No. 21-194

IN THE

Supreme Court of the United States

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

BRIEF OF THE INTERMODAL ASSOCIATION OF NORTH AMERICA AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus Curiae Intermodal Association of North America ("IANA") is a leading transportation trade association representing the combined interests of the intermodal freight industry.[1] The intermodal freight industry involves the movement of freight, in a container or on a trailer, by more than one mode of transportation. The movement can be by a combination of rail, truck, or ship and can be provided in any order among the modes. Globally, ninety-five percent (95%) of all manufactured goods are at one point moved in an intermodal container. The North American intermodal market alone—estimated to have a $51 billion value—is the largest intermodal market in the world and relies upon a fleet of more than 750,000 chassis to move over 52 million domestic and international containers.

IANA's voting membership comprises approximately one thousand corporate members involved with the intermodal transportation of cargo throughout the United States, including intermodal and over-the-road motor carriers, railroads (Class I, short-line, and regional), water carriers, stacktrain operators, port authorities, intermodal marketing and logistics companies, and suppliers to the industry such as equipment

[1] Pursuant to Rule 37.2(a) of this Court's Rules of Practice, IANA states that all counsel of record received notice of IANA's intent to file this brief more than ten days before its due date, and that all counsel of record have consented to its filing. Pursuant to Rule 37.6, amicus curiae affirms that no counsel for any party authored this brief in whole or in part and that no party, party's counsel, or third-party (other than IANA and its members) made any monetary contribution intended to fund the preparation or submission of this brief.

manufacturers, leasing companies, and technology firms. IANA's members transport over 90% of the intermodal cargo moving throughout the United States. IANA's associate (non-voting) members include shippers (defined as the beneficial owners of the freight to be shipped), academic institutions, government entities, and non-profit trade associations.

IANA's mission is to promote the growth of efficient intermodal freight transportation through innovation, education, and dialogue. In furtherance of its mission, IANA administers the Uniform Intermodal Interchange and Facilities Access Agreement (an equipment interchange agreement adopted almost universally throughout the industry) and offers a wide variety of value-added business services and programs relating to operations, maintenance, risk management, safety, and security. These services are intended to promote intermodal productivity and operating efficiencies through the development and implementation of uniform industry processes and procedures.

Because motor carriers are a crucial link in the nation's intermodal network, IANA members rely on stability and predictability in the trucking sector of the industry. Intermodal transportation is inherently symbiotic and almost exclusively involves the movement of cargo in interstate commerce, the very interest Congress sought to promote by the federal deregulation of the trucking industry, first enacted as part of the Federal Aviation Administration Authorization Act of 1994, Public Law 103-305, §601, 108 Stat. 1569, 1605 (Aug. 23, 1994), 49 U.S.C. §14501 ("FAAAA"). Indeed, in the course of deregulating the trucking industry, Congress found that the states' myriad of regulations on the *intrastate* transportation of property had "imposed an unreasonable burden on *interstate*

commerce; . . . impeded the free flow of trade, traffic, and transportation of *interstate* commerce; and . . . placed an unreasonable cost on the American consumers . . . ." Public Law 103-305, §601(a)(1)(A)-(C), 108 Stat. 1569, 1605 (emphasis added). In short, Congress appropriately determined that the complex jumble of varying—and often conflicting—state regulations of the trucking industry was a significant burden on interstate commerce, a burden that could and should be reduced via an express, broad federal preemption provision.

When any one participant in the intermodal market—a motor carrier, railroad, water carrier, port authority, shipper, or supplier—is subject to operational inefficiencies, the other participants in the intermodal network necessarily suffer as well. California Assembly Bill 5, see Cal. Lab. Code §2775(b)(1)(A)-(C) ("AB-5"), enacted in September 2019, imposes operational inefficiencies on one major component of the intermodal freight industry—motor carriers—by mandating that motor carriers classify their entire driving workforce as employees rather than independent contractors.[2] AB-5 completely changes the way a majority of motor carriers have operated their businesses for decades.

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[2] Cal. Lab. Code §2775(b)(1) adopts the so-called ABC test for determining whether a person providing labor or services must be considered an "employee" rather than an "independent contractor." "[U]nless the hiring entity demonstrates all" three of the listed conditions—subdivisions (A), (B), and (C)—"a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor." Because an owner-operator necessarily performs work that is within the usual course of the hiring motor carrier's business—transporting property by truck—motor carriers can never classify their drivers as "independent contractors" under California law.

The use of independent contractors as drivers has been a lynchpin of the stability and success of the intermodal industry. For over thirty-five (35) years, the prevailing business model for motor carriers supporting intermodal freight movements by water and rail has involved the use of independent contractors. Indeed, a recent survey of IANA's California motor carrier members indicated that approximately seventy percent (70%) of the drivers engaged by those members were independent contractors. The independent contractor business model offers significant operational and financial flexibility to intermodal motor carriers by allowing motor carriers to adapt and respond to volatility in the intermodal transportation market.

In short, IANA is keenly interested in the outcome of this case because the use of the independent contractor model by motor carriers is indispensable to the intermodal freight industry. The outcome of this case affects not only motor carriers but, more broadly, has widespread correlative implications for water carriers, railroads, shippers, and every other participant in the nation's extensive intermodal network.

Moreover, regardless of what decision the Court may ultimately reach on the merits of Petitioner's appeal, IANA has a strong interest in ensuring that the Court, at the very least, has an opportunity to provide clarity to the intermodal industry in light of the conflicting decisions of the lower courts as to the breadth of the FAAAA's preemption of state laws and regulations "relat[ing] to a price, route, or service of any motor carrier." 49 U.S.C. §14501(c)(1). Accordingly, IANA respectfully urges this Court to grant the petition for a writ of certiorari.

SUMMARY OF ARGUMENT

Congress' deregulation of the trucking industry included an express and expansive preemption provision that prohibits states from "enact[ing] or enforce[ing] a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. §14501(c)(1). This Court has consistently concluded that this section operates to invalidate a state law even if that law's "effect on rates, routes or services 'is only indirect,'" provided that the law has "a 'significant impact' related to Congress' deregulatory and pre-emption-related objectives." *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364, 370-71 (2008) (citations omitted). AB-5, and particularly Cal. Lab. Code §2775(b)(1), which mandates motor carriers to classify their owner-operator drivers as "employees" rather than "independent contractors" (which is the predominant model in the industry), significantly impacts motor carriers prices, routes, and services, and is therefore, preempted under §14501(c)(1). The Ninth Circuit's decision holding otherwise is inconsistent with this Court's precedent.

Moreover, AB-5 and the Ninth Circuit's decision holding that it is not preempted create substantial instability in the vital, interconnected, intermodal freight industry by completely altering motor carriers' relationships with their workforces, diminishing the availability of specialized transportation services, and eliminating carriers' capability to accommodate fluctuations in supply and demand for their services, all of which will work to increase the prices carriers must charge for those services. By enacting §14501, Congress

sought to free the trucking industry from a patchwork of conflicting state laws and regulations, and to leave the determination of the services, prices, and routes in the industry to market forces. AB-5 entirely frustrates that purpose by, in effect, prohibiting motor carriers from classifying owner-operators as independent contractors while transporting property within California. This Court should, therefore, grant the petition for certiorari.

REASONS FOR GRANTING THE PETITION

I. CONGRESS BROADLY PREEMPTED ANY "LAW RELATED TO A PRICE, ROUTE, OR SERVICE OF ANY MOTOR CARRIER . . . WITH RESPECT TO THE TRANSPORTATION OF PROPERTY."

As noted above, Congress recognized that the states—although purporting to control only the transportation of goods and property within their individual states—had significantly burdened *interstate* commerce by adopting countless, often conflicting, state regulations governing the trucking industry. Public Law 103-305, §601(a)(1)(A)-(C), 108 Stat. 1569, 1605. Motor carriers transporting property across state lines were forced to modify their operations every time they left one state and entered another, perhaps traveling through ten or more states on one route.

Thus, Congress ultimately deregulated the trucking industry by enacting a provision that broadly preempted state regulation of the industry. Public Law 103-305, §601, 108 Stat. 1569, 1605 (Aug. 23, 1994), 49 U.S.C. §14501 ("FAAAA"). That provision, which mirrored the preemption provision of the Airline Deregulation Act of 1978 ("ADA"), 49 U.S.C. §41713(b)(1), now provides 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* . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. §14501(c)(1) (emphasis added).

This Court had previously concluded that ADA preemption was expansive:

> [T]he 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,"—and the words thus express a broad pre-emptive purpose.

Morales v. Trans World Airlines, Inc, 504 U.S. 374, 383 (1992) (quoting Black's Law Dictionary 1158 (5th ed.1979)). And Congress, when it enacted the FAAAA, was keenly aware of the Court's *Morales* decision interpreting the ADA's preemption language as broadly preempting state regulation of the industry. *Rowe*, 552 U.S. at 370 ("Here, the Congress that wrote the language before us copied the language of the air-carrier pre-emption provision of the Airline Deregulation Act of 1978. And it did so fully aware of this Court's interpretation of that language as set forth in *Morales*.") (citations omitted).

As the Court concluded in *Rowe*, the broad preemptive provisions of the ADA and the FAAAA operated to invalidate a state law even if that law's "effect on rates, routes or services 'is only indirect,'" provided that the law has "a 'significant impact' related to Congress' deregulatory and pre-emption-related objectives." *Rowe*, 552 U.S. at 370-71 (quoting *Morales*, 504

U.S. at 386, 390). "Congress' overarching goal" was to "help[ ] assure transportation rates, routes, and services . . . reflect 'maximum reliance on competitive market forces,' thereby stimulating 'efficiency, innovation, and low prices,' as well as 'variety' and 'quality,'" *Rowe*, 552 U.S. at 371 (quoting *Morales*, 504 U.S. at 378), and to avoid "a patchwork of state service-determining laws, rules and regulations" that would be "inconsistent with Congress' major legislative effort to leave such decisions, where federally unregulated, to the competitive marketplace." *Id.* at 373 (citations omitted). The Court's only tether on the FAAAA's expansive preemption provision is that "it might not pre-empt state laws that affect" the prices, routes, or services of a motor carrier "in only a 'tenuous, remote, or peripheral . . . manner' . . . ." *Rowe*, 552 U.S. at 371 (quoting *Morales*, 504 U.S. at 390).

The Ninth Circuit's decision that AB-5 is not preempted by the FAAAA cannot be sustained within the framework of this Court's decisions interpreting the ADA and FAAAA preemption provisions. By AB-5's plain wording, and with the State's express intention to enforce its provisions against motor carriers, AB-5 will significantly impact motor carriers' prices, routes, *and* services.

As Judge Bennett noted in his dissent below, AB-5 not only affects a motor carrier's relationship with its workforce, but has "a significant impact on that motor carrier's prices, routes, or services" and is, therefore, preempted. *California Trucking Ass'n v. Bonta*, No. 20-55106, slip op. at 43, apx. at 36a (9th Cir. April 28. 2021) (Bennett, J., dissenting):

> AB-5 mandates the very means by which [California Trucking Association] 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.

California Trucking, slip op. at 44-45, Apx. at 38a (Bennett, J., dissenting). Because, under AB-5, owner-operators can never be considered independent contractors, "motor carriers would have to 'reclassify all independent-contractor drivers as employee-drivers for all purposes under the California Labor Code, the Industrial Welfare Commission [(IWC)] wage orders, and the Unemployment Insurance Code.'" *Id*., slip op. at 45, Apx. at 39a (Bennett, J., dissenting) (citation omitted). This mandatory reclassification, in and of itself, "will significantly impact motor carriers' services by mandating the *means by which they are provided*," *Id*., slip op. at 46, Apx. at 40a (Bennett, J., dissenting) (emphasis added), a decision Congress unquestionably left "to the competitive marketplace." *Rowe*, 552 U.S. at 373 (citation omitted). Beyond mandating the means by which services are provided, AB-5 will also, as the district court found, significantly impact the services provided by motor carriers by "diminishing the specialized transportation services motor carriers are able to provide" and "eliminat[ing] motor carriers' flexibility to accommodate fluctuations in supply and demand." *California Trucking*, slip op. at 47-48, Apx. at 40a-41a (Bennett, J., dissenting).[3]

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[3] This is especially true given that California law requires employers to supply tools and equipment to their employees, meaning that motor carriers will be required to purchase or lease their own trucks, limiting their ability to supply specialized transportation services or adequately respond to fluctuating

Moreover, as the First Circuit observed in invalidating a substantially similar Massachusetts law, AB-5 will significantly impact "the actual routes followed for the pick-up and delivery" of property. *Schwann v. FedEx Ground Package Sys., Inc.* 813 F.3d 429, 439 (1st Cir. 2016). Motor carriers that, for numerous legitimate business reasons, operate their enterprises under the independent contractor model, will be forced to stop their routes at the California border so that the property being transported can be transferred to another carrier that employs its own drivers; or, for goods and property leaving California, to start their routes at the California border after transferring property from employee-driven trucks to the owner-operated trucks they hire as independent contractors to transport property throughout the rest of the country. Many motor carriers that operate under the independent contractor model will simply cease accepting any loads that traverse the California state line. For all practical purposes, these motor carriers that choose to operate under the independent contractor model will effectively be prevented from doing business in California. Given that California's ports are one of the primary points for importing goods into and exporting goods from the United States, a more significant impact on these motor carriers' routes cannot be imagined.

And finally, AB-5's impacts on the services motor carriers provide and the routes they follow will necessarily have a significant impact on the prices charged for those services. As the district court in this case observed, "motor carriers wishing to continue offering the same services to their customers in California

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demand. See *California Trucking*, slip op. at 48-49, Apx. at 41a-42a (Bennett, J., dissenting).

must do so using only employee drivers, meaning they must significantly restructure their business model, including by obtaining trucks, hiring and training employee drivers, and establishing administrative infrastructure compliant with AB-5," *California Trucking Ass'n v. Becerra*, 433 F.Supp.3d 1154, 1170 (S.D.Cal. 2020), Apx. at 76a, all at added costs to motor carriers, and ultimately, their customers. Again, it would be hard to imagine a more significant impact on a motor carrier's prices. As Congress observed when it deregulated the trucking industry, AB-5 is the very kind of state law that "impose[s] an unreasonable burden on interstate commerce" and "place[s] an unreasonable cost on the American consumers." Public Law 103-305, §601(a)(1)(A) & (C), 108 Stat. at 1605.

In its decision in this case, the Ninth Circuit attempted to evade this Court's clear and repeated holdings on ADA and FAAAA preemption by erroneously asserting that the Court had "refined its interpretation of 'related to'" in "subsequent cases" and that decisions "after *Morales* have tended to construe the [FAAAA] narrowly . . . ." *California Trucking*, slip op. at 21-22, Apx. at 15a. The court then "attempted to 'draw a line between laws that are significantly related to rates, routes, or services, even indirectly, and thus are preempted, and those that have only a tenuous, remote, or peripheral connection to rates, routes, or services, and thus are not preempted," *Id.*, slip op. at 22, Apx. at 16a, by conjuring what amounts to a near-blanket rule that "laws of general applicability that affect a motor carrier's relationship with its workforce, and compel a certain wage or preclude discrimination in hiring or firing decisions, are not significantly related to rates, routes or services," *Id.*, slip op. at 23, Apx. at 17a, "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." *Id.*, slip op. at 25, Apx. at 19a (quoting *Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 646 (9th Cir. 2014)) (emphasis supplied by Court). This holding finds no support in this Court's decisions, and, as noted by Petitioners in their Petition for Certiorari, is in conflict with the decisions of at least two other Circuit Courts of Appeals. See Petition for Certiorari at 15 (citing *Schwann*, 813 F.3d 429 (1st Cir. 2016), and *Bedoya v. American Eagle Express, Inc.*, 914 F.3d 812 (3d Cir. 2019)).

While this Court has acknowledged that "[a] court may recognize subsequent changes in either statutory or decisional law," *Agostini v. Felton*, 521 U.S. 203, 215 (1997), lower courts should not "conclude [the Court's] more recent cases have, by implication, overruled an earlier precedent." *Id.*, 521 U.S. at 237. The Court in *Morales* expressly rejected the line drawn by the Ninth Circuit in this case:

> Next, petitioner advances the notion that only State laws specifically addressed to the airline industry are pre-empted, whereas the ADA imposes no constraints on laws of general applicability. Besides creating an utterly irrational loophole (there is little reason why state impairment of the federal scheme should be deemed acceptable so long as it is effected by the particularized application of a general statute), this notion similarly ignores the sweep of the "relating to" language.

Morales, 504 U.S. at 386. This Court has never overruled its holding in *Morales* that laws of general applicability are not exempt from preemption under the "relating to" language of the ADA and FAAAA preemption provisions. The Ninth Circuit's conclusion

otherwise cannot stand in light of this Court's clear holdings.

II. BECAUSE CALIFORNIA LAW FLATLY PROHIBITS WHAT FEDERAL LAW PERMITS—THE CLASSIFICATION OF OWNER-OPERATOR TRUCK DRIVERS AS INDEPENDENT CONTRACTORS—AB-5 IS PREEMPTED UNDER 49 U.S.C. §14501(c)(1).

As far back as 1953, this Court recognized the importance owner-operator drivers in moving goods through interstate Commerce. *American Trucking Ass'ns, Inc. v. United States*, 344 U.S. 298, 303 (1953). The over 350,000 owner-operator truck drivers operating today have always been treated as independent contractors by all parties involved—the drivers themselves, the motor carriers that engage them, and the shippers whose property they transport.

Recognizing the prevalence of this business model in the trucking industry, Congress authorized the Secretary of Transportation (originally, the now-abolished Interstate Commerce Commission) to adopt regulations governing aspects of the relationship between "a motor carrier providing transportation . . . that uses motor vehicles not owned by it" and the owner-operators of the vehicles so used. 49 U.S.C. §14102(a). The Secretary's regulations may require a motor carrier to (1) specify in a writing signed by the parties the compensation to be paid to the owner-operator and duration of the arrangement, (2) inspect the motor vehicle and obtain liability and cargo insurance, and (3) be responsible for the operation of those vehicles in compliance the Secretary's regulations. 49 U.S.C. §14102(a)(1) - (4).

The Secretary has adopted regulations pursuant to §14102, and those regulations for the "Lease and Interchange of Vehicles" outline in detail the provisions that must be contained in owner-operator lease agreements. 49 C.F.R. §§376.11 & 376.12. For example, motor carriers' lease agreements with owner-operators must specify, *inter alia*, the term of the lease, that the motor carrier lessee shall have exclusive possession, control, and use of the equipment, and assumes complete responsibility for the operation of the equipment during the lease period, the responsibilities of both parties with respect to the equipment, the responsibilities of both parties with respect to the costs associated with the equipment's operation, the amount the owner-operator will be paid both for the lease of the equipment and for services as the equipment's driver, the time frame for such payment, the items that may be charged back to the owner-operator, and the carrier's obligation to maintain liability insurance. 49 C.F.R. §376.12. These detailed protections are not afforded workers classified as independent contractors in other industries.

Perhaps most noteworthy here, the Secretary's regulations expressly provide that an owner-operator may be considered an "independent contractor" when the motor carrier complies with 49 U.S.C. §14102 and the Secretary's regulations:

> Nothing in the provisions required by paragraph (c)(1) of this section is intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the authorized carrier lessee. *An independent contractor relationship may*

> *exist when a carrier lessee complies with 49 U.S.C. 14102 and attendant administrative requirements.*

49 C.F.R. §376.12(c)(4) (emphasis added).

With the adoption of AB-5, California now prohibits motor carriers and owner-operators from entering into an independent contractor relationship with regard to motor carriers operating within the State of California. In other words, under AB-5, California law now *prohibits* something that federal law expressly *permits*, the quintessential case for federal preemption. Cf. *Brown v. Hotel & Restaurant Employees & Bartenders Int'l. Union Local 54*, 468 U.S. 491 (1984). "[T]he Court has found pre-emption . . . where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *English v. General Electric Co.*, 496 U.S. 72, 79 (1990) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

Congress sought to free the trucking industry from a patchwork of conflicting state laws and regulations, and to leave the determination of the services, prices, and routes in the industry to market forces. AB-5 undoes that deregulation to a considerable degree by, in effect, prohibiting motor carriers from classifying owner-operators as independent contractors while transporting property within California. Again, given that a tremendous volume of goods entering or leaving the United States pass through California's ports, AB-5 stands as a major obstacle to Congress' deregulatory objectives and, by extension, to the efficiencies that are so critical to seamless intermodal transportation here in the United States. Accordingly, this Court should grant the Petition for Certiorari.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Petitioners' Petition for a Writ of Certiorari, Amicus Curiae Intermodal Association of North America respectfully urges this Court to grant the Petition.

Respectfully submitted,

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Respondents.

AFFIDAVIT OF SERVICE

I HEREBY CERTIFY that on September 10, 2021, three (3) copies of the BRIEF OF THE INTERMODAL ASSOCIATION OF NORTH AMERICA AS *AMICUS CURIAE* SUPPORTING PETITIONERS in the above-captioned case were served, as required by U.S. Supreme Court Rule 29.5(c), on the following:

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Sworn to and subscribed before me this 10th day of September 2021.

C. Hogan

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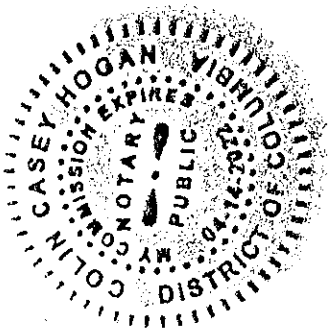
NOTARY PUBLIC
District of Columbia

My commission expires April 14, 2022.



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CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the document contains 3,902 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

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