No. 21-194

IN THE

Supreme Court of the United States

CALIFORNIA TRUCKING ASSOCIATION, INC., ET AL.,

Petitioners,

v.

ROBERT BONTA, ATTORNEY GENERAL OF CALIFORNIA, ET AL.,

Respondents.

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

BRIEF FOR *AMICI CURIAE* SHIPPER TRADE ASSOCIATIONS SUPPORTING PETITIONERS

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INTEREST OF THE *AMICI CURIAE*[1]

The *amici curiae* are eight trade associations that represent a broad cross-section of U.S. businesses who operate supply chains that depend on competitive and efficient trucking services. *Amici*'s members are manufacturers, distributors, wholesalers, retailers, and receivers of many different types of goods shipped in interstate commerce, including within or through California. *Amici*'s members regularly contract with motor carriers for interstate trucking services and have varied demands for trucking capacity and specialized services, such as hazardous materials and refrigerated shipments. Simply stated, *amici* represent the customers of the trucking industry.

Amici have a strong interest in preserving the competitive, efficient, and flexible trucking services that Congress afforded U.S. businesses by deregulating the trucking industry. *Amici*'s interest includes ensuring that the Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. § 14501(c), is enforced to nullify state laws, such as California's Assembly Bill 5 statute (AB-5), Cal. Lab. Code § 2775, that indirectly regulate trucking services, routes, and

[1] Counsel of record for all parties have received timely notice of *amici*'s intent to file this brief pursuant to Rule 37.2(a) and have consented to the filing of this brief. No counsel for any party has authored this brief in whole or in part, and no person other than *amici*, their members, and their counsel, have made a monetary contribution intended to fund the preparation or submission of this brief.

prices in a manner that would substantially disrupt the efficient flow of interstate commerce.

American Chemistry Council (ACC) represents the leading companies in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier, and safer. The business of chemistry is a $565 billion enterprise and a key element of the nation's economy.

Council of Supply Chain Management Professionals (CSCMP) is the preeminent worldwide professional association of supply chain management professionals. The Mission of CSCMP is to lead the Supply Chain profession by connecting, educating, and developing the world's Logistics and Supply Chain Management Professionals throughout their careers. The National Shippers Strategic Transportation Council (NASSTRAC), a division of CSCMP, is an association for transportation and logistics professionals who manage freight across all modes. Its member companies range from consumer products, retail, pharmaceutical, chemicals, and cosmetics to machinery, medical, printing, publishing, durable goods, and food and beverage.

Institute of Scrap Recycling Industries, Inc. (ISRI) represents approximately 1,300 companies operating in nearly 4,000 locations in the United States and 41 countries worldwide that process, broker, and consume scrap commodities, including metals, paper, plastics, glass, rubber, electronics, and textiles.

National Association of Chemical Distributors (NACD) is the premier trade association for the U.S.

chemical distribution industry, representing nearly 430 chemical distributors and their supply chain partners. NACD members represent more than 85 percent of the chemical distribution capacity in the nation and generate 90 percent of the industry's gross revenue. NACD members blend, re-package, warehouse, transport, and market chemical products made by large-quantity manufacturers to 750,000 end-users in nearly every industry sector, from cosmetics to automotive and from paints and coatings to food and water treatment.

National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million people, contributes roughly $2.35 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for nearly two-thirds of private-sector research and development in the nation. NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the nation.

National Industrial Transportation League (NITL) was founded in 1907 and is one of the nation's oldest associations representing purchasers of transportation services, i.e. shippers of all kinds of commodities, in domestic and international commerce. Its mission is to advance the views of shippers on freight transportation issues and policy and enhance their professional development.

National Retail Federation (NRF), the world's largest retail trade association, passionately advocates for the people, brands, policies, and ideas that help retail thrive. Retail is the nation's largest private-sector employer, contributing $3.9 trillion to annual GDP and supporting one in four U.S. jobs—52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating and communicating the powerful impact retail has on local communities and global economies.

