No. 24-1238

IN THE

Supreme Court of the United States

SHAWN MONTGOMERY,

Petitioner,

v.

CARIBE TRANSPORT II, LLC, YOSNIEL VARELA-MOJENA, C.H. ROBINSON COMPANY, C.H. ROBINSON COMPANY, INC., C.H. ROBINSON INTERNATIONAL, INC., AND CARIBE TRANSPORT, LLC,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICI CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, BUSINESS ROUNDTABLE, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, AND NATIONAL RETAIL FEDERATION IN SUPPORT OF RESPONDENTS

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(continued from front cover)

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES

OTHER AUTHORITIES

INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America (the Chamber) is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

Business Roundtable represents more than 200 chief executive officers (CEOs) of America's leading companies, representing every sector of the U.S. economy. The CEO members lead U.S.-based companies that support one in four American jobs and almost a quarter of U.S. gross domestic product. Business Roundtable was founded on the belief that businesses should play an active and effective role in the formulation of public policy, and Business Roundtable members develop and advocate for policies to promote a thriving U.S. economy and expanded opportunity for all. Business Roundtable participates in litigation as *amicus curiae* when important business interests are at stake.

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[1] In accordance with this Court's Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

The National Association of Wholesaler-Distributors (NAW) is an employer and a non-profit, non-stock, incorporated trade association that represents the wholesale distribution industry—the essential link in the supply chain between manufacturers and retailers as well as commercial, institutional, and governmental end users. NAW is made up of direct-member companies and a federation of national, regional, and state associations across 19 commodity lines of trade which together include approximately 35,000 companies operating nearly 150,000 locations throughout the nation. The overwhelming majority of wholesaler-distributors are small-to-medium-size, closely held businesses. As an industry, wholesale distribution generates more than $8 trillion in annual sales volume, providing stable and well-paying jobs to more than 6 million workers.

The National Federation of Independent Business, Inc. (NFIB) is the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members. An affiliate of NFIB, the NFIB Small Business Legal Center, Inc. (NFIB Legal Center) is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. To fulfill its role as the voice for small business, the NFIB Legal Center frequently files *amicus* briefs in cases that will impact small businesses.

Established in 1911, the National Retail Federation (NRF) is the world's largest retail trade association and the voice of retail worldwide. Retail is the largest private-sector employer in the United States. The NRF's membership includes retailers of all sizes, formats, and channels of distribution, spanning all industries that sell goods and services to consumers. The NRF provides courts with the perspective of the retail industry on important legal issues impacting its members. To ensure that the retail community's position is heard, the NRF often files *amicus curiae* briefs expressing the views of the retail industry on a variety of topics.

Amici have a strong interest in this case because it raises important questions concerning the extent to which States may interfere with the prices, routes, and services of freight brokers in the face of Congress's decision to expressly preempt such interference. Many of *Amici*'s members are either motor carriers or brokers themselves or transact business on a nationwide scale and rely on the services of motor carriers and brokers in their day-to-day operations. Indeed, the freight trucking industry affects nearly every business in the United States, whether directly or indirectly, as well as myriad American consumers.

Petitioner's position would significantly hamper the freight trucking industry contrary to congressional design and prevent those businesses from competing freely and efficiently. It also would increase costs for businesses and consumers alike, as brokers would be forced to bear the expense of regulatory burdens that Congress prohibited in passing the Federal Aviation Administration Authorization Act of 1994 (FAAAA).

Affirming the decision below would ensure that—consistent with congressional design—businesses and consumers continue to enjoy a full range of services at prices determined largely by the free market, rather than a haphazard patchwork of state regulation.

SUMMARY OF THE ARGUMENT

Freight brokers like Respondent "don't transport [] property, don't operate motor vehicles or have drivers, and don't assume responsibility for the cargo being transported." [2] Instead, they "arrange for the transportation of property or household goods" by acting as "the 'middle person' between a shipper and a motor carrier." [3] Despite brokers providing transportation logistics services far removed from the roadway, Petitioner would saddle them with liability for traffic accidents under a patchwork of state common-law duties.

Congress forbade that result. The FAAAA expressly preempts state-law claims related to the services that brokers provide with respect to the transportation of property. 49 U.S.C. § 14501(c)(1). The narrow savings clause for state safety regulatory authority applies only to regulations directly connected to motor vehicles, such as claims against a negligent operator of a vehicle, and does not save from preemption the state tort claims here. Petitioner's framing around whether Congress "deregulated safety" misses the mark: The statute permits liability against those responsible for transporting cargo (carriers and operators)—not freight brokers.

The Seventh Circuit therefore correctly concluded that Petitioner's claim is preempted. That result is compelled by the statute's text, structure, and context. Holding otherwise would frustrate Congress's design,

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[2] https://www.fmcsa.dot.gov/faq/what-are-definitions-motor-carrier-broker-and-freight-forwarder-authorities

[3] *Id.*

while increasing costs on shippers and consumers without improving safety.

A. To start, state-law negligent-hiring claims against brokers fall squarely within the terms of the FAAAA's express preemption provision, because such claims are "related to a . . . service of any . . . broker . . . with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). The statute defines a "broker" by reference to arranging transportation by motor carrier, and federal regulations likewise define "brokerage service" as arranging transportation. 49 U.S.C. § 13102(2); 49 C.F.R. § 371.2. A negligent-hiring common-law theory strikes at the essence of broker services by challenging the adequacy of care that the company took (or failed to take) in hiring a carrier to provide motor carrier services. Such a claim falls in the heartland of the FAAAA's express preemption clause.

