and can recover their costs by contracting with numerous motor carriers. ER272; SER127.

In addition, use of owner-operators has allowed emerging motor carriers to expand without major capital investment, making it possible for them bid on jobs that require multiple trucks and to provide those services through subcontractors or by themselves acquiring additional trucks and hiring employee drivers. ER272; SER120-21, 132, 142. Owner-operators

who expand their businesses in this way may ultimately obtain their own operating authority. See Douglas C. Grawe, *Have Truck, Will Drive: The Trucking Industry and the Use of Independent Owner-Operators Over Time*, 35 Transp. L.J. 115, 127 (2008).

Congress has long recognized the importance of owner-operators to the trucking industry. In 1978, for example, a congressional report noted that owner-operators were "one of the most efficient movers of goods and account[ed] for approximately 40 percent of all intercity truck traffic in the United States." H.R. Rep. No. 95-1812, at 5. The facilitation of owner-operator transport is now federal policy: Federal Truth-in-Leasing regulations, which govern contracts between motor carriers and owner-operators, were adopted to "promote the stability and economic welfare of the independent trucker segment of the motor carrier industry." Part 1057 – Lease and Interchange of Vehicles, 44 Fed. Reg. 4680, 4680 (Jan. 23, 1979).

B. Deregulation of the trucking industry

In 1980, Congress found that federal regulation of motor carriers had "inhibit[ed] market entry, carrier growth, maximum utilization of equipment and energy resources, and opportunities for minorities and others to enter the trucking industry." Motor Carrier Act of 1980, Pub. L. 96-296, §§ 2, 3(a), 94 Stat. 793, 793. Congress therefore enacted the Motor Carrier Act of 1980 to "reduce unnecessary regulation." *Id.* at § 2. Owner-operators were among the intended beneficiaries of this deregulation: When signing the Motor Carrier Act, President Carter specifically stated that the law would "enhance business opportunities for independent truckers." Motor Carrier Act of 1980: Remarks on Signing S. 2245 Into Law, Pub. Papers of Jimmy Carter at 1266 (July 1, 1980).

Congress expanded on this effort in 1994, enacting the FAAAA "to ensure that the States would not undo federal deregulation with regulation of their own" (*Rowe* v. *New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 368 (2008) (internal quotation marks omitted)) and to prevent development of "a patchwork of state service-determining laws, rules, and regulations." *Id.* at 373. Congress recognized that "[t]he sheer diversity" of state regulatory schemes posed "a huge problem for national and regional carriers attempting to conduct a standard way of doing business." H.R. Conf. Rep. No. 103-677, at 87 (1994). Consequently, it declared in express legislative findings that state regulation of the trucking industry "imposed an unreasonable burden on interstate commerce" that "impeded the free flow of trade, traffic, and transportation of interstate commerce." FAAAA, Pub. L. No. 103-305, § 601(a)(1)(A)-(B), 108 Stat. 1569, 1605.

Congress therefore included in the FAAAA an express preemption clause providing that no state may "enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier * * * with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). In Congress's view, the preemption of state law would "help[] ensure transportation rates, routes, and services that reflect 'maximum reliance on competitive market forces,' thereby stimulating 'efficiency, innovation, and low prices,' as well as 'variety' and 'quality.'" *Schwann* v. *FedEx Ground Package Sys., Inc.*, 813 F.3d 429, 436 (1st Cir. 2016) (quoting *Rowe*, 552 U.S. at 371). Congress borrowed the FAAAA's preemption language from the earlier-enacted Airline Deregulation Act of 1978 ("ADA"), 49 U.S.C. § 41713(b)(1), which this Court already had

held to "express a broad pre-emptive purpose." *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992).

C. California's adoption of the "ABC" test and its implications for owner-operators

California law imposes numerous obligations on "employers" with respect to "employees." But the many laws governing the employer-employee relationship in California generally do not apply to independent contractors. See, *e.g., Skidgel* v. *Cal. Unemployment Ins. Appeals Bd.,* 234 Cal. Rptr. 3d 528, 533 (Ct. App. 2018).

For decades, classification of California workers as independent contractors or employees had been governed by the multi-factor test described in *S.G. Borello & Sons, Inc.* v. *Department of Industrial Relations*, 769 P.2d 399 (Cal. 1989). Motor carriers lawfully treat owner-operators as independent contractors under that test. SER048, 083. In 2018, however, the California Supreme Court held that a new test for independent-contractor status, the so-called "ABC" test, would apply to claims under state wage orders. See *Dynamex Operations W., Inc.* v. *Superior Ct.*, 416 P.3d 1 (Cal. 2018). The California legislature subsequently adopted a statute, known as Assembly Bill 5 ("AB-5"), that codified the ABC test, expanded its applicability beyond wage orders to reach the entire Labor Code and the Unemployment Insurance Code, and created specified exceptions to the test. 2019 Cal. Stat., ch. 296; Cal. Lab. Code §§ 2775(b)(1)(A)-(C), 2776-2784.[2]

---

[2] The legislature subsequently amended the law, now designated by a new number. See Assembly Bill 2257 (2020 Cal. Stat., ch.

Under prong (B) of the ABC test, a person is treated as an employee unless the "hiring entity" establishes that "[t]he person performs work that is outside the usual course of the hiring entity's business." Cal. Lab. Code § 2775(b)(1)(B). And a motor carrier that contracts with an owner-operator categorically cannot satisfy Prong B. As the dissenting judge below explained, with no disagreement from the majority, "independent-contractor truckers hauling goods for the hiring entity are perforce *not* performing work outside the usual course of the hiring entity's business." App., *infra*, 39a (dissenting opinion). Accordingly, AB-5 would require all motor carriers "to reclassify all independent-contractor drivers as employee drivers." *Ibid.* (quotation marks omitted).

