Nos. 20-55106; 20-55107

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CALIFORNIA TRUCKING ASSOCIATION, et al.,

Plaintiffs-Appellees,

v.

XAVIER BECERRA, et al.,

Defendants-Appellants,

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Intervenor-Defendant-Appellant.

On Appeal From the United States District Court
For the Southern District of California (Hon. Roger T. Benitez) No. 3:18-cv-02458

BRIEF FOR CAL CARTAGE TRANSPORTATION EXPRESS, LLC; CMI TRANSPORTATION, LLC; AND K&R TRANSPORTATION CALIFORNIA, LLC AS *AMICI CURIAE* IN SUPPORT OF APPELLEES AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel of record certifies that Cal Cartage Transportation Express, LLC; CMI Transportation, LLC; and K&R Transportation California, LLC are wholly owned by parent company California Cartage Transportation, LLC. California Cartage Transportation, LLC is wholly owned by parent company NFI California Cartage Holding Company, LLC, which is wholly owned by a privately held parent company, NFI, L.P.

Date: May 13, 2020

/s/ Joshua S. Lipshutz
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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

Cal Cartage Transportation Express, LLC; CMI Transportation, LLC; and K&R Transportation California, LLC (together, "Amici") are motor carriers operating within Southern California. The Southern California region has one of the largest concentrations of independent owner-operator trucking jobs in the state, with nearly 40,000 independent owner-operator truck drivers.[2] Amici are also defendants in litigation involving similar issues to this appeal, *People v. Cal Cartage Transp. Express LLC*, 2020 WL 497132 (Cal. Super. Ct. Jan. 8, 2020), *writ petition denied*, No. B304240 (Cal. Ct. App. Mar. 26, 2020), and have unique experience litigating the issue of whether California's Assembly Bill 5 ("AB 5") is preempted by the Federal Aviation and Administration Authorization Act of 1994 ("FAAAA"), and the application of AB 5's business-to-business exemption.

Amici are interested in this case because it involves pressing questions of federal law that affect all motor carriers across the state, including Amici, that rely upon the longstanding and congressionally protected model of engaging independent

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party contributed money intended to fund its preparation or submission. No person other than Amici and their counsel contributed money intended to fund the preparation or submission of this brief. All parties consented to the filing of this brief.

[2] Husing et al., *San Pedro Bay Ports Clean Air Action Plan* (Sept. 7, 2007) (finding "37,194 [independent owner-operators] in Southern California during 2005."), available at https://bit.ly/2CYUaZT.

owner-operator truck drivers who perform trucking operations under the motor carrier's operating authority. AB 5 threatens the entire motor carrier industry, including Amici, by forcing motor carriers to use employees instead of independent contractors. The district court's order below preliminarily enjoining the enforcement of AB 5 against motor carriers effectuates the intent of Congress by protecting the owner-operator model and safeguards the federal objective of maintaining maximum competition in the market for motor carrier services.

SUMMARY OF THE ARGUMENT

The independent owner-operator model, in which an individual *without* a motor carrier license contracts with an authorized motor carrier to move cargo under the motor carrier's credentials, has been a cornerstone of the trucking industry for nearly 70 years. Congress has supported and protected that business model since the 1970s. AB 5, on the other hand, eviscerates that model, requiring motor carriers to use employees, and not independent owner-operators, to perform trucking services. As the district court properly concluded quoting this Court's precedent, AB 5 is precisely the type of "'all or nothing' rule requiring services be performed by certain types of employee drivers" that results in an "obvious" finding of preemption under the FAAAA. ER012 (quoting *Cal. Trucking Ass'n v. Su*, 903 F.3d 953, 964 (9th Cir. 2018)).

Congress intended exactly that result when it enacted the FAAAA's

preemption provision in 1994. As explanation for the law's necessity, Congress pointed to a California law that burdened the independent owner-operator business model by denying a state regulatory exemption to motor carriers utilizing independent owner-operators. Congress explained that the "[l]ifting of these antiquated controls will permit our transportation companies to freely compete more efficiently and provide quality service to their customers. Service options will be dictated by the marketplace; and not by an artificial regulatory structure." H.R. Conf. Rep. No. 103-677, 103d Cong., 2d Sess. 88 (1994) ("H.R. Conf. Rep. No. 103-677"). AB 5 does even *more* damage to the independent contractor model than the California law that Congress expressly preempted—it *prohibits* motor carriers from using independent owner-operators altogether.