Every circuit to address the question agrees, and for good reason. Petitioner's attempts to recast negligent-hiring claims as unrelated to a broker's "prices, routes, or services," or to sidestep their applicability to the transportation of property, are incompatible with the statute's text and this Court's construction of the phrase "related to" as broadly preemptive. Nor does Petitioner's appeal to a supposed "personal-injury" carveout from preemption under the related Airline Deregulation Act (ADA) help here. The cases suggesting such a carveout rest on an unduly narrow reading of the core "services" of airlines under the ADA, and, in any event, that reasoning does not fit the broker context where the core services of brokers are undisputed.

B. The savings clause does not change this result. The savings clause preserves state "safety regulatory authority . . . *with respect to* motor vehicles." 49 U.S.C. § 14501(c)(2)(A) (emphasis added). This Court has read similar "with respect to" language to impose a meaningful constraint by requiring a direct relation between the purported regulation and the specified subject. *See, e.g.*, *Presley v. Etowah Cnty. Comm'n*, 502 U.S. 491, 506 (1992) (phrase "with respect to" means "direct relation to, or impact on"); *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 720 (2018) (similar). By contrast, Petitioner's capacious reading of this savings clause effectively reads the "with respect to motor vehicles" limitation out of the statute. The Seventh and Eleventh Circuits thus correctly hold that the savings clause applies only to claims directly connected to motor vehicles, such as claims against a negligent operator of a vehicle.

Statutory structure confirms preemption here. While the preemption clause expressly references brokers, the savings clause conspicuously does not; a related intrastate preemption provision for brokers contains no savings clause relating to motor-vehicle safety; and Congress has otherwise made clear that responsibility for motor-vehicle safety lies with motor carriers and drivers, not brokers.

Common-law negligent-hiring claims against brokers challenge selection decisions by entities that, by definition, neither operate nor maintain motor vehicles. Accordingly, such claims lack the required direct connection—the asserted link to motor-vehicle safety runs through independent carrier conduct and is indirect at best.

C. The practical shortcomings of Petitioner's position confirm what the FAAAA's text and structure compel. Freight brokers perform a limited—but essential—role in a vast freight trucking market that has grown increasingly complex over time, lowering transaction costs and enabling efficient routing and pricing nationwide. Petitioner invokes the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) system as a basis for imposing liability, but the CSA is a law-enforcement prioritization mechanism, not a reliable tool for brokers to evaluate motor carrier safety. Indeed, Congress and the executive branch have expressly warned against using the CSA in that way. Meanwhile, an extensive federal-state regime, including the FMCSRs and the Commercial Vehicle Safety Alliance's out-of-service criteria, already governs motor carriers and drivers, ensuring robust safety oversight without distorting the broker function.

Because brokers lack effective means to monitor carrier- or driver-level compliance, imposing negligent-hiring liability would not enhance safety. Rather, allowing suits like Petitioner's to proceed will raise costs for shippers and consumers alike and invite the patchwork of state-law standards that Congress sought to foreclose.

The Court should affirm that the FAAAA preempts common-law negligent-hiring claims against freight brokers, without exception.

ARGUMENT

I. THE FAAAA PREEMPTS STATE TORT SUITS AGAINST BROKERS.

The FAAAA's preemption provision provides that "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 . . . broker . . .* with respect to the transportation of property" unless an exception applies. 49 U.S.C. § 14501(c)(1) (emphases added). Petitioner's common-law negligent-hiring claim falls within the heartland of that provision, and the savings clause on which Petitioner attempts to rely is inapplicable here. Accordingly, as the Seventh and Eleventh Circuits recognize, the FAAAA expressly preempts claims like Petitioner's.

A. Negligent-Hiring Claims Are Expressly Preempted As They "Relate[] To" Freight Brokers' Services.

1. Every circuit that has addressed the preemption question at issue here has concluded that suits like Petitioner's fall within the FAAAA's express preemption provision. *See Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016, 1025 (9th Cir. 2020); *Aspen Am. Ins. Co. v. Landstar Rangers, Inc.*, 65 F.4th 1261, 1267 (11th Cir. 2020); *Ye v. GlobalTranz Enter., Inc.*, 74 F.4th 453, 458 (7th Cir. 2023); *Cox v. Total Quality Logistics, Inc.*, 142 F.4th 847, 853 (6th Cir. 2025).

That uniform consensus exists for good reason. As this Court has explained, the phrase "related to" in preemption clauses "express[es] a broad pre-emptive purpose." *Morales v. Trans World Airlines, Inc.*, 504

U.S. 374, 383 (1992). In the FAAAA context, then, the preemption clause "embraces state laws 'having a connection with or reference to' . . . 'rates, routes, or services[]' [of brokers and the other enumerated entities,] whether directly or indirectly." *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260 (2013) (quoting *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008)).