AB-5 therefore effectively requires motor carriers, when engaging *any* driver, to comply with the full panoply of California laws governing the employment relationship. Among other requirements, the motor carrier would have to hire drivers in compliance with California's Labor Code (Cal. Lab. Code § 2810.5); reimburse drivers for any cost incurred in operating and maintaining vehicles (*id.* § 2802(a)); record drivers' working hours (Wage Order No. 9, § 7(A)(3); Cal. Lab. Code § 1174(d)); provide and manage drivers' meal and rest periods (Wage Order No. 9, §§ 7 (A)(3), 11-12); pay drivers as employees (*id.* § 4; Cal. Lab. Code §§ 204, 226, 246, 1197); furnish itemized wage statements (*id.* § 226); institute and supervise worker-safety programs (*id.* § 6401.7); and pay worker's compensation and unemployment insurance (*id.* §§ 3600, 3700; Cal. Unemp. Ins. Code § 976). To comply with

---

38, § 2). The amendment is not material to the issues presented here, and in this petition we refer to the law as AB-5, as did the Ninth Circuit in its decision.

these and other requirements made applicable by AB-5, motor carriers would be forced to significantly restructure their operations—to obtain their own trucks, hire drivers, and create the administrative structure necessary to manage their new fleets, supervise their new employees, and maintain the employment records mandated by California law. See SER127-28, 142-43. At the same time, owner-operators who previously operated their own businesses would, as a practical matter, have to become employees if they wish to provide driving services in California for motor carriers.

D. Proceedings below

1. Petitioners are a trade association whose members include motor carriers that provide trucking services in California using independent contractors, and two individual owner-operators who contract with motor carriers in California. After the California Supreme Court decided *Dynamex*, petitioners sued the State Defendants seeking a declaration that the FAAAA preempts application of the ABC test to motor carriers and an injunction barring the State Defendants from applying the ABC test to motor carriers. ER315-33. The International Brotherhood of Teamsters intervened as a defendant. After enactment of AB-5, petitioners amended their complaint and moved for a preliminary injunction barring the State Defendants' enforcement of the statute.

In support of their motion for a preliminary injunction, petitioners demonstrated that shifting to an all-employee model would have a substantial adverse impact on motor carriers' services, routes, and prices.

First, petitioners showed that compelling motor carriers to abandon the owner-operator model would

significantly affect trucking services. Prohibiting the use of independent drivers who supply their own trucks "eliminat[es] one of the two primary ways in which these services have been provided." ER274. This would change not only *how* trucking services are offered, but the extent to which they *are* offered at all.

Some small motor carriers might be put out of business because they cannot afford to convert to an all-employee business model and others might leave the California market, resulting in reduced competition. ER274; SER124, 131-33. Motor carriers that survive and continue operating in California would offer curtailed services. ER274-75; SER126-27. Motor carriers barred from using owner-operators can be expected to acquire only enough equipment and hire only enough drivers to meet average demand, meaning that services would be in short supply when demand is high, ER274-75; SER126-27, 147, 150. Moreover, because it is infeasible for motor carriers to invest in specialized equipment that is infrequently used, they would be unable to offer services requiring such equipment—services that currently are provided by motor carriers through owner-operators. SER126-27; ER275.

Second, petitioners introduced evidence showing that application of the ABC test to motor carriers would affect motor carriers' routes in several ways. The effective ban on owner-operators (a) could cause motor carriers to curtail or cancel certain routes that would no longer be economically feasible; and (b) would force motor carriers to reconfigure the routes of interstate shipments so as to allow the transfer of cargo between trucks driven by owner-operators outside California and those driven by employees within the State. SER157; ER275.

Finally, petitioners introduced evidence that compelling motor carriers to use employees rather than owner-operators would cause motor carriers' prices to rise. As petitioners demonstrated, forcing motor carriers to shift to all-employee fleets would materially increase motor carriers' equipment and labor costs, and these increased costs would be passed on to motor-carriers' customers. SER123-24, 146, 157-59.

2. The district court issued a preliminary injunction. App, *infra*, 51a-79a. Finding that AB-5 has "more than a tenuous, remote, or peripheral impact on motor carriers' prices, routes, or services" (*id.* at 74a), the district court held that petitioners had demonstrated "a likelihood of success on the merits as to their FAAAA preemption challenge." *Id.* at 75a The court also held that petitioners are likely to suffer irreparable harm in the absence of an injunction. *Id.* at 75a-76a. It noted that, to avoid "violat[ing] the law and fac[ing] criminal and civil penalties," motor carriers would have to "significantly restructure their business model, including by obtaining trucks, hiring and training employee drivers, and establishing administrative infrastructure compliant with AB-5." *Id.* at 76a. It found further that, "on balance, the hardships faced by Plaintiffs significantly outweigh those faced by Defendants," noting that "California still maintains numerous laws and regulations designed * * * to prevent misclassification [of workers]." *Id.* at 77a.

3. A divided panel of the court of appeals reversed. App., *infra*, 1a-50a. The majority stated that "the Supreme Court's decisions about [FAAAA] preemption after *Morales* have tended to construe the [FAAAA] narrowly." *Id.* at 15a. From that starting point, the majority reasoned that, when generally applicable laws affect a motor carrier's relationship with its

workforce, those laws are not "related to a price, route or service" "even if they raise the overall cost of doing business" or "shift[] incentives and make[] it more costly for motor carriers to choose some routes or services relative to others, leading the carriers to reallocate resources or make different business decisions." *Id*. at 17a.

Instead, the majority observed, "a generally applicable state law is not 'related to a price, route, or service of any motor carrier' for purposes of the [FAAAA] unless the state law '*binds* the carrier to a particular price, route or service' or otherwise freezes them into place or determines them to a significant degree." App., *infra*, 19a. Accordingly, "[b]ecause AB-5 is a generally applicable labor law that impacts the relationship between a motor carrier and its workforce, and does not bind, compel, or otherwise freeze into place a particular price, route, or service of a motor carrier at the level of its customers," the majority held that the law is "not preempted by the [FAAAA]." *Id*. at 32a.