The Fertilizer Institute (TFI) represents the nation's fertilizer industry, which includes companies that are engaged in all aspects of the fertilizer supply chain. TFI's members play a key role in producing and distributing vital crop nutrients, such as nitrogen, phosphorus, and potassium. These products are used to replenish soils throughout the United States and elsewhere to facilitate the production of healthy and abundant supplies of food, fiber, and fuel. Fertilizer is a key ingredient in feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all food grown around the world today is made possible from fertilizer use.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners are seeking this Court's review of whether the FAAAA precludes application of California's "ABC" test under AB-5 to motor carriers' longstanding practice of contracting with independent truck operators who own commercial vehicles. Pet. 2-3. They explain how Prong B of the ABC test will force motor carriers operating in California to fundamentally restructure their business model and service offerings by requiring contracted independent truck operators, commonly called "owner-operators," to be classified as employees. Pet. 9. Petitioners are asking this Court to grant their request for review because lower courts are split on this issue and the decision below by the Ninth Circuit that FAAAA preemption does not apply to California's ABC test is wrong. Pet. 3. They also describe the tremendous practical significance of this issue, focusing primarily on the impact AB-5 will have on motor carriers and owner-operators, including their services, routes, and prices. Pet. 3-4.

Amici submit this brief to explain that applying California's ABC test to trucking services will frustrate the Congressional policy and purpose underlying FAAAA preemption by allowing state regulation, rather than market forces, to dictate the manner by which trucking services will be performed. *Amici* describe how California's ABC test will have far reaching impacts beyond the trucking industry because *amici*'s supply chains are configured to receive competitive and efficient interstate trucking services. If trucking capacity is reduced, routes become more circuitous, and prices rise from AB-5, as predicted by the trucking industry, Pet. 10-12, *amici*'s members that ship goods to and from California will experience supply-chain disruption. The ripple effect from this disruption will harm consumers and the national economy, which are already grappling with delivery delays, product shortages, and empty store shelves caused by the Covid-19 pandemic. *See* Paul Davidson, *Shoppers Face Shortages of Cars, Shirts and Smart*

Speakers Amid Covid-19 Shipping Delays, USA Today (Feb. 1, 2021, 2:50 PM), https://www.usatoday.com/story/money/2021/02/01/covid-delays-shoppers-face-shortages-higher-prices-amid-pandemic/4311962001/.

The practical significance of this issue cannot be overstated. Truck transportation is essential to the movement of goods throughout the United States. The vast majority of U.S. freight shipments—71% by value and tons—travel by truck. Bureau of Transp. Statistics & U.S. Census Bureau, *2017 Commodity Flow Survey* 29 tbl. A1a (2020), https://www.census.gov/content/dam/Census/library/publications/2017/econ/ec17tcf-us.pdf.

Some of *amici*'s members' supply chains are carefully orchestrated as "just in time" to ensure that goods are delivered and available when and where they are needed. Other *amici*'s demand for trucking services may vary by season (such as fertilizer for crops or retail shipments that peak before the holidays), the commodities' markets (the value of scrap metal fluctuates daily), or their customers' requirements or consumer demands. Additionally, some goods moving through *amici*'s members' supply chains require specialized equipment to transport hazardous materials or refrigerated or over-sized goods.

To meet these variable demands for services, motor carriers have adopted a highly flexible business model that depends extensively on the use of owner-operators. As Petitioners have explained, owner-operators enable motor carriers to add capacity during periods of heightened demand and acquire specialized equipment that a motor carrier could not economically maintain in its fleet. Pet. 5.

Petitioners also explained that, by disrupting motor carriers' use of the owner-operator business model in California, AB-5 will reduce available capacity to handle truck shipments to, from, and within California. Pet. 11-12. This has national significance partly because California's San Pedro Bay Port Complex, which comprises the Ports of Long Beach and Los Angeles, is the largest international gateway for US containerized ocean imports, most of which move by truck to inland destinations throughout the country. *See About*, Port of L.A., https://www.portoflosangeles.org/business/statistics/facts-and-figures (last visited Sept. 10, 2021) (stating that the Port of Los Angeles handles more ocean container traffic than any other ocean port in the United States); *Rail*, Port of L.A., https://www.portoflosangeles.org/business/supply-chain/rail (last visited Sept. 10, 2021) (stating that 35% of containers use the Port of Los Angeles' rail network). And California is one of the leading states for truck shipments by value. *Freight Analysis Framework*, Nat'l Transp. Rsch. Ctr., https://faf.ornl.gov/faf5/SummaryTable.aspx (last visited Sept. 10, 2021) (follow "2017" hyperlink for "Tonnage/Value for shipments Within, From, and To State by Trade Type and Mode" table). AB-5 will also exacerbate the current truck-driver shortage, as some (perhaps many) owner-operators who favor the flexible independent-contractor model will choose not to become motor-carrier employees. *See* Ari Hawkins, *A Trucking Crisis Has the U.S. Looking for More Drivers Abroad*, Bloomberg (Aug. 2, 2021, 10:00 AM), https://www.bloomberg.com/news/articles/2021-08-02/a-trucking-crisis-has-the-u-s-looking-for-more-drivers-abroad (explaining that a longstanding driver shortage has become severe). Thus, the resulting loss of trucking capacity in California will reduce the availability of competitive and efficient trucking services to the detriment of *amici*'s members. For the American economy, this means shortages of raw materials, shortages of finished goods, and higher prices.