AB 5's business-to-business exemption does not save the law from preemption, as IBT and certain amici argue.[3] The twelve requirements of that exemption bear no resemblance to the independent contractor relationship between motor carriers and owner-operators that has defined the trucking industry for the past 70 years. For example, the exemption "does not apply to an individual worker"—thereby precluding independent owner-operators from qualifying. Cal. Lab. Code

[3] *See* Dkt. 21, Opening Brief of Intervenor-Defendant-Appellant International Brotherhood of Teamsters at 35-41 (Mar. 11, 2020) ("IBT Br."); Dkt. 30-1, Brief of Amici Curiae Office of the Los Angeles City Attorney and the City of Oakland in Support of Defendants and Reversal at 4-14 (Mar. 18, 2020) ("City Attorneys Br.").

§ 2750.3(e). The exemption also requires truck drivers to have their own motor carrier licenses, *id.*, destroying the core attribute of independent owner operators—who, by definition, "are persons owning one or a few trucks who *lack [motor carrier] operating authority*" and instead "lease their services and equipment to a carrier in order to utilize the carrier's operating authority." *Cent. Forwarding, Inc. v. ICC*, 698 F.2d 1266, 1267 (5th Cir. 1983) (emphasis added). Other requirements impose similarly insurmountable barriers to entry for independent truckers—"place of business" requirements, advertising requirements, and more—that are anathema to the Motor Carrier Act's protection of free-market competition in the trucking industry. Cal. Lab. Code § 2750.3(e).

At bottom, AB 5 makes it impossible for motor carriers to use independent contractors to drive trucks. Therefore, the district court properly concluded that CTA is "likely to succeed on the merits" of its preemption claim, *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008), and this Court should affirm the preliminary injunction.

ARGUMENT

I. Congress Recognized the Importance of the Independent Owner-Operator Model Long Before Passing the FAAAA Preemption Provision

The independent owner-operator business model has been prevalent in the motor carrier industry since the dawn of federal trucking regulations and has had a

particular definition within the trade since long before passage of the FAAAA preemption provision.

Independent "[o]wner-operators are the 'independent truckers' of song and legend. They are persons owning one or a few trucks who *lack [motor carrier] operating authority*. Since they cannot transport regulated commodities in interstate commerce in their own right, . . . they lease their services and equipment to a carrier in order to utilize the carrier's operating authority." *Cent. Forwarding, Inc.*, 698 F.2d at 1267 (emphasis added). Both Congress and the U.S. Supreme Court have explained that the *absence* of a motor carrier license is a core attribute of an independent contractor in the trucking industry. *See* H.R. Rep. No. 1812, 95th Cong., 2d Sess. 5 (1978) ("H.R. Rep. No. 1812") (describing independent owner-operators as "the last American cowboy" and defining them as "a person who owns and operates one, or a few, trucks for hire *without holding ICC operating authority*") (emphasis added); *Am Trucking Ass'ns v. United States*, 344 U.S. 298, 303 (1953) ("Carriers . . . have increasingly turned to owner-operator truckers . . . . By a variety of arrangements, the authorized carriers hire them to conduct operations *under the former's permit*") (emphasis added).

Independent owner-operators "permeate . . . the interstate motor carrier industry." H.R. Rep. No. 1812 at 5. Congress, courts around the country, and commentators have noted that this business model forms the backbone of the

trucking industry and shapes how goods move from point A to point B: a shipper contracts with a licensed motor carrier to move a product, and then the motor carrier contracts with an independent owner-operator to operate under the motor carrier's license and move the shipper's product. *Id.* at 5 (Congress noting in 1978 that "[t]he independent owner-operator is undoubtedly regarded as one of the most efficient movers of goods and accounts for approximately 40 percent of all intercity truck traffic in the United States"); *State Comp. Ins. Fund v. Brown*, 32 Cal. App. 4th 188, 195 (1995) ("Contracting with independents is customary 'in trucking' and is the arrangement used by all [defendant's] competitors.").[4] Indeed, in 1978, Congress issued specific findings that "[i]ndependent owner-operators are