The majority expressly acknowledged that its decision creates a conflict with *Schwann* v. *FedEx Ground Package System, Inc.*, 813 F.3d 429 (1st Cir. 2016). There, the First Circuit held that the FAAAA preempted a Massachusetts statute that is identical to AB-5 in all relevant respects. The panel majority here made no effort to reconcile its decision with *Schwann*, instead flatly "reject[ing]" the First Circuit's decision as "contrary to our precedent." App., *infra*, 30a.

Judge Bennett dissented. App., *infra*, 33a-50a. He noted that

AB-5 mandates the very means by which CTA

> members must provide transportation services to their customers. It requires them to use employees rather than independent contractors as drivers, thereby significantly impacting CTA members' relationships with their workers *and* the services that CTA members are able to provide to their customers.

App., *infra*, 38a.

As a consequence, Judge Bennett found it plain that AB-5 "diminish[es] the specialized transportation services that motor carriers are able to provide through independent contractor drivers" (App., *infra*, 40a) and "will eliminate motor carriers' flexibility to accommodate fluctuations in supply and demand." *Id.* at 41a. In these circumstances, Judge Bennett found the proper approach "akin to the Supreme Court's holding in *Rowe*, that a state law has a significant impact on services not only when it determines said services, but also when it regulates 'the essential details of a motor carrier's system for picking up, sorting, and carrying goods—essential details of the carriage itself.'" *Id.* at 43a (quoting *Rowe*, 552 U.S. at 373). The majority's contrary approach, Judge Bennett concluded, "undermines the balance of state and federal power contemplated by the [FAAAA] and in doing so, unnecessarily creates a circuit split." *Id.* at 46a.

The full court of appeals denied a petition for en banc review (app., *infra*, 80a-81a), although the panel stayed the mandate pending disposition of a petition for a writ of certiorari. *Id.* at 82a-83a.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's holding should not stand. It creates a conflict in the circuits. It rests on a construc-

tion of the FAAAA that departs both from the statutory language and from this Court's approach. It will cause dis-uniformity in national commerce, while disrupting the operations both of motor carriers and of owner-operators. And it interferes with the routes, services, and prices of motor carriers—just what Congress meant the FAAAA to prevent.

I. THE LOWER COURTS ARE DIVIDED OVER WHEN THE FAAAA PREEMPTS STATE WORKER-CLASSIFICATION AND OTHER WORKFORCE-RELATED LAWS

At the outset, there can be no dispute that the circuits are in conflict on whether state statutes like AB-5 are preempted. The Ninth Circuit itself expressly recognized that AB-5 is in relevant part "identical" to the Massachusetts statute held by the First Circuit to be preempted in *Schwann*, but nevertheless rejected the First Circuit's holding as "contrary to our precedent." App., *infra*, 30a. And that is not the end of the disagreement among the lower courts. Although California state courts have embraced something akin to the Ninth Circuit's approach, the panel majority and Judge Bennett agreed that the holding below departs from the analysis of the Third Circuit. *Id*. at 30a, 45a-46a (discussing *Bedoya* v. *Am. Eagle Express Inc.*, 914 F.3d 812, 818 (3d Cir. 2019)). The decision below also squarely conflicts with a decision of the Massachusetts Supreme Judicial Court invalidating that State's ABC statute, cannot be squared with the rule adopted by the Rhode Island Supreme Court, and is in clear tension with the Seventh Circuit's understanding of the FAAAA.

Such a disagreement about the meaning of an important federal statute would be deeply problematic in any circumstances. And it is intolerable when, as

here, it affects owner-operators who may perform services in Massachusetts one week and California the next. Such a conflict disrupts the carriage of goods and the conduct of business across state lines, while making it impossible for carriers to operate multi-state businesses in a uniform way. Intervention by this Court therefore is essential.

A. Under the Ninth Circuit's approach, the FAAAA preempts only state worker-classification laws that bind a carrier to particular rates, routes, or services.

1. The Ninth Circuit was very clear in its understanding of the FAAAA: In its view,

> a generally applicable state law is not "related to a price, route, or service of any motor carrier" for purposes of the [FAAAA] unless the state law "*binds* the carrier to a particular price, route or service" or otherwise freezes them into place or determines them to a significant degree.

App., *infra*, 19a (quoting *Dilts* v. *Penske Logistics, LLC*, 769 F.3d 637, 646 (9th Cir. 2014)). And, the court of appeals continued, a state law "does not have such a binding or freezing effect unless it compels a result at the level of the motor carrier's relationship with its customers or consumers." *Ibid.* (citation omitted).

The result below followed inevitably from that legal test. As the Ninth Circuit explained, "AB-5 is a generally applicable law because it applies to employers generally; it does not single out motor carriers but instead affects them solely in their capacity as employers." App., *infra*, 20a. And "AB-5 * * * compels a particular result at the level of a motor carrier's rela-

tionship with its workforce" but does not "compel a result in a motor carrier's relationship with consumers, such as freezing into place a particular price, route or service that a carrier would otherwise not provide." *Ibid*. Accordingly, "[b]ecause AB-5 is a generally applicable labor law that affects a motor carrier's relationship with its workforce and does not bind, compel, or otherwise freeze into place the prices, routes, or services of motor carriers, we conclude that it is not preempted by the [FAAAA]." *Id*. at 2a; see *id*. at 21a, 32a.[3]

B. Other courts reject the Ninth Circuit's narrow approach to the FAAAA.

Numerous other courts have embraced a broader and more flexible reading of the FAAAA, producing