The core "service" that brokers provide is the hiring of motor carriers, a fact expressly recognized by the FAAAA. *See* 49 U.S.C. § 13102(2) (defining "broker" to mean "a person. . . , [that] offers for sale, negotiates for, or holds itself out . . . as selling, providing, or arranging for, transportation *by motor carrier* for compensation") (emphasis added).[4] And a negligent-hiring claim like that asserted here "seeks to interfere [with that service] at the point at which [a broker] 'arrang[es] for' transportation by motor carrier." *Miller*, 976 F.3d at 1024. After all, the gravamen of a negligent-hiring claim against a broker is that the defendant should have selected a different motor carrier, *i.e.*, that the defendant broker should have performed its core service of hiring a motor carrier differently. *See* Pet. Br. 11–12 (citing as the broker's alleged misconduct in this case that it "hired Caribe Transport," an authorized motor carrier). The tort claim thus "directly connect[s] with broker services," and falls squarely within the express preemption provision. *Miller*, 976 F.3d at 1024; *see also Ye*, 74

[4] A "motor carrier," meanwhile, is defined as "a person providing motor vehicle transportation for compensation." 49 U.S.C. § 13102(14).

F.4th at 459 (negligent-hiring claims "strike[] at the core of . . . broker services").

Of course, the FAAAA does not preempt state-law claims related to services "in any capacity," and instead applies only to claims related to services "with respect to the transportation of property." *Dan's City*, 569 U.S. at 261 (quoting 49 U.S.C. § 14501(c)(1)). If brokers were offering their services as intermediary for purposes other than the transportation of property, then, such services would fall outside the preemption clause. But "[t]he FAAAA and its implementing regulations . . . define the 'service' of a 'broker' covered by the statute as arranging for the transportation of property." *Aspen Am. Ins.*, 65 F.4th at 1267 (citing 49 U.S.C. § 13102(23) (defining "transportation"); 49 U.S.C. § 13102(2) (defining "broker"); 49 C.F.R. § 371.2(a) (defining "broker"); *id.* § 371.2(c) (defining "brokerage service")). As a result, any services provided in a company's capacity as an FAAAA-regulated broker necessarily will be "with respect to the transportation of property." The express preemption provision thus fully covers claims "related to" such brokers' services—including the negligent-hiring claim at issue here.

2. Petitioner contests this straightforward statutory interpretation by asserting that its "claims do not seek to regulate [a broker's] prices, routes or services," because a broker can still "offer whatever prices, routes or services it chooses, as long as it does not hire negligent drivers and carriers to do so." Pet. Br. 46. But that is like telling a composer he can write any symphony he chooses so long as he arranges the notes a certain way. Brokers' fundamental "service" is the selection of carriers, such that regulating *which*

"drivers and carriers" a broker hires—and how the broker selects them—is *directly regulating* the broker's "services."

Similarly, Petitioner argues his claims "are not directly premised on the fact that" the services at issue were for "the transportation of property," because the "claims do not turn on whether [the involved] trailer was full or empty or involved the transport of passengers or property." *Id*. at 46–47. In other words, because the tort claim (negligent hiring) could apply in other contexts (*i.e.*, someone could sue for negligent hiring concerning a different subject matter), Petitioner contends he can sidestep the preemption provision even when *his* claim squarely concerns the transportation of property. But that misses the point. For purposes of the FAAAA, the preemption question is whether the "prices, routes or services" affected by the claim at issue are "with respect to the transportation of property," not whether the law underlying that claim reaches issues outside the transportation of property as well. *See Dan's City*, 569 U.S. at 261–63 (analyzing whether the services at issue involved transportation of property). Indeed, this Court has expressly rejected the argument that the analogous provision of the ADA preempts only "state laws specifically addressed to the airline industry," rather than "laws of general applicability." *Morales*, 504 U.S. at 386.

To illustrate the reach of Petitioner's reading, consider a hypothetical. Under Petitioner's logic, a state law that regulated pricing for all types of transportation services (which thus would include property transportation) would likewise fall outside the scope of the preemption provision, because claims

premised on such a law would likewise "not turn on whether [the] trailer was full or empty or involved the transport of passengers or property." Pet. Br. 46–47. That reading would "creat[e] an utterly irrational loophole," *Morales*, 504 U.S. at 386, eviscerating the express preemption provision and allowing precisely the patchwork of regulations that the FAAAA was designed to avoid. *See, e.g.*, *Dan's City*, 569 U.S. at 256.

3. Petitioner next argues that all "safety-related tort claims for personal injuries" fall outside the scope of the express preemption provision, claiming support in interpretations of the ADA. Pet. Br. 47-48. Yet the safety-tort exception Petitioner asserts is wrong for both the ADA and the FAAAA, for several related reasons.

First, many of the ADA decisions Petitioner cites rely on a presumption against preemption. *See, e.g.*, *Taj Mahal Travel, Inc. v. Delta Airlines, Inc.*, 164 F.3d 186, 192 (3d Cir. 1998) ("[T]he interpretation of even express preemption provisions . . . must begin with the presumption that Congress does not intend to supplant state law."); *Charas v. Trans World Airlines, Inc.*, 160 F.3d 1259, 1265 (9th Cir. 1998) (noting that court must "start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act") (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). But this Court has since clarified that no such presumption applies where—as in the ADA and the FAAAA—the statute "contains an express pre-emption clause." *Commonwealth of Puerto Rico v. Franklin California Tax-free Tr.*, 579 U.S. 115, 125 (2016).

Second, some of the ADA decisions Petitioner cites turn on a narrow interpretation of the word "services" espoused by the Ninth Circuit in the specific context of airlines. *See, e.g.*, *Charas*, 160 F.3d at 1265–66 ("service" in the ADA preemption provision "refers to such things as the frequency and scheduling of transportation, and to the selection of markets to or from which transportation is provided" rather than "the dispensing of food and drinks, flight attendant assistance, or the like"); *Taj Mahal*, 164 F.3d at 195 (citing the Ninth Circuit's approach approvingly). Defining "services" so narrowly scopes out most personal-injury claims from the requisite connection to "prices, routes, or services," placing them outside the preemption provision. *Charas*, 160 F.3d at 1266.