[4] *See also W. Home Transp., Inc. v. Idaho Dept. of Labor*, 155 Idaho 950, 953 (Idaho 2014) ("Many owner/operators are solely dependent on the motor carrier's DOT authority, and this dependence is an intentional and fundamental part of the motor carrier-owner/operator relationship. . . . In serving the motor carrier market as a trucker, the owner/operator *must* use the motor carrier's DOT authority."); *In re Bentley*, 175 B.R. 652, 655 (E.D. Tenn. 1994) ("[A] significant segment of the regional trucking industry treated its drivers as independent contractors."); *Sanderson v. United States*, 862 F. Supp. 196, 198 (N.D. Ohio 1995) ("[P]laintiff's testimony and the statements by others demonstrate a long-standing practice of treating drivers as independent contractors."); Douglas C. Grawe, *Have Truck, Will Drive: The Trucking Industry and the Use of Independent Owner-Operators Over Time*, 35 Transp. L.J. 115, 116 n.1 (2008) ("The independent owner-operator is an independent trucker who lacks federal operating authority."); James C. Hardman, *The Employment Classification Issue in the Motor Carrier Industry*, 37 Transp. L.J. 27, 28 (2010) ("'Independent contractors' include an individual who. . . leases [her] vehicle to a motor carrier with driver service to be used in moving freight . . . indicating the lessor of the equipment as the motor carrier of the freight transported.").

a vital segment of the motor transportation industry." H.R. Rep. No. 1812 at 26. And in 1979, Congress enacted regulations governing the relationship between motor carriers and independent owner-operators who lack their own motor carrier license, for the express purpose of supporting such relationships and helping them to operate in a fair and equitable manner. *See* 49 CFR § 376.1, *et seq.* ("Truth in Leasing Regulations").

For instance, in the Southern California port drayage industry in which Amici operate, the independent owner-operator business model is vital. *See, e.g.*, *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1049 (9th Cir. 2009) (motor carriers in the Los Angeles area "rely largely on independent truck owner-operators as subcontractors to provide drayage at the Ports. One Port study estimated that *85% of drayage drivers are independent contractors*, rather than employees . . . .") (emphasis added). The Ports of Los Angeles and Long Beach themselves have noted the importance of the independent owner-operator business model to the drayage industry, noting that the "[l]ack of barriers to entry" for independent owner-operators "has created a very competitive port drayage sector." Husing et al., San Pedro Bay Ports Clean Air Action Plan at 15 (independent owner-operators "are not motor carriage companies since they are not authorized to provide for-hire services to end users."). Indeed, the Ports identified "37,194 such IOOs in Southern California during 2005." *Id.* at 34.

II. Congress Adopted the FAAAA Preemption Provision to Prevent States from Interfering with the Independent Owner-Operator Model

Congress had in mind the independent owner-operator's central role in the trucking industry when it enacted the FAAAA's preemption provision.

The genesis of the FAAAA's preemption provision came long before 1994. In 1978, the House Subcommittee on Special Small Business Problems issued its Report on "Regulatory Problems of the Independent Owner-Operator in the Nation's Trucking Industry." H.R. Rep. No. 1812. In that Report, Congress found, among other things, that:

1. "Independent owner-operators are a vital segment of the motor transportation industry" (*id.* at 26);
2. "The varying number of conflicting State laws and regulations are a deterrent to a more stable, efficient, and economical motor transportation system in this Nation" because they hinder the independent owner-operator model (*id.*); and
3. "[I]t is apparent that at long last the independent owner-operators and their problems have been recognized by Federal officials. Changes are being made, issues studied, and programs proposed—all to help owner-operators. It is the responsibility of each and every owner-operator in the Nation to avail themselves of the opportunity at hand" (*id.* at 27).

Shortly thereafter, Congress passed federal regulations specifically governing the relationship "between the carrier and owner-operator," which sought to "promote the stability and economic welfare of the independent trucker." 44 Fed. Reg. 4680 (1979); *see also* 49 C.F.R. § 376.1, *et seq*. (providing comprehensive standards for the relationship between motor carriers and the independent owner-operators who operate under the motor carriers' licenses). The

next year, Congress passed the Motor Carrier Act of 1980, 49 U.S.C. § 10101, *et seq.*, which was designed in part to reduce the costs of the independent owner-operator model by "reduc[ing] unnecessary regulation and eas[ing] competitive carrier entry into the trucking industry." *Cent. Transp., Inc. v. United States*, 694 F.2d 968, 971 (4th Cir. 1982). As Congress explained, the 1980 Motor Carrier Act was intended to "forge a workable, practical, reasonable piece of legislation . . . reflect[ing] the Committee's concern for small community service, safety, inflation, energy efficiency, regulatory lag, *owner-operators*, and consumers." H.R. Rep. No. 96-1069, 96th Cong., 2d Sess. 9 (1980) (emphasis added).