---

[3] Using a somewhat different approach, the California Court of Appeal also has held that California's ABC test is not preempted as it applies to motor carriers. *People* v. *Superior Court of Los Angeles County*, 271 Cal. Rptr. 3d 570 (Ct. App. 2020) ("*Cal Cartage*"), petition for cert. pending sub nom. *Cal Cartage Transportation Express, LLC* v. *California*, No. 20-1453 (filed Apr. 16, 2021). That court relied on *People ex rel. Harris* v. *Pac Anchor Transportation, Inc.*, 329 P.2d 180 (Cal. 2014), which it characterized as holding that "the FAAAA does not preempt generally applicable worker-classification laws that do not prohibit the use of independent contractors." *Cal Cartage*, 271 Cal. Rptr. 3d at 573. The Court of Appeal held that "*Pac Anchor*" is "dispositive" because "[t]he ABC test does not mandate the use of employees" but "states a general and rebuttable presumption that a worker is an employee unless the hiring entity demonstrates certain conditions." *Id.* at 579. As we explain below, however, as a practical matter AB-5 *does* preclude the use of independent owner-operators by motor carriers—and the statute would be preempted even if AB-5 did offer hoops through which carriers could jump in order to be allowed to use owner-operators in limited circumstances. See note 6, *infra*.

results and offering analyses that cannot be squared with the Ninth Circuit's approach.

1. The Ninth Circuit's decision conflicts flatly with decisions of the First Circuit and the Supreme Judicial Court of Massachusetts, in both its reasoning and its bottom-line outcome. Both courts held that the FAAAA preempted a state worker-classification law that, in relevant part, is identical to AB-5. Unlike the Ninth Circuit, these courts afforded no weight to the law's general applicability or its focus on a motor carrier's workforce, and did not look to whether the law froze particular practices into place. Instead, citing this Court's precedents, they found it dispositive that the challenged law necessarily would have a significant effect on motor-carrier rates, routes, or services, and held the law preempted on that basis.

In both cases, a motor carrier challenged a Massachusetts worker-classification statute under the FAAAA. See *Schwann,* 813 F.3d at 433; *Chambers* v. *RDI Logistics, Inc.*, 65 N.E.3d 1, 7-8 (Mass. 2016). Like Prong B of California's test, Prong 2 of the Massachusetts test provided that "an individual performing any service * * * shall be considered to be an employee" unless, among other requirements, "the service is performed outside the usual course of the business of the employer." *Schwann*, 813 F.3d at 433 (quoting Mass. Gen. Laws ch. 149, § 148B(a)). Under this prong of the test, motor carriers effectively were required to treat all drivers as employees. *Id.* at 439.

Like AB-5, the Massachusetts classification rule triggered application of numerous state laws benefitting employees, including those requiring employers to provide "various days off, parental leave, work-break benefits, and a minimum wage"; to "track and record hours worked and amounts paid"; and to "pay

for or reimburse all out-of-pocket expenses incurred for the benefit of [the motor carrier] such as the maintenance and depreciation of the vehicles they used to perform their services." *Schwann*, 813 F.3d at 433. In practice, the Massachusetts statute, like AB-5, required motor carriers to comply with all of these requirements whenever they engaged any driver.

The First Circuit began its analysis by noting that preemption "may * * * occur 'even if a state law's effect on rates, routes, or services 'is only indirect.'" *Schwann*, 813 F.3d at 436 (quoting *Rowe*, 522 U.S. at 370 (further internal quotation marks omitted)). It also explained that, although the FAAAA does not preempt "state laws that have only a 'tenuous, remote, or peripheral' impact on prices, routes, or services" (*id.* (quoting *Rowe*, 522 U.S. at 371)), preemption applies "'at least where state laws have a "significant impact" related to Congress' deregulatory and pre-emption-related objectives.'" *Ibid.* (quoting *Rowe*, 522 U.S. at 371).

Applying that standard, the First Circuit held the Massachusetts law preempted. The court observed that "[t]he regulatory interference posed by * * * Prong 2 is not peripheral. The decision whether to provide service directly, with one's own employee, or to procure the services of an independent contractor is a significant decision in designing and running a business." *Schwann*, 813 F.3d at 438; see also *Mass. Delivery Ass'n* v. *Healey*, 821 F.3d 187, 193 (1st Cir. 2016) (same). It likewise reasoned that the "regulatory prohibition" on using independent drivers "would also logically be expected to have a significant impact on * * * routes" because "[i]t is reasonable to conclude that employees would have a different array of incentives that could render their selection of routes less

efficient, undercutting one of Congress's express goals in crafting" the FAAAA's "express preemption proviso." *Schwann*, 813 F.3d at 439. Having thus concluded that application of Prong 2 "would transgress Congress's 'view that the best interests of [motor carrier service beneficiaries] are most effectively promoted, in the main, by allowing the free market to operate,'" the First Circuit held Prong 2 preempted. *Id.* at 439-40 (quoting *Nw. Inc.* v. *Ginsberg*, 572 U.S. 273, 288 (2014)).

The Supreme Judicial Court of Massachusetts reached the same conclusion. As that court explained:

> Prong two [of the Massachusetts statute] provides an impossible standard for motor carriers wishing to use independent contractors. This de facto ban constitutes an impermissible "significant impact" on motor carriers that would undercut Congress's objectives in passing the FAAAA; the statute containing prong two also forms part of an impermissible "patchwork" of State laws due to its uniqueness.

Chambers, 65 N.E.3d at 9. This state requirement, the court held, therefore "contravenes the objectives of Congress in enacting the FAAAA by 'substitut[ing] ... its own governmental commands for 'competitive market forces' in determining (to a significant degree) the services that motor carriers will provide.'" *Ibid.* (quoting *Rowe*, 552 U.S. at 372).

The Ninth Circuit's decision also is in conflict with a decision of the Rhode Island Supreme Court holding that a state law governing Sunday and holiday pay, as applied to an airline's customer-service agents, was preempted by the ADA. See *Brindle* v. *Rhode Island*

Dep't of Labor & Training, 211 A.3d 930 (R.I. 2019). The court relied on the "'logical effect'" that the pay mandate would have on the "delivery of services" (*id.* at 938; see *id.* at 935-938)—a conclusion that applies with even greater force to AB-5, which *directly* affects the services provided by carriers.

2. The decision below likewise cannot be reconciled with the analysis used by the Third and Seventh Circuits, neither of which has embraced the Ninth Circuit's view that the FAAAA has preemptive effect only when state law "'*binds* the carrier to a particular price, route or service' or otherwise freezes them into place or determines them to a significant degree." Instead, although both courts rejected FAAAA challenges to particular worker-classification laws, the reasoning of their decisions strongly supports the conclusion that AB-5 is preempted.

In *Bedoya*, the Third Circuit held that New Jersey's version of the ABC test was not preempted. But its decision expressly hinged on a key difference between the New Jersey statute and AB-5: Prong B of the New Jersey test includes additional language—not present in the California or Massachusetts ABC tests—that *enables* motor carriers to classify drivers as independent contractors. The Third Circuit explained that the Massachusetts statute addressed by the First Circuit in *Schwann* was preempted because it "bound the carrier to provide its services using employees and not independent contractors." 914 F.3d at 822. In contrast, "[n]o part of the New Jersey test categorically prevents carriers from using independent contractors." *Id.* at 824. The Third Circuit accordingly held that the New Jersey statute was not preempted because, "unlike the preempted Massachusetts law at

issue in *Schwann*," the New Jersey law "does not mandate a particular course of action—e.g., requiring carriers to use employees rather than independent contractors." *Id.* at 824-25. The clear implication of the decision is that the Third Circuit would consider AB-5 to be preempted because that law lacks the key language of the New Jersey statute. Both the panel majority and Judge Bennett below expressly recognized that tension with *Bedoya*. See App., *infra*, 30a, 45a-46a.

As for the Seventh Circuit, in *Costello* v. *BeavEx, Inc.*, 810 F.3d 1045 (7th Cir. 2016), that court upheld the Illinois Wage Payment and Collection Act ("IWPCA"), which uses a test similar to the one at issue here. But the court made clear that "[t]here are no bright-line rules to resolve whether a state law is preempted"; and it explained that its "task" was "to determine whether the IWPCA will have a significant impact on the prices, routes, and services that [a delivery service] offers to its customers." 810 F.3d at 1055. In upholding the statute, the Seventh Circuit deemed it crucial that the IWPCA does not apply the full range of labor laws to affected employees and that the *BeavEx* plaintiffs sought to enforce only the requirement that the company "refrain from making deductions from its couriers' pay" without written consent. *Id.* at 1056. The court suggested, however, that a requirement to "reclassify[] [independent contractors] as employees for all purposes" might well be preempted (*id.* at 1056), "agree[ing]" with the service that such a requirement "could undermine its ability to continue offering on-demand delivery services." AB-5, of course, would have just such an effect, making it

likely that the Seventh Circuit would hold that statute to be preempted.[4]

II. THE NINTH CIRCUIT'S DECISION IS WRONG

The need for review is especially acute because the Ninth Circuit's decision misapplies the FAAAA. The approach taken below disregards the preemptive statutory text, which is notably broad; takes no account of the clear congressional purpose, which was to promote uniformity across the states in the regulation of motor carriers; and misunderstands this Court's decisions applying the FAAAA and ADA, which faithfully apply that text and purpose. The result is an outcome that departs from the FAAAA and frustrates the statutory goal.

---

[4] The need for this Court's guidance also is reflected in the development of *intra*-jurisdictional disputes about the validity of AB-5. The court below noted that two California state courts had held prong B of the ABC test preempted, while two others upheld it. App., *infra*, 30a n.13 (citing cases). And prior to the decision below, four district courts in California (including the one in this case) had held AB-5 preempted (see *B&O Logistics, Inc.* v. *Cho*, 2019 WL 2879876 (C.D. Cal. Apr. 15, 2019); *Valadez* v. *CSX Intermodal Terminals, Inc.*, 2019 WL 1975460 (N.D. Cal. Mar. 15, 2019); *Alvarez* v. *XPO Logistics Cartage LLC*, 2018 WL 6271965 (C.D. Cal. Nov. 15, 2018)), while two others had upheld it. See *Henry* v. *Cent. Freight Lines, Inc.*, 2019 WL 2465330, at *7 (E.D. Cal. June 13, 2019); *W. States Trucking Ass'n* v. *Schoorl*, 377 F. Supp. 3d 1056, 1070 (E.D. Cal. 2019); see also *Cal Cartage*, 271 Cal. Rptr. 3d at 577 n.10 (acknowledging conflict).

A. The Ninth Circuit's view that the FAAAA preempts only laws that "bind, compel or otherwise freeze into place a particular price, route, or service" conflicts with this Court's decisions.

1. The FAAAA preempts state laws that affect rates, routes, or services even indirectly.

a. To begin with, AB-5 is inconsistent with the FAAAA's plain language. The federal statute provides in relevant part that a state "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier." As the Court explained in *Morales*, addressing the identical language of the ADA,

> the key phrase, obviously, is "relating to." The ordinary meaning of these words is a broad one—"to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with," Black's Law Dictionary 1158 (5th ed. 1979)—and the words thus express a broad pre-emptive purpose.

504 U.S. at 383.

Evidently recognizing that the reading given the statutory text in *Morales* mandates preemption here, the Ninth Circuit below opined that this Court has retreated from that plain-language reading, positing that "the Supreme Court's decisions about [FAAAA] preemption after *Morales* have tended to construe the [FAAAA] narrowly." App., *infra*, 15a. But that simply is not so. *Rowe*, perhaps the Court's leading post-*Morales* application of the FAAAA, declared flatly that "we follow *Morales* in interpreting similar language in the 1994 [FAAAA]" (*Rowe*, 552 U.S. at 370)—which is

hardly surprising, given that Congress, in enacting the FAAAA, "express[ed] agreement with 'the broad preemption interpretation adopted by the United States Supreme Court in *Morales*.'" *Ibid.* (quoting H.R. Conf. Rep. No. 103–677, at 83 (1994)). See also, *e.g.*, *Ginsberg*, 572 U.S. at 281 (the Court has "reaffirmed *Morales*' broad interpretation of the ADA preemption provision").

To be sure, the Court also has recognized that the scope of the statutory language is not limitless. See *Dan's City Used Cars, Inc.* v. *Pelkey*, 569 U.S. 251, 260-261 (2013). But it has adhered to the analysis of *Morales*; the Court has not suggested—and, consistent with the FAAAA's text, could not suggest—that the statute lacks broad preemptive force, instead affirming that the FAAAA precludes "a State's direct substitution of its 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.

Moreover, Congress chose that broad language advisedly, to effectuate the express statutory purpose. As noted above, Congress recognized that "[t]he sheer diversity" of state regulatory schemes posed "a huge problem for national and regional carriers attempting to conduct a standard way of doing business." H.R. Conf. Rep. No. 103-677 at 87 (1994)). It therefore designed the FAAAA to prevent development of "a patchwork of state service-determining laws, rules, and regulations." *Rowe*, 552 U.S. at 373. Congress understood that limit to be essential so as to prevent states from "impos[ing] an unreasonable burden on interstate commerce." FAAAA, Pub. L. No. 103-305, § 601(a)(1)(A)-(B), 108 Stat. 1569, 1605.

b. AB-5 cannot be reconciled with this language and goal. In holding to the contrary, the Ninth Circuit opined that the FAAAA preempts generally applicable laws only when they "bind, compel, or otherwise freeze into place a particular price, route, or service of a motor carrier at the level of its customers." App., *infra*, 32a. But this Court has rejected just that view: Taking account of the "broad pre-emptive purpose," in *Morales* the Court turned aside the argument that the ADA "only pre-empts the States from actually prescribing rates, routes or services." 504 U.S. at 385. It explained that such an interpretation "simply reads the words 'relat[ed] to' out of the statute." *Ibid.* Thus, while noting that "[s]ome state actions may affect [rates, routes, or services] in too tenuous, remote, or peripheral a manner" to warrant preemption (*id.* at 390 (quotation marks omitted)), the Court stated in *Morales* and subsequently emphasized in *Rowe* that "pre-emption may occur even if a state law's effect on rates, routes, or services 'is only indirect.'" *Rowe*, 552 U.S. at 370 (quoting *Morales*, 504 U.S. at 386).

Applying this standard, the *Morales* Court held that the ADA prohibited states from enforcing "guidelines on [airline] fare advertising through a State's general consumer protection laws." 504 U.S. at 383. The guidelines did not prescribe particular fares or even direct airlines how to set fares. But states' use of consumer-protection laws to limit fare advertising was impermissible because, "as an economic matter," such restrictions would "have the forbidden significant effect upon fares." *Id.* at 388.

Similarly, the Court held in *Rowe* that the FAAAA preempted a Maine statute that prohibited licensed tobacco retailers from employing a delivery service

unless the service followed particular procedures. Although the regulation "[told] *shippers* what to choose rather than *carriers* what to do," the Court deemed the law preempted because its "effect * * * [was] that carriers [would] have to offer tobacco delivery services that differ significantly from those that, in the absence of the regulation, the market might dictate." 552 U.S. at 372.

Here, AB-5's prohibition of the use of independent-contractor drivers would have exactly that "forbidden significant effect." *Morales*, 504 U.S. at 388. For one thing, AB-5 regulates motor carriers' services *more* directly than the laws at issue in *Morales* and *Rowe*: It "mandates the very means by which CTA members must provide transportation services to their customers." App., *infra*, 38a (dissenting opinion); see also *Schwann*, 813 F.3d at 439 (Massachusetts law preempted because it "foreclose[s]" the defendant motor carrier's preferred "method of providing delivery services"). And for another, AB-5 "will deprive motor carriers' *consumers* of particular services" that carriers procure by engaging independent-contractor drivers—including specialized trucking services and increased service in times of peak demand. App., *infra*, 41a (dissenting opinion). Just as in *Rowe*, therefore, under AB-5 motor carriers "[would] have to offer * * * delivery services that differ significantly from those that, in the absence of regulation, the market might dictate." 552 U.S. at 372.

These points are undeniable. As the First Circuit recognized, that is the *necessary* effect of a statute like AB-5: "The decision whether to provide a service directly, with one's own employee, or to provide the services of an independent contractor is a significant decision in designing and running a business" and

"would also logically be expected to have a significant impact on the actual routes followed." *Schwann*, 813 F.3d at 438, 439. Petitioners' evidence in this case confirms that AB-5 would in fact affect both rates and routes. See pages 10-12, *supra*. Although the Ninth Circuit regarded those consequences as legally immaterial, the California statute's effects trigger preemption under the Court's rulings.

At the same time, AB-5 would frustrate the manifest congressional purpose. California's statute requires carriers to adopt a service model that differs from the one they historically used everywhere and still use across the nation. It therefore creates the very "diversity" of state regulatory schemes that Congress understood to pose "a huge problem for national and regional carriers attempting to conduct a standard way of doing business." H.R. Conf. Rep. No. 103-677 at 87 (1994). Congress left no doubt that it understood state regulations with such an impact to "impose[] an unreasonable burden on interstate commerce" that "impeded the free flow of trade, traffic, and transportation"(FAAAA, Pub. L. No. 103-305, § 601(a)(1)(A)-(B), 108 Stat. 1569, 1605)—and sought to set such relations aside.

2. The Ninth Circuit's standard rests on a misreading of this Court's ERISA decisions.

There is no mystery where the Ninth Circuit's error originated. As noted, the panel held that "a generally applicable state law is not 'related to a price, route, or service of any motor carrier' for purposes of the [FAAAA] unless the state law '*binds* the carrier to a particular price route, or service' or otherwise freezes them into place or determines them to a significant degree.'" App., *infra*, 19 (quoting *Dilts*, 793

F.3d at 646). The "binds the * * * carrier" language first appeared in *Air Transport Association* v. *City & County of San Francisco*, 266 F.3d 1064, 1072 (9th Cir. 2001).

In that case, air carriers argued that the ADA preempted an ordinance that prohibited the city from contracting with companies that did not afford equal benefits to employees' domestic partners. Citing *Egelhoff* v. *Egelhoff*, 532 U.S. 141 (2001), the court of appeals declared that "[r]ecent Supreme Court ERISA cases suggest that in order for the 'effect' of a state law to cause preemption, the state law must compel or bind an ERISA plan administrator to a particular course of action with respect to the ERISA plan." *Air Transport*, 266 F.3d at 1071. It then stated that "the question" in assessing whether the ordinance in *Air Transport* was preempted under the ADA "is whether the Ordinance compels or binds [the air carriers] to a particular price, route or service," holding the ordinance not preempted under that test. *Id.* at 1074. Since then, the Ninth Circuit has repeatedly cited this standard in FAAAA and ADA preemption decisions. See, *e.g., Dilts*, 769 F.3d at 646; *Cal. Trucking Ass'n* v. *Su*, 903 F.3d 953, 964 (9th Cir. 2018); *American Trucking Ass'ns, Inc.* v. *City of Los Angeles*, 660 F.3d 384, 398 (9th Cir. 2011); *Californians for Safe & Competitive Dump Truck Transportation* v. *Mendonca*, 152 F.3d 1184, 1189 (9th Cir. 1998).

As explained above, however, this Court has never construed the FAAAA's preemption provision to bar *only* laws that bind the carrier to particular rates, routes, or services. Nor, for that matter, has it found ERISA preemption only when state law dictates particular actions. In *Egelhoff* itself, the Court held that ERISA preempted a state law providing that certain

beneficiary designations terminated automatically upon divorce. The Court noted, among other things, that "[t]he statute binds ERISA plan administrators to a particular choice of rules for determining beneficiary status." 532 U.S. at 147. But although this was *sufficient* for preemption, the Court nowhere suggested that it was *required* for preemption. To the contrary, the Court explained that, "'to determine whether a state law has the forbidden connection'" to an ERISA plan, courts "look both to 'the objectives of the ERISA statute'" and "'the nature of the effect of the state law on ERISA plans.'" *Ibid.* (citation omitted). It concluded that the beneficiary-termination law was preempted because it "implicates an area of core ERISA concern" (*ibid.*)—the payment of benefits—and "interferes with nationally uniform plan administration." *Id.* at 148.

Under that standard, AB-5 is plainly preempted: The statute implicates an area of core concern under the FAAAA—the manner in which motor carriers arrange the transportation of property across state lines—and interferes with the development of nationally uniform practices that are necessary for the efficient transportation of goods across the country. The Ninth Circuit thus seems to have wholly missed this Court's point.

B. The FAAAA preempts laws of general applicability.

In ruling against preemption, the panel also relied heavily on the notion that "AB-5 is a generally applicable labor law." App., *infra*, 2a. This Court has made clear, however, that laws of general applicability are not excluded from FAAAA and ADA preemption. See *Morales*, 504 U.S. at 386. As the Court explained, it would create an "utterly irrational loophole" if "state

impairment of the federal scheme should be deemed acceptable so long as it is effected by the particularized application of a general statute." *Ibid.*

Thus, in *Morales* the Court held that "federal law pre-empts States from enforcing their consumer-fraud statutes"—generally applicable laws—"against deceptive airline-fare advertisements." *Rowe*, 552 U.S. at 371. Likewise, the Maine law at issue in *Rowe* applied to all delivery services and did not specifically mention motor-carriers. *Ibid.* Yet the Court concluded that there was a "direct 'connection with' motor-carrier services" because, in reality, trucking and other motor-carrier services made up "a substantial portion" of delivery services covered by the statute. *Ibid.* The Court also has held that state common-law claims are preempted under the ADA when they relate to airlines' rates, routes, or services. See *Ginsberg*, 572 U.S. at 290.

Here, AB-5 undeniably has a direct connection to motor carriers. Although the statute applies to many industries, it "does not affect truckers solely in their capacity as members of the general public, the impact is significant, and the connection with trucking is not tenuous, remote, or peripheral." *Rowe*, 552 U.S. at 375. Instead, AB-5 directly prohibits motor carriers' generations-old practice of providing transportation services through contractual relationships with non-employee owner-operators. That prohibition "interfere[s] with motor carriers' operations at the point at which they provide a service to their customers" and will "significantly impact[]" those services. App., *infra*, 38a (dissenting opinion).

Indeed, AB-5's author expressly *intended* the statute to change motor carriers' business methods, forc-

ing them to abandon what she deemed to be an "outdated" owner-operator business model—that is, the model that prevailed when Congress enacted the FAAAA.[5] Thus, AB-5's drafters exempted specified other occupations and industries from the ABC test, but not motor carriers. See App., *infra*, 5a (noting exceptions). AB-5 therefore represents a forbidden "effort[] to regulate [motor carrier] services themselves." *Rowe*, 552 U.S. at 372.

III. THE PETITION PRESENTS AN ISSUE OF EXCEPTIONAL IMPORTANCE

The issue presented in this petition is a matter of significant practical importance that warrants this Court's attention, for several reasons.

First, enforcement of AB-5 and its application to motor carriers would cause immediate and dramatic disruption of motor-carrier operations, forcing a significant change in the structure of the trucking industry nationally. As we have explained, a very substantial portion of the services provided by motor carriers nationwide—and, in particular, in California—are offered through owner-operators; a significant number of carriers provide services in California *only* through owner-operators. See pages 4-6, *supra*. AB-5 would require all of these entities that do business in California to change the nature of their operations, obligating them to purchase trucks, hire drivers, and create

---

[5] See Cal. State Assembly Floor Session, at 1:07:12-15, 1:08:20-30 (Sept. 11, 2019) (Statement of Assembly Member Lorena Gonzalez) ("And let me talk for one minute *about trucking* * * *. We are [] getting rid of an outdated broker model that allows companies to basically make money and set rates for people that they called independent contractors * * *.") (emphasis added), https://tinyurl.com/6cmmczn8.

a whole new business infrastructure for operations performed in the State. See pages 10-12, *supra*.[6]

Second, as also described above, enforcement of AB-5 would lead to changes in the services offered, routes traveled, and prices charged by carriers in California—and elsewhere across the country. Under AB-5, trucks driven by owner-operators across the nation *to* California would have to either switch drivers when they *enter* the State or not enter the State at all—with obvious effects on routes, services, and prices. Meanwhile, the effective prohibition on the use of owner-operators sometimes would make it impossible as a practical matter for carriers to provide specialized services or accommodate seasonal fluctuations in demand. See pages 6, 11-12, *supra*. The predictable effect would be both a reduction in services offered and an increase in prices. See App., *infra*, 40a-42a (dissenting opinion).

And the consequential nature of these effects, which would be significant in any State, would take

[6] AB-5 contains a "business-to-business" exemption that makes the statute inapplicable in specified circumstances involving business-to-business contracting relationships, which the California Court of Appeal invoked when upholding AB-5 in *Cal Cartage*. See 271 Cal. Rptr. 3d at 580-81. But that provision has no bearing here. The State Defendants did not argue in this case that the business-to-business exception applies, and the Ninth Circuit disregarded the exception "[f]or purposes of determining whether the [FAAAA] preempts AB-5." App. *infra*, 21a n.10. In fact, application of the exception hinges on satisfaction of a long list of requirements that carriers and owner-operators generally will not be able to meet—and in any event would require them to operate in ways that *themselves* would be preempted by the FAAAA. See Br. of American Trucking Ass'ns, Inc., *et al.* as *Amici Curiae* Supporting Petitioners at 19-21, *Cal Cartage Transp. Express, LLC* v. *California*, No. 20-1453 (U.S. Sup. Ct.).

on outsize importance given California's central role in the movement of items across the United States. Each year, billions of dollars' worth of goods pass through California ports for delivery in California and throughout the nation, all moved, in part, by means of truck. Moreover, the State is the leading producer of manufactured goods and the largest agricultural producer in the country. SER 142. A very substantial share of these California-generated products, not to mention goods imported into California from other states, also is transported by truck (*ibid.*); in 2017, commodities valued at $527 billion left California by truck. *Ibid.* Inevitably, then, AB-5 would injure not only motor carriers and their immediate customers, but also myriad ultimate consumers and the national economy. Cf. ATA, American Trucking Trends 5 (2020) (trucks carried 80.4% of the nation's 2019 freight by value and 72.5% of its freight tonnage).

Third, AB-5 would undermine the uniformity in the rules governing motor carriers that Congress regarded as essential to prevent development of "a patchwork of state service-determining laws, rules, and regulations." *Rowe*, 552 U.S. at 373. This effect would be especially pernicious because California's rule is aberrational; with the exception of the Massachusetts statute disapproved by the First Circuit in *Schwann*, it appears that no other State has a law with the precise problematic features of AB-5. See Br. of American Trucking Ass'ns, Inc., *et al.* as *Amici Curiae* Supporting Petitioners at 12-17, *Cal Cartage Transp. Express, LLC* v. *California*, No. 20-1453 (U.S. Sup. Ct.). But given the role of California in the national economy and the practical importance to carriers of doing business in the State, there is a substantial danger that California will succeed in effectively

exporting its idiosyncratic approach to other jurisdictions, as carriers with a national business (and owner-operators that travel in the State) will have no choice but to abide by California's disapproval of owner-operators.

Fourth, AB-5 would create significant uncertainty and disruption for the nation's more than 350,000 owner-operators. See Owner-Operator Independent Drivers Ass'n, *Industry Facts*, https://bit.ly/3xsr7Y8; see also Jennifer Cheeseman Day & Andrew W. Hait, *Number of Truckers at All-Time High*, U.S. Census Bureau (June 6, 2019), https://bit.ly/3tO3qbq. Many of these truckers regularly engage in long hauls across the country, entering and leaving California. AB-5 would force them to change their arrangements with the motor carriers for which they operate, becoming employees rather than independent business owners. Some might cease to operate in California; others might simply go out of business; and all would have to change their operations in significant ways.

Finally, the decision below will have broader legal consequences. It will infect the interpretation of other significant federal statutes that use preemptive language similar, or identical, to that of the FAAAA, including the ADA and ERISA.[7] The result will be broader frustration of the congressional purpose, disruption in the operation of national businesses, and unending additional litigation. It should be this Court, and not the Ninth Circuit, that determines whether

---

[7] The Ninth Circuit recently applied its test limiting preemption to state laws that "'*bind[]* the carrier to a particular price, route, or service,'" in a decision that rejected an airline's ADA preemption challenge to state-law meal- and rest-break requirements. *Bernstein* v. *Virgin Am., Inc.*, 990 F.3d 1157, 1169-70 (9th Cir. 2021) (citation omitted).

the law should change in a manner that has such dramatic implications for the nation as a whole.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

ROBERT R. ROGINSON
ALEXANDER M. CHEMERS
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
400 South Hope St.
Suite 1200
Los Angeles, CA 90071
(2132) 239-9800

CHARLES ROTHFELD
Counsel of Record
EVAN M. TAGER
MIRIAM R. NEMETZ
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
crothfeld@mayerbrown.com

Counsel for Petitioners

AUGUST 2021