If California's ABC test stands, other states may follow the same path and require independent owner-operators to be classified as employees, further burdening the efficient flow of interstate commerce. Indeed, Massachusetts already attempted to pass a worker-classification law that prohibits motor carriers from using independent owner-operators, although this was found to be preempted under the FAAAA by the Court of Appeals for the First Circuit. *Schwann v. FedEx Ground Package Sys., Inc.*, 813 F.3d 429, 440 (1st Cir. 2016). This Court has determined that such a patchwork of burdensome state regulation is contrary to the intent of the FAAAA, which reflects "Congress' major legislative effort to leave such decisions, where federally unregulated, to the competitive marketplace." *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 373 (2008).

REASONS FOR GRANTING THE PETITION

I. Congress Enacted FAAAA Preemption to Facilitate the Free Flow of Interstate Commerce by Preventing State Interference in the Trucking Market.

The FAAAA is the culmination of Congress' efforts to facilitate interstate commerce by ensuring that manufacturers, retailers, and other businesses that ship and receive goods have competitive trucking options that are not impeded by a patchwork of state regulation.

Congress initiated these efforts by enacting the Motor Carrier Act of 1980, Pub. L. 96-296, 94 Stat. 793 (1980), upon finding that "a . . . competitive . . . motor carrier system is vital to the maintenance of a strong national economy." *Id.* § 3(a). The Motor Carrier Act eliminated many aspects of federal economic regulation of the trucking industry. It also established a federal truck-transportation policy "to promote competitive and efficient transportation services in order to . . . meet the needs of shippers, receivers, and consumers" and "allow a variety of quality and price options to meet changing market demands and diverse requirements of the shipping . . . public." 49 U.S.C. § 13101(2)(C), (D).

Fourteen years after enacting the Motor Carrier Act, Congress found that state regulation of truck transportation "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." FAAAA, Pub. L. 103-305, § 601(a)(1), 108 Stat. 1569, 1605 (1994). At the time, states regulated motor-carrier services, routes, and prices "in varying degrees" resulting in a "patchwork of regulation" that "causes significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology and curtails the expansion of markets." H.R. Rep. No. 103-677 at 86-87 (1994) (Conf. Rep.). For these reasons, Congress felt that preemption of state regulation was "necessary to facilitate commerce." *Id.* at 87.

Congress thus enacted the FAAAA, which preempts any state "law . . . related to a price, route, or services of any motor carrier . . . with respect to the transportation of property." 49 U.S.C. § 14501(c). This Court has recognized that the FAAAA's "target . . . was 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." *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 263 (2013) (cleaned up).

The Motor Carrier Act and the FAAAA reflect a common principle that the truck transportation needs of the American economy are best satisfied by placing maximum reliance on competition to establish prices, routes, and services of motor carriers. This Court has explained that Congress' ultimate goal in deregulating the trucking industry is to "stimulat[e] efficiency, innovation, and low prices, as well as variety and quality." *Rowe*, 552 U.S. at 371 (applying the Court's precedent regarding the preemption provision in the Airline Deregulation Act of 1978 (ADA), 49 U.S.C. § 41713(b)(1), upon which Congress based the

FAAAA's preemption provision). FAAAA preemption thus reflects Congress' view that the best interests of shippers and others that rely on the trucking industry are most effectively promoted by allowing the free market to operate. *Nw., Inc. v. Ginsberg*, 572 U.S. 273, 288 (2014) ("The ADA is based on the view that the best interests of airline passengers are most effectively promoted, in the main, by allowing the free market to operate.").

II. AB-5's Impact on Trucking Services Will Place a Significant Burden on Interstate Commerce and the American Economy.

The trucking industry has long relied on owner-operators to satisfy the trucking needs of shippers. Pet. 2. The owner-operator service model enables motor carriers to quickly and efficiently scale their operations to satisfy fluctuating demand. Pet. 5. It also enables motor carriers to economically provide services for shipments that require specialized equipment. Pet. 5. And it allows smaller carriers to compete for jobs that require multiple trucks. Pet. 5. But AB-5 denies these benefits to *amici*'s members by effectively prohibiting motor carriers from using the owner-operator service model. Pet. 31.

Petitioners explain that AB-5's prohibition of the owner-operator service model will have a substantial adverse impact on motor carriers' services, routes, and prices. Pet. 10-12. It would make providing specialized services and accommodating demand fluctuations sometimes impossible. Pet. 33. It may put some small motor carriers out of business and thereby reduce competition. Pet. 11. And it would prevent trucks being driven by owner-operators to California from entering the state without switching drivers at the California border. Pet. 33. Petitioners predict that, at bottom, AB-5 will reduce available motor-carrier services and increase prices. Pet. 33.

For *amici*'s members and the broader economy, the impact of AB-5 on motor carriers' services will have serious consequences, as follows.

A. AB-5 impairs trucking capacity that is critical to many industries and to supply-chain resiliency.

As stated above, Petitioners explain that AB-5's effective prohibition of the owner-operator service model would sometimes make it impossible for motor carriers to provide specialized services and accommodate demand fluctuations. Pet. 33. This reduced capacity to handle demand fluctuations or specialized services will cause significant harm to businesses in many industries for several reasons.

First, reduced trucking capacity means that some goods will move at higher prices and others will not move at all. Inadequate truck capacity forces businesses that rely on trucking to forego shipments of inbound raw materials that are essential to their operations, delay fulfillment of customer orders, or pay higher prices for truck services. Because the price a business can pay for a truck shipment is inevitably limited, some shipments will not occur or will be deferred to periods of reduced demand, if any.

Second, many industries are subject to seasonal or fluctuating customer demand that requires shortterm additive truck capacity. Businesses in these industries may have a single peak shipping season, multiple peak seasons, monthly or quarterly shipping windows, or on-demand shipping needs. Examples of the variable trucking needs of *amici*'s members include:

- Many retail and consumer-goods manufacturing businesses have a peak shipping season from August to October, which enables goods to be staged in time for winter-holiday shopping.
- Fertilizer businesses have short peak shipping windows that coincide with farmers' planting windows. During the spring planting season, fertilizer truck shipments increase by 50%.
- Chemical manufacturers and distributors experience periods of heightened shipping need depending on the commodity. Latex, for example, tends to have seasonal trucking needs coinciding with summer paint promotions by retailers. Shipments of refrigerants increase as outdoor temperatures increase. Crop protection chemicals require transportation during growing seasons. Also, batch production is necessary to economically produce some chemicals. Just before these production runs begin, manufacturers may need to receive a large number of truck shipments carrying raw materials.
- Paper manufacturers have peak seasons coinciding with the seasonality of e-commerce and agriculture, which rely on paper packaging products.
- Scrap-metal recyclers commonly require high volumes of truck capacity on short notice. Since scrap-

> metal prices fluctuate daily and margins are low, scrap transactions and resulting shipments are unpredictable. Also, scrap transactions typically involve large quantities of scrap that may require multiple trucks to transport.

If motor carriers are unable to accommodate heightened demand, businesses with variable trucking needs in these and other industries will find that trucks are not available when they need them most. For some businesses, this is a make or break proposition. *See* Abha Bhattarai, *How the Delta Variant Stole Christmas: Empty Shelves, Long Waits – and Yes, Higher Prices*, Wash. Post (Sept. 1, 2021, 7:49 AM), https://www.washingtonpost.com/business/2021/09/01/holiday-shipping-delays-inflation/ (explaining that the retail industry is facing transportation and other challenges as it prepares for the eight-week holiday season "that can account for more than half of a retailer's annual sales").

Third, businesses in many industries rely on specialized truck transportation. For example, *amici*'s members in the food industry ship a wide range of temperature-sensitive goods that require refrigerated trucks for transportation. Members in the chemical industry ship chemicals that must be transported in special tank trucks that meet applicable requirements under the Hazardous Materials Regulations, 49 C.F.R. Parts 171-180. They also ship goods that are sensitive to cold temperatures and, thus, require heated tanks or trailers when moving by truck. Members in the scrap and paper industries tend to ship dense or heavy goods that can be transported economically only in quantities that exceed the weight rating of standard tractors and trailers.

Additionally, many goods that require specialized trucking services are used to create a wide array of other goods that are important to commerce. For instance, chemicals are a critical input for clean drinking water, building materials, electronics, and pharmaceuticals. Am. Chemistry Council, *2021 Guide to the Business of Chemistry* 19 (2021), https://www.americanchemistry.com/chemistry-in-america/data-industry-statistics/resources/2021-guide-to-the-business-of-chemistry. Interference with market forces for these and other types of specialized transport thus has significant downstream effects on commerce.

Fourth, reduced additive truck capacity impairs the movement of goods in response to business disruptions. Many businesses operate carefully choreographed "just-in-time" supply chains in which they receive goods when they need them. When faced with an unforeseen event that disrupts supply, these businesses rely on additive transportation capacity to obtain raw materials from alternative sources. Additionally, businesses require additive transportation capacity to support production surges necessary to address pent-up demand following a production disruption.

When motor carriers are unable to handle shipments necessary to mitigate or recover from business disruptions, commerce suffers and shortages of goods intensify. *See* Peter S. Goodman, *Hurricane Ida Could Make the Supply Chain Disaster Even Worse*, N.Y. Times (Sept. 1, 2021), https://www.nytimes.com/2021/

08/31/business/hurricane-ida-supply-chain-shortages.html (explaining that the response to Hurricane Ida "will leave even fewer trucks available to carry goods everywhere else, intensifying already-profound shortages"). And transportation costs rise. Jennifer Smith, *Truckers Expect U.S. Transport Capacity Crunch to Persist*, Wall St. J. (May 2, 2021, 8:00 AM), https://www.wsj.com/articles/truckers-expect-u-s-transport-capacity-crunch-to-persist-11619956801.

At bottom, by prohibiting motor carriers from using owner-operators to meet their customers' needs efficiently and effectively, AB-5 results in carriers offering services "that differ significantly from those that, in the absence of the regulation, the market might dictate." *Rowe*, 552 U.S. at 372. This is inconsistent with "Congress' overarching goal" of FAAAA preemption, which was to "help[] ensure 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." *Id.* at 371.

B. Changes to the California trucking market from AB-5 will have national impacts.

Because California truck shipments play a prominent role in U.S. commerce, AB-5's impacts would likely disrupt supply chains throughout the nation.

Supply chains are highly synchronized and complex. Manufacturing a single product may require hundreds, if not thousands, of parts that are sourced from all over the globe. Austen Hufford, Kyle Kim & Andrew Levinson, *Why Is the Supply Chain Still So*

Snarled? We Explain, With a Hot Tub, Wall St. J. (Aug. 26, 2021, 10:18 AM), https://www.wsj.com/articles/why-is-the-supply-chain-still-so-snarled-we-explain-with-a-hot-tub-11629987531 (making a particular hot tub requires 1,850 parts that come from seven countries and 14 states, and travel a cumulative 887,776 miles). Shipping delays concerning a single part could disrupt production of thousands of end products. *See* Eun-Young Jeong & Dan Strumpf, *From Tablets to Sex Toys, the Chip Shortage Is Far-Reaching*, Wall St. J. (Apr. 30, 2021, 7:45 AM), https://www.wsj.com/articles/expanding-from-autos-to-appliances-and-sex-toys-the-chip-shortage-is-far-reaching-11619783117 (explaining how a shortage of computer chips is impacting a wide range of manufacturers who use them in their products and also companies that do not use the chips); Jeanna Smialek & Madeleine Ngo, *What an Adult Tricycle Says About the World's Bottleneck Problems*, N.Y. Times (Aug. 30, 2021), https://www.nytimes.com/2021/08/23/business/economy/supply-chain-bottlenecks-coronavirus-inflation.html ("We're sitting on $2 million in inventory for one $30 part."). A disruption to the movement of goods in California because of AB-5's impact on the trucking market could thus have a ripple effect to other goods and other states.

Moreover, the large role of California in commerce all but ensures that the impacts of AB-5 on trucking services will be felt throughout the nation. In 2020, 31% of U.S. containerized waterborne import cargo moved through California's San Pedro Bay Port Complex for destinations throughout the United States. *Facts & Figures*, Port of L.A., https://

www.portoflosangeles.org/business/statistics/facts-and-figures (last visited Sept. 10, 2021). Approximately 65% of this traffic moves inland by truck. *See Rail*, Port of L.A., https://www.portoflosangeles.org/business/supply-chain/rail (last visited Sept. 10, 2021) (stating that 35% of containers use the Port of Los Angeles' rail network). Additionally, California is the nation's largest state economy. Press Release, Bureau of Econ. Analysis, U.S. Dep't of Commerce, Gross Domestic Product by State, 1st Quarter 2021 tbl. 3 (June 25, 2021), https://www.bea.gov/sites/default/files/2021-06/qgdpstate0621.pdf. In 2017, it led the nation in value of goods shipped to other states and was second to Texas in value of goods shipped intrastate and inbound from other states. *Freight Analysis Framework*, Nat'l Transp. Rsch. Ctr., https://faf.ornl.gov/faf5/SummaryTable.aspx (last visited Sept. 10, 2021) (follow "2017" hyperlink for "Tonnage/Value for shipments Within, From, and To State by Trade Type and Mode" table). Trucks handled approximately 77% of shipments within California, by value; 58% of shipments outbound from California to other states; and 47% of shipments inbound from other states. *Id.*

C. Businesses will have to make California-specific changes to their supply chains.

As Petitioners have explained, AB-5 will reduce motor-carrier capacity to handle fluctuating demand and provide specialized services, and it will cause smaller carriers to close. Pet. 11. Petitioners also have explained that those changes will increase prices for shippers. Pet. 12. Businesses whose supply chains include California trucking will need to account for these impacts or risk business disruptions and higher costs.

Accounting for the impacts of AB-5 on the trucking market will likely involve reconfiguring supply chains. Businesses that historically have staged goods in California for delivery within the state and to neighboring states may move the staging location outside California where motor-carrier capacity is less constrained by AB-5. Businesses that source goods from California might switch to a supplier out of the state. And businesses whose goods move through California ports might re-route their goods through ports outside of California.

Making these changes is risky, however. Many retailers, manufacturers, and other businesses have spent years refining their supply chains for optimal efficiency. For businesses that have adopted a "just-in-time" model under which goods are precisely scheduled to arrive when they are needed, the margin for error may be paper-thin. Also, making changes to suppliers or warehousing to avoid the impacts of AB-5 may expose a business to quality issues and other non-transportation risks.

These changes would make a supply chain less efficient. Without AB-5 in the first place, a supply chain would be optimized based on the availability of additive truck capacity and competitive service offerings afforded by the owner-operator model. However, changes would be needed to mitigate the inefficiencies that AB-5 introduces into the trucking market.

Of course, Congress enacted FAAAA preemption to protect businesses from having to undertake these risks and inefficiencies when motor-carrier services are dictated by a state law, like AB-5. This Court has recognized that Congress's "overarching goal" in enacting FAAAA preemption was to "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." *Rowe*, 552 U.S. at 371 (cleaned up). And it has found that FAAAA preemption applied where "carriers will have to offer . . . delivery services that differ significantly from those that, in the absence of regulation, the market might dictate." *Id.* at 372. Here, AB-5 would dictate how carriers provide their services, not market demand.

Additionally, by enacting FAAAA preemption, Congress sought to free businesses dependent on trucking from having to make these and other types of state-specific supply-chain adjustments to account for the impacts of laws like AB-5. Congress observed that a "diversity of [state] regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business" and that "lifting [] these [regulatory schemes] will permit our transportation companies to freely compete more efficiently and provide quality service to their customers." H.R. Rep. No. 103-677 at 87-88 (1994) (Conf. Rep.). This Court has recognized this intent to facilitate commerce by allowing motor carriers to develop nationally-uniform business practices, stating that "a patchwork of state service-determining laws, rules, and regulations . . . is inconsistent with Congress' major legislative effort to leave such decisions, where federally unregulated, to the competitive marketplace." *Rowe*, 552 U.S. 373. AB-5's regulation creates such a patchwork of state law by prohibiting motor carriers from contracting with independent owner-operators in California to satisfy their customers' service needs.

CONCLUSION

For the foregoing reasons, and those stated in the petition for writ of certiorari, the petition should be granted.

Respectfully submitted,

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