In 1994, Congress confirmed that it intended for federal law to have the final say in the motor carrier sphere when it passed the FAAAA preemption provision, which prohibits any state from passing or enforcing any law "related to a price, route, or service of any motor carrier." 49 U.S.C. § 14501(c)(1). Congress was abundantly clear as to its legislative purpose:

> State economic regulation of motor carrier operations causes significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology and curtails the expansion of markets. . . . Lifting of these antiquated controls will *permit our transportation companies to freely compete more efficiently* and provide quality service to their customers. *Service options will be dictated by the marketplace; and not by an artificial regulatory structure*.

H.R. Conf. Rep. No. 103-677 at 87 (emphasis added).

In passing the FAAAA preemption provision, Congress took specific aim at

disparate state laws and regulations burdening motor carriers that had adopted the independent owner-operator model. In fact, one of the only concrete examples of a law falling within the ambit of the preemption clause that Congress cited as underlying the preemption provision was California legislation that relieved some motor carriers from onerous regulations, but "*denied this exemption … to those* [*motor carriers*] *using a large proportion of owner-operators instead of company employees*." *Id.* (emphasis added). Congress noted that "[t]he sheer diversity of these regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business." *Id.*

Congress explicitly designed the FAAAA preemption provision to adopt the "broad preemption interpretation adopted by the United States Supreme Court in *Morales v. TransWorld Airlines, Inc.*" in the Airline Deregulation Act context. *Id.* at 84, citing *Morales v. TransWorld Airlines, Inc.*, 504 U.S. 374 (1992). Congress even warned that the FAAAA preemption provision's enumerated exceptions must be construed narrowly: "There has been concern raised that States . . . may instead attempt to regulate intrastate trucking markets through its unaffected authority to regulate matters such as safety, vehicle size and weight, insurance and self-insurance requirements, or hazardous materials routing matters. *The conferees do not intend for States to attempt to de facto regulate prices, routes or services of intrastate trucking through the guise of some form of unaffected regulatory*

authority." H.R. Conf. Rep. No. 103-677 at 85 (emphasis added).

In signing the preemption provision into law, President Clinton stated: "State regulation preempted under this provision takes the form of *controls on who can enter the trucking industry within a State*, what they can carry and where they can carry it, and whether competitors can sit down and arrange among themselves how much to charge shippers and consumers. Taken together in the 41 States that do this, this set of regulation costs consumers up to $8 billion per year . . . by increasing the freight transportation cost of everything we buy." Statement by President William J. Clinton Upon Signing H.R. 2739, 1994 U.S.C.C.A.N. 1762-1 (Aug. 23, 1994) (emphasis added).

In short, there can be no doubt that the FAAAA preemption was designed to capture within its net laws that enact barriers to entry in the trucking industry, including those that would upend the congressionally-favored independent owner-operator trucking model.

III. The Business-to-Business Exemption Does Not Save AB 5 from Preemption

This Court has previously taken the extraordinary step of *reversing the denial* of a preliminary injunction against a law that "impos[ed] . . . requirements in order to force drayage carriers to hire certain preferred workers over others," thereby "attempt[ing] to decide who can use whom for drayage services." *Am. Trucking Ass'ns*, 559 F.3d at 1056. AB 5 is no different, given Prong B of the ABC Test's

categorical prohibition on motor carriers' use of independent owner-operators to provide trucking services, *see* CTA Br. at 48-56, which "is a palpable interference with prices and services," *Am. Trucking Ass'ns*, 559 F.3d at 1056. For precisely that reason, courts across the country have held that the ABC Test is preempted by the FAAAA, which broadly preempts *any* state law "related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." 49 U.S.C. § 14501(c)(1); *see also Mass. Delivery Assn. v. Healey*, 821 F.3d 187 (1st Cir. 2016) (finding ABC Test preempted); *Schwann v. FedEx Ground Package Sys., Inc.*, 813 F.3d 429 (1st Cir. 2016) (same); *Valadez v. CSX Intermodal Terminals, Inc.*, 2019 WL 1975460 (N.D. Cal. Mar. 15, 2019) (same); *Alvarez v. XPO Logistics Cartage LLC*, 2018 WL 6271965 (C.D. Cal. Nov. 15, 2018) (same); *Chambers v. RDI Logistics, Inc.*, 476 Mass. 95 (2016) (same).