That narrow view of airline services is incorrect, as other circuits have held. *See, e.g.*, *Hodges v. Delta Airlines, Inc.*, 44 F.3d 334, 336 (5th Cir. 1995) (en banc) ("Elements of the air carrier service bargain include items such as ticketing, boarding procedures, provision of food and drink, and baggage handling, in addition to the transportation itself."); *Branche v. Airtran Airways, Inc.*, 342 F.3d 1248, 1257 (11th Cir. 2003); *see also* Brief for the Chamber of Commerce of the United States of America as *Amicus Curiae* in Support of Petitioners at *5–11, *Virgin America, Inc. v. Bernstein*, 142 S. Ct. 2903 (2022) (No. 21-260) (discussing errors in Ninth Circuit's approach). Nothing in the text of the ADA suggests the word "service" should be given a narrower construction than its ordinary meaning. *Hodges*, 44 F.3d at 336 (explaining that "service" generally means "a bargained-for or anticipated provision of labor from one party to another"). Indeed, this Court already has

explained that the ADA's preemption provision "express[es] a broad pre-emptive purpose." *Morales*, 504 U.S. at 383.

Regardless, no plausible reading of the word "service" could eliminate preemption under the FAAAA here. After all, there can be no dispute that the selection and hiring of a motor carrier is a core "service" of brokers. In other words, it is akin to "services" such as the scheduling and market-selection decisions of an airline, which all of the foregoing circuits (including the Ninth) agree trigger preemption under the ADA. Any cases relying on a narrow interpretation of the word "service" in the ADA context are inapposite as to freight brokers under the FAAAA.

Third, other courts have concluded that the term "services" in the ADA covers a broader swath of services, reaching all aspects of the "contractual arrangement between the airline and the user of the service," *Hodges*, 44 F.3d at 336, but have nonetheless rejected preemption for certain personal-injury claims under the ADA. They have done so by concluding that such claims are insufficiently "connected with" prices, routes, or services because they "do not govern a central matter of an airline's prices, routes, or services . . . and will not cause acute economic consequences that would effectively limit airlines' choices regarding their prices, routes, and services." *Day v. SkyWest Airlines*, 45 F.4th 1181, 1190 (10th Cir. 2022). Those courts' reasoning, however, has a glaring flaw: under the meaning of "related to" articulated by this Court, claims seeking to regulate the manner in which an airline provides its services are necessarily "related to" those services. After all, if even "indirect" effects on prices, routes, or services are

sufficient to justify preemption, *Morales*, 504 U.S. at 386, then attempts to directly regulate the provision of those services must qualify as well. Indeed, the true weight of this line of reasoning appears to rely on the view that the relevant effects will not be on a "central matter" of the airline's services. *Day*, 45 F.4th at 1190. Really, then, this is simply another way to cabin the "services" that must be affected by a regulation for preemption to apply—an approach that cannot be squared with the text of the ADA.

But again, even if this argument were correct in the ADA context (it is not), it still would lack force as to the FAAAA issue here. If negligent-hiring claims against brokers were permitted, brokers would be "required to conform" to state law "when hiring motor carriers," such as "by dedicating time and resources to evaluating the safety metrics of prospective motor carriers." *Cox*, 142 F.4th at 852. "In other words, negligent hiring claims affect how brokers conduct their services and the amount of money that they spend on those services." *Id*. And again, hiring motor carriers lies at the very heart of a broker's business—the resulting effects are thus anything but peripheral.

Finally, many of the ADA decisions Petitioner cites rely on 49 U.S.C. § 41112(a), which requires air carriers to carry insurance "sufficient to pay . . . for bodily injury to, or death of, an individual or for loss of, or damage to, property of others, resulting from the operation or maintenance of the aircraft." Those decisions have reasoned that "complete preemption of state law in this area would have rendered any requirement of insurance coverage nugatory," and the insurance requirement therefore "qualif[ies] the scope of 'services' removed from state regulation." *Hodges*,

44 F.3d at 338. Such reasoning does nothing to support the categorical rule Petitioner suggests here. That is, to the extent the insurance provision arguably could suggest that *some* personal-injury claims "resulting from the operation and maintenance of the aircraft" escape preemption, it does not follow that *all* personal-injury claims against airlines remain viable. To the contrary, it suggests at most a distinction between the "services" an airline provides its customers and the "operation and maintenance" of aircraft.

And yet again, no matter the validity of those courts' ADA interpretations, the relevant insurance provisions in the FAAAA are different. Under the FAAAA, "brokers need only secure against a failure to perform logistics services" and are *not* required to have insurance covering personal-injury claims. *Ye*, 74 F.4th at 463. Thus, the regulatory scheme confirms that brokers are not intended "to bear responsibility for motor vehicle accidents"—in other words, rather than supporting any argument that they "qualify the scope" of the preemption provision, the insurance requirements in the FAAAA confirm its breadth as to brokers. *Id*.

In sum, there is no basis for the categorical personal-injury rule that Petitioner contends applies to the ADA's preemption provision, and there is even less reason to adopt such a rule in the context of the FAAAA. Instead, the straightforward textual interpretation discussed above and adopted by every circuit to consider the issue confirms that negligent-hiring claims against brokers fall within the scope of the FAAAA's express preemption provision.

B. The FAAAA's Savings Clause Does Not Apply Because Petitioner's Negligent-Hiring Tort Against a Broker Lacks A Direct Connection to Motor Vehicles.

Because the claims at issue here are subject to the FAAAA's preemption provision, they must yield unless they fall within a statutory exception. The sole exception at issue is a savings clause providing that the FAAAA "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). That savings clause does not apply to Petitioner's claim because the connection between the conduct at issue and "motor vehicles" is far too attenuated.

1. This Court already has evaluated the phrase "with respect to" in the context of the FAAAA, albeit in the context of the preemption provision. There, this Court explained, "the addition of the words 'with respect to the transportation of property' . . . massively limits the scope of preemption." *Dan's City*, 569 U.S. at 261. Viewing the "with respect to" phrase as a significant limit on the scope of preemption contrasts sharply with the Court's holding, addressing the same sentence of the statute, that the phrase "relating to" "express[es] a broad pre-emptive purpose." *Morales*, 504 U.S. at 383; *see also Corley v. United States*, 556 U.S. 303, 315 (2009) (explaining that where Congress uses different terms within the same statute, the Court does "not presume to ascribe this difference to a simple mistake in draftsmanship" but instead has "every reason to believe that Congress used the distinct terms very deliberately"). Thus, while the words "relating to" in the preemption

provision signal breadth, the words "with respect to" instead convey significant limits.

This Court's precedents provide guidance as to exactly what those limits are. This Court repeatedly has held that the phrase "*with respect to*" means "*direct* relation to, or impact on." *Presley*, 502 U.S. at 506 (emphases added); *see also Lamar*, 584 U.S. at 720 ("statement is 'respecting' a debtor's financial condition if it has a direct relation to or impact on the debtor's overall financial status").

For purposes of the savings clause, then, the Seventh and Eleventh Circuits correctly interpreted the phrase "with respect to motor vehicles" to impose a meaningful limit on the types of safety-related regulations that avoid preemption: Only those with a direct connection to motor vehicles survive. *Ye*, 74 F.4th at 462 (state safety regulations fall within the savings clause only if "directly related to 'motor vehicles'"); *Aspen*, 65 F.4th at 1271 (limiting "the safety exception's application to state laws that have a *direct* relationship to motor vehicles").

Petitioner's view, by contrast, would render superfluous the "with respect to" portion of the savings clause, running afoul of the "cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). After all, to fall within the scope of the FAAAA's preemption provision in the first place, a law must regulate prices, routes, or services "with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). And in the context

of the FAAAA, the transportation at issue will necessarily "have at least an *indirect* relationship to motor vehicles." *Aspen*, 65 F.4th at 1271. Accordingly, if an indirect relationship to motor vehicles were all that was required to satisfy the "with respect to motor vehicles" portion of the savings clause, any claim that falls within the scope of the preemption provision necessarily would satisfy the "with respect to motor vehicles" limitation of the savings clause. In practice, then, Petitioner would read these words of limitation out of the statute entirely.

Petitioner argues otherwise by claiming that motor carriers provide "services" that fall within the scope of the preemption provision but that nonetheless are not tied to motor vehicles. Pet. Br. 35. Such services, Petitioner says, will fall outside the savings clause even on Petitioner's broad view of that clause. *Id*. That is, Petitioner claims "the 'services' of a motor carrier include not just actually driving the goods from one place to another via motor vehicles, but also 'services related to that movement,' including 'packing,' 'storage,' 'ventilation,' and 'refrigeration.'" *Id*. (quoting 49 U.S.C. § 13102(23)). But that argument is self-defeating—as Petitioner's own quotation establishes, the other "services" provided by motor carriers are still "related to" the movement of goods using motor vehicles. If Petitioner's broad conception of the "with respect to motor vehicles" clause were correct, all those "related" services would still fall within its scope. Pointing to those related services thus does nothing to solve Petitioner's superfluity problem.

The canon against superfluity thus confirms that the "with respect to motor vehicles" portion of the

savings clause cannot be so broad as Petitioner contends. Only if a direct connection to motor vehicles is required does that phrase have any operative effect—much less an effect commensurate with the "massive[]" limitation imposed by the similar portion of the express preemption provision.

2. Were all that not enough, statutory structure confirms the narrow scope of the savings clause in at least three ways.

First, while the preemption provision expressly refers to "brokers," the savings clause does not, instead referring only to "motor vehicles." *Compare* 49 U.S.C. § 14501(c)(1) *with id.* § 14501(c)(2)(A). In light of other statutory provisions, that distinction demonstrates that although the preemption provision applies to brokers, the savings clause ordinarily will *not*. After all, the statutory definition of "motor carrier" is "a person providing *motor vehicle* transportation for compensation." 49 U.S.C. § 13102(14) (emphasis added). The definition of "broker," by contrast, does not use the term "motor vehicle" at all, instead defining a broker as arranging "transportation by motor *carrier*." *Id.* § 13102(2) (emphasis added). Safety regulations targeted at motor vehicles, then, are closely tied to the business of motor *carriers*, but have a far more tenuous connection to brokers. By using language in the savings clause that generally applies to motor carriers, but not brokers, Congress thereby confirmed that brokers are outside the clause's scope, at least when they are acting in their statutory capacity as brokers.

Second, in another portion of 49 U.S.C. § 14501, Congress provided a separate preemption provision

that overrides laws "relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker." 49 U.S.C. § 14501(b). That provision contains no savings clause for safety regulations at all. Petitioner offers no explanation why Congress would preempt state-law claims against brokers based on *intrastate* conduct while allowing the same claims against brokers in the *interstate* context. And for good reason. It would be nonsensical for Congress to erase a State's laws wholly within its borders, while enabling them to apply to interstate commerce. Common sense supports what the text reflects: Congress provided for the same broad preemptive effect for brokers in both provisions, reflecting "a purposeful separation between brokers and motor vehicle safety." *Ye*, 74 F.4th at 461.

Third, when regulating motor-vehicle safety itself, Congress focuses on the conduct of motor carriers and drivers—not brokers—confirming that Congress views carriers, not brokers, as responsible for motor-vehicle safety. For example, Congress created the Federal Motor Carrier Safety Administration to "carry out duties and powers related to motor carriers or motor carrier safety," without reference to brokers. 49 U.S.C. § 113(f)(1). Unsurprisingly, the implementing regulations apply to motor carriers, not to brokers. *See, e.g.*, 49 C.F.R. § 392.4(b).

When Congress regulates brokers, by contrast, the focus is on "the financial aspects of broker services, not safety." *Ye*, 74 F.4th at 463. For example, while motor carriers are required to carry liability insurance for personal injuries "resulting from the negligent operation, maintenance, or use of motor

vehicles," the corresponding requirement for brokers is limited to securing against claims "arising from [a broker's] failure to pay freight charges under its contracts, agreements, or arrangements for transportation." 49 U.S.C. § 13906(a)(1), (b)(1)(A), (b)(2)(A). That distinction confirms that Congress anticipates that motor *carriers* risk liability for personal injuries resulting from motor-vehicle accidents, while brokers' potential liability is limited to living up to their end of their contractual bargains. Congress made no allowance for states to second-guess that view—whereas 49 U.S.C. § 14501(c)(2)(A) expressly authorizes states to impose additional insurance requirements on motor *carriers*, nothing in the statute allows states to require *brokers* to carry personal-injury insurance.

In light of these provisions, it is unsurprising that Congress drafted a savings clause that does not cover potential claims like Petitioner's against brokers. To the contrary, the regulatory scheme makes clear that Congress intentionally placed responsibility for ensuring motor-vehicle safety on motor carriers, both through federal safety standards and by allowing state safety regulations to survive preemption. Brokers, by contrast, are not expected to be responsible for motor-vehicle safety—and for good reason, given that brokers have no practical way to police motor-vehicle safety effectively. *See infra* Pt. II.

3. Negligent-hiring claims like Petitioner's lack the required "direct" connection to motor vehicles.

Such a claim is not based on any allegations that the defendant was negligent in operating or maintaining a motor vehicle, or even in selecting which motor

vehicle would be used or by whom it would be driven, since brokers like Respondent do not perform such functions. Instead, a negligent-hiring claim against a broker asserts that the broker negligently selected a motor carrier, who in turn was in some way negligent with respect to a motor vehicle.

Indeed, under the FAAAA, brokers by definition cannot directly provide *any* motor-vehicle services. To the contrary, only motor carriers can do so. *See* 49 U.S.C. § 13102(2) (defining a "broker" as "a person, other than a motor carrier" who arranges "transportation by motor carrier") (emphasis added); *id*. § 13102(14) (defining "motor carrier" as "a person providing motor vehicle transportation for compensation"). Accordingly, any connection between brokers and motor vehicles is indirect at best, and the savings clause does not apply.

* * *

None of this requires the Court to "interpret[] the FAAAA's preemption provision broadly and its safety exception narrowly," as Petitioner claims. Pet. Br. 49–50. Instead, the Seventh and Eleventh Circuits' approaches simply give the precise language Congress selected its ordinary meaning. That is exactly the approach to interpreting preemption clauses that this Court requires. *See Franklin California*, 579 U.S. at 125.

In claiming otherwise, Petitioner glosses over that the "with respect to" phrase in the two provisions modify different things. In the preemption provision, the "with respect to" phrase modifies the "prices, routes, or services" that will be affected—that is, a claim is preempted only if the "prices, routes, or

services" that will be affected are "with respect to transportation of property." In the savings clause, however, the "with respect to" phrase modifies the law itself, which must be "with respect to motor vehicles." Just as the "with respect to" phrase in the preemption provision "massively limits" the FAAAA's preemptive scope by limiting the services that qualify, *Dan's City*, 569 U.S. at 261, the "with respect to" phrase in the savings clause correspondingly limits the scope of the savings clause by limiting the laws that qualify. Reading the two provisions in a consistent manner thus supports the Seventh Circuit's decision below—not Petitioner's contrary view.

II. PERMITTING BROKER LIABILITY FOR NEGLIGENTLY HIRING A MOTOR CARRIER WOULD IMPOSE ENORMOUS COSTS WITHOUT IMPROVING SAFETY.

As discussed, freight brokers coordinate the transportation of goods from one destination to another. They neither own or maintain the trucks nor employ or train the drivers. And the safety standards that govern motor carriers and drivers with respect to these issues are set by extensive federal and state regulations. As a result, imposing common-law tort liability on brokers for vehicle accidents that occur in the course of shipments they coordinate would not improve safety. Rather, it would serve only to increase the costs of freight trucking, raising prices for shippers and consumers alike.

A. Freight Brokers Are Critical To Trucking Operations And To The Economy.

Trucking is the dominant mode of freight transportation in the U.S.—indeed, trucks transport 72.7% of the country's freight, as measured by weight.[5] That is unsurprising, given the critical role trucking plays at every stage of the supply chain, from the shipment of raw materials to manufacturers, to the movement of finished goods to warehouses and retailers, to delivery of those goods to consumers. Even when other modes of transportation are involved in a particular shipment, trucks are often used at one end or the other of the shipment.[6]

A sprawling industry exists to meet this demand, including more than 577,000 U.S. motor carriers that own or lease at least one truck.[7] The overwhelming majority of those carriers are small businesses, with 95.5% of carriers operating 10 or fewer trucks.[8] Indeed, many motor carriers are single-truck owner-operators.[9]

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[5] American Trucking Associations, Economics and Industry Data, https://www.trucking.org/economics-and-industry-data.

[6] *See* https://smallbusiness.chron.com/importance-trucking-industry-71922.html; https://www.trucking.org/sites/default/files/2019-12/When%20Trucks%20Stop%20America%20Stops.pdf.

[7] Economics and Industry Data, *supra* n.5.

[8] *Id.*

[9] *Id.*

Given the large number of motor carriers—few of which are large enough to consistently satisfy any individual shipper's needs—many shippers lack the practical ability to efficiently identify carriers that will be able to transport their goods. That is where freight brokers come in: Brokers connect shippers with carriers in their networks based on the shippers' requirements and the carriers' schedules, routes, qualifications, and prices.[10]

By leveraging freight brokers' expertise and experience, shippers can reduce overhead costs and avoid undertaking a time-consuming search for a carrier for each shipment. Those reduced costs are ultimately passed on to American consumers in the form of lower prices.[11]

Although freight brokers' role is critical, it is also limited. Brokers may communicate with the carrier regarding shipment logistics generally, but they usually are not privy to specific details of the motor carriers' operations. For example, brokers only occasionally learn the specific drivers who will be assigned to complete a shipment. Instead, management of such matters is left to the motor carriers themselves.

In practice, the freight trucking industry has evolved to allow each participant to play a specific, distinct role. Shippers designate the what, where,

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[10] https://arcb.com/blog/freight-brokers-connecting-shippers-and-carriers.

[11] *See* U.S. Chamber of Commerce, *Roadblock: The Trucking Litigation Problem and How to Fix It*, *15 (July 2023), available at https://instituteforlegalreform.com/research/roadblock-the-trucking-litigation-problem-and-how-to-fix-it/.

when, and how of shipments. Motor carriers provide the trucks and drivers. And brokers form the crucial logistical link between the two.

B. Brokers And Others Involved in Motor Carrier Selection Have No Effective Way To Monitor Motor Carriers.

Given the limited role brokers play in coordinating shipments, they have no direct way to manage the safety of the shipments they arrange. Nor do they have an effective way to screen motor carriers, much less the approximately 3.5 million commercial vehicle drivers who might complete a shipment. Others involved in the selection of motor carriers are in a similar position. For example, shippers that choose to contract with a motor carrier directly similarly lack any meaningful way to evaluate the safety performance of motor carriers. *See, e.g.*, *Moseley v. Big's Trucking*, 2025 WL 1186868, at *6 (M.D. Ala. Apr. 23, 2025) (concluding negligent-hiring claim was preempted regardless of whether defendant was a broker or a shipper). Rail or water carriers, too, may have to coordinate with motor carriers to complete shipments, but lack the practical ability to control motor-vehicle safety.[12]

To argue otherwise, Petitioner cites the Compliance, Safety, Accountability (CSA) program run by the

[12] Recognizing this reality does not deny plaintiffs remedies for actual injuries resulting from unsafe trucks or driving, because FAAAA preemption does not bar entirely personal-injury claims based on trucking. Instead, FAAAA preemption requires the plaintiff to sue the party with a direct connection to motor vehicles—most commonly, the motor carrier and/or driver—instead of brokers.

FMCSA, a component of the U.S. Department of Transportation. *See, e.g.*, Pet. Br. 11–12 (citing CSA data as alleged basis for "red flags" regarding motor carrier at issue). But the CSA is a law-enforcement tool, not a reliable tool for use by brokers or others to evaluate the relative safety of motor carriers when deciding which carrier to hire.

Some background on the CSA is necessary to understand why. Within the CSA, the Safety Management System (SMS) allows the FMCSA to collect data about carriers. The SMS gathers information from roadside inspections, crash reports, and other investigative data.[13] Those data are organized into seven Behavior Analysis and Safety Improvement Categories (BASICs), and carriers are ranked by percentile within each BASIC. *Id.* The FMCSA then uses those data to inform decisions about how to address potentially dangerous carriers, such as subjecting them to enhanced scrutiny or potentially withdrawing them from service altogether. *See* 49 C.F.R. §§ 385.11(d), 385.13(d).

Based on the collected data, the FMCSA can assign a carrier a rating pursuant to the Safety Fitness Determination (SFD) rating system. Carriers can attain one of three ratings under the SFD: "satisfactory," "conditional," or "unsatisfactory." More than 94% of interstate motor carriers have no SFD safety rating, though, because carriers receive a rating only after FMCSA has conducted a compliance

[13] FMCSA, The Safety Measurement System (SMS), https://csa.fmcsa.dot.gov/about/Measure.

review or comprehensive onsite investigation.[14] Such reviews or investigations are relatively infrequent, as they typically follow a troubling BASIC SMS score or major event like a fatal truck crash.

Although the CSA undoubtedly provides some information about motor carrier safety, it cannot be relied on in the way Petitioner suggests. *See* Pet. Br. 11–12 (citing the carrier's "'conditional' safety rating" as a "serious red flag[]" that should have prevented it from being hired). To start, "[t]he relationship between violation of most regulations FMCSA included in the SMS methodology and crash risk is unclear."[15] Indeed, as discussed further below, the FMCSA's regulations are comprehensive, detailed, and prescriptive on a wide range of matters—and violations of such disparate regulations are not created equal when evaluating the safety of motor carriers. The SMS system, however, often obscures these differences. For example, the system might deem a motor carrier with many technical violations

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[14] FMCSA, 2023 Pocket Guide to Large Truck and Bus Statistics 27 (Dec. 2023), available at https://perma.cc/G8VVYW7F. Although the FMCSA has signaled its intention to make changes to the SMS system, those changes would only make it more difficult to use that system to evaluate the comparative safety of carriers. Specifically, the FMCSA has suggested it may convert the percentile scale to a bimodal "1 or 2" system for assessing the severity of safety issues. *See* Enhanced Carrier Safety Measurement System (SMS), 89 Fed. Reg. 91,874, 91,877 (Nov. 20, 2024).

[15] U.S. Gov't Accountability Off., GAO-14-114, Federal Motor Carrier Safety: Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers 15 (2014).

with only a tenuous connection to crash risk less safe than a carrier with a smaller number of more serious violations.

Reflecting these limitations, Congress has explicitly required the FMCSA to warn users of the CSA system about its limitations as a tool for judging a motor carrier's safety record. Specifically, in the Fixing America's Surface Transportation (FAST) Act, Congress mandated that the FMCSA website must warn that "[r]eaders should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system." FAST Act, Pub. L. No. 114-94, § 5223(d)(2), 129 Stat. 1312, 1542 (2015) (noting also that "[u]nless a motor carrier has received an 'UNSATISFACTORY' safety rating . . . or has otherwise been ordered to discontinue operations by the [FMCSA], it is authorized to operate on the Nation's roadways").[16]

As that warning makes clear, the CSA is not a reliable tool for brokers or others to evaluate carrier safety. In addition, brokers lack other effective, reliable ways to evaluate the relative safety of motor carriers, and Petitioner has not pointed to any. And forcing brokers to accept liability based on motor vehicle accidents would not improve safety because brokers would have no meaningful way to avoid liability under this rule; instead, the cost of doing business (and prices for consumers) would simply increase.

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[16] Here, Petitioner does not contend Respondent had an unsatisfactory rating, instead seeking to improperly draw inferences Congress warned against. *See* Pet. Br. 11–12.

C. Extensive Federal And State Laws Already Safeguard The Nation's Roadways.

Allowing brokers to continue to perform their crucial but limited role in the freight shipping industry without undue state interference will not mean "anything goes" in the trucking industry. Instead, an extensive set of federal and state safety laws govern trucking, ensuring unsafe drivers and carriers are identified and removed from the road—without any need for broker involvement.

At the federal level, the FMCSA possesses primary authority to promulgate regulations governing the operation of motor carriers. *See* 49 C.F.R. § 1.87. Specifically, it oversees the Federal Motor Carrier Safety Regulations ("FMCSRs"), which span over 700 pages in the Code of Federal Regulations. *See* 49 C.F.R. parts 300–99.

The depth of those safety regulations is breathtaking. Section 393.30, for example, governs "battery installation," addressing details such as the requirement that "[w]herever a battery and a fuel tank are both placed under the driver's seat, they shall be partitioned from each other, and each compartment shall be provided with an independent cover, ventilation, and drainage." Part 380, meanwhile, covers the special training requirements "for operators of longer combination vehicles (LCVs) and LCV driver-instructors," including the detailed requirements for registry of entry-level driver training providers, including requirements for such providers' facilities, equipment, assessments, and certification. Other provisions cover driver-hour

requirements (Part 395), inspection, repair, and maintenance (Part 396), and controlled substances and alcohol use and testing (Part 382).

In short, the FMCSRs are comprehensive. And although the federal version of these rules applies only to interstate operations, every state has adopted the FMCSRs into its own laws for intrastate operations, meaning that both state and federal officials routinely enforce these extensive regulations of freight trucking.

The Commercial Vehicle Safety Alliance (CVSA) provides yet another level of oversight. The CVSA is a nonprofit association made up of local, state, territorial, and federal commercial motor-vehicle-safety officials and industry representatives.[17] The CVSA promulgates "Out-of-Service Criteria," which dictate when a vehicle or driver must be removed from service because it presents an "imminent hazard" to safety.[18] Those criteria are updated annually, with revisions incorporated into inspection bulletins, inspection procedures, operational policies, and training videos that are distributed nationwide.[19]

This extensive framework for safeguarding freight-trucking safety makes clear that there is no need for this Court to expand the savings clause to include negligent-hiring claims against brokers. Adding common-law tort liability for brokers would only add

[17] CVSA, *About the Alliance*, https://www.cvsa.org/about-cvsa/about-the-alliance.

[18] *Id.*

[19] *Id.*

costs, uncertainty, and variation to the industry, without any meaningful safety benefit. Congress expressly preempted such claims for just that reason, and this Court should not second-guess Congress's judgment.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below.

Respectfully submitted,

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