IBT and certain amici, however, argue that AB 5's business-to-business exemption saves the law from preemption. *See* IBT Br. at 35-41; City Attorneys Br. at 7-12. But the many requirements of the business-to-business exemption are fundamentally incompatible with the well-established independent owner-operator business model that Congress sought to preserve. Perhaps for that reason, amici's argument is not even supported by the California Attorney General—the primary state official "tasked with enforcing AB-5." ER019.

1. The Business-to-Business Exemption Is Incompatible With the Owner-Operator Model

AB 5 provides that the ABC Test "do[es] not apply to a bona fide business-to-business contracting relationship" if every element of a 12-part test is met. Cal. Lab. Code § 2750.3(e). IBT and the City Attorneys argue that this test "permits motor carriers to engage independent contractors while imposing sensible limitations on their use" and therefore places AB 5 outside the scope of FAAAA preemption. City Attorneys Br. at 8. This is wrong. To the contrary, for at least four reasons beyond those already raised in CTA's answering brief, *see* CTA Br. at 63-64, the requirements of the business-to-business exemption make it impossible for independent owner-operator truck drivers to qualify. Because of this, the business-to-business exemption does not save AB 5 from preemption.

First, the business-to-business exemption "does not apply to an individual worker, as opposed to a business entity, who performs labor or services for a contracting business." Cal. Lab. Code § 2750.3(e)(2). That requirement alone means that independent owner-operators—who by definition are individual "persons" that "own[] one or a few trucks" (*Centr. Forwarding*, 698 F.2d at 1267)—cannot qualify.

Second, AB 5's business-to-business exemption only applies if the "business service provider" obtains any "required business license" needed to perform "the work" contemplated by the parties' contract in the jurisdiction in which it is to be

performed. Cal. Lab. Code § 2750.3(e)(1)(D). Federal law requires motor carriers to obtain a federal motor carrier operating license to perform interstate trucking operations. *See* 49 U.S.C. § 13902. Independent contractors in the trucking industry, however, are defined by the fact that they do *not* have their own operating licenses. *See* H.R. Rep. No. 1812 at 5 (an independent owner-operator is "a person who owns and operates one, or a few, trucks for hire without holding ICC operating authority"); *Am Trucking Ass'ns*, 344 U.S. at 303 ("Carriers . . . have increasingly turned to owner-operator truckers . . . to conduct operations under the former's permit.").[5] In fact, the federal Truth-in-Leasing Regulations are *premised* on the business model of independent owner-operators "leasing" their services and trucks instead of obtaining their own motor carrier licenses. *See* 49 C.F.R. §§ 376.1, 376.2.

Third, the business-to-business exemption establishes a host of obstacles that independent truckers must overcome in contracting with a motor carrier, each of which mandates a business relationship completely different from the traditional independent owner-operator business model. For example, the business-to-

[5] *See also* Grawe, *supra*, at 116 n.1 ("The independent owner-operator is an independent trucker who lacks federal operating authority."); Hardman, *supra*, at 28 ("'Independent contractors' include an individual who . . . leases [her] vehicle to a motor carrier with driver service to be used in moving freight . . . indicating the lessor of the equipment as the motor carrier of the freight transported.").

business exemption applies only if the contractor "maintains a business location that is separate from the business or work location of the contracting business," Cal. Lab. Code § 2750.3(e)(1)(E); "actually contracts with other businesses to provide the same or similar services and maintains a clientele," *id.*, § 2750.3(e)(1)(G); and "advertises . . . to the public," *id.*, § 2750.3(e)(1)(H). The FAAAA's preemption provision, though, was intended to eliminate "antiquated controls" encumbering the entry of independent truckers into the marketplace, allow "transportation companies to freely compete more efficiently," and permit "[s]ervice options [to] be dictated by the marketplace, and not by an artificial regulatory structure." H.R. Conf. Rep. No. 103-677 at 87; *see also Cal Cartage*, 2020 WL 497132, at *8 (holding that AB 5's "barriers to entry" for independent truckers "contradict the rationale for enacting the FAAAA preemption provision in the first place" of permitting free market competition in the trucking industry). As President Clinton noted in signing the preemption provision into law, "[s]tate regulation preempted under this provision takes the form of controls on who can enter the trucking industry." Statement by President William J. Clinton Upon Signing H.R. 2739, 1994 U.S.C.C.A.N. 1762-1 (Aug. 23, 1994).

Fourth, the business-to-business exemption only applies when an owner-operator "can negotiate its own rates" with a motor carrier, Cal. Lab. Code § 2750.3(e)(1)(J), which conflicts with the Truth-in-Leasing regulations that

require a motor carrier to *provide* "clearly stated" rates to independent owner-operators, 49 C.F.R. § 376.12(d).

Each of these requirements is insurmountable for traditional independent owner-operator truckers, who have been described by Congress as among "the most efficient movers of goods" in the United States and as "a vital segment of the motor transportation industry." H.R. Rep. No. 1812 at 5, 26. That independent owner-operator model is protected by the FAAAA. Because AB 5 prohibits it, the district court was correct in concluding that AB 5 is likely preempted.

2. Every Court to Consider the Business-to-Business Exemption Agrees That It Does Not Save AB 5 From Preemption

It is no surprise, given the clear inapplicability of the business-to-business exemption to independent owner-operators, that the arguments advanced by IBT and the City Attorneys have been rejected by both of the courts that have considered them—and that the Attorney General has avoided endorsing them in this case.

In *Cal Cartage*—an Unfair Competition Law enforcement action brought by the Los Angeles City Attorney—the Superior Court held that "the ABC Test as applied to motor carriers is preempted by the FAAAA" in light of the "deliberately expansive" reach of the FAAAA's "broad" preemption provision, because it "does not permit motor carriers to utilize independent owner-operators, as that term has been used in the trucking industry, by Congress, and by the U.S. Supreme Court for

many decades." *Cal Cartage*, 2020 WL 497132, at *2, *4, *7. The Superior Court considered at length and rejected the City Attorney's argument that the business-to-business exemption permitted motor carriers' use of independent contractors, and therefore saved AB 5 from preemption,[6] concluding that "the relationship contemplated by the business-to-business exception is *nothing like the independent contractor relationship* that has been a staple of the trucking industry through nearly 70 years of congressional proceedings and court decisions" in light of the exemption's inapplicability to individuals, licensure requirements, and insurmountable barriers to entry for independent truckers. *Id.* at *8 (emphasis added).

The district court below reached the same conclusion that the business-to-business exemption does not rescue AB 5 from FAAAA preemption—convinced, in part, by the Attorney General's lack of support for the argument. As the district court stated, it "is skeptical that motor carriers could, in fact, avail themselves of that exception, particularly where the State Defendants, who are tasked with enforcing

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[6] The Los Angeles City Attorney conceded in *Cal Cartage* that Prong B of AB 5 itself prohibited motor carriers from engaging independent contractors as truck drivers, and argued only that the business-to-business exemption saved the law from preemption. *Cal Cartage*, 2020 WL 497132, at *7. The City Attorneys appear to make the same key concession in their amicus brief in this case. City Attorneys Br. at 5 (arguing that CTA cannot show that motor carriers are "barred from using independent contractors," but only "because of AB5's business-to-business exemption").

AB-5, do not expressly concede that the exception would apply" to motor carriers. ER019. That continues to be the case on appeal, as the Attorney General's opening brief again distances itself from IBT and the City Attorneys' interpretation of AB 5's business-to-business exemption, arguing that the exemption is of *no consequence* to this proceeding. *See* AG Br. at 14 n.9 ("[T]he Court need not address whether the business-to-business exception applies here.").

Both courts to address the question have held that the business-to-business exemption does not save AB 5 from preemption, since it destroys the longstanding independent owner-operator model that the FAAAA protects. Neither IBT nor the City Attorneys offer any sound reason for this Court to decide the issue differently.

CONCLUSION

This Court should affirm the district court's order preliminarily enjoining the enforcement of AB 5 as preempted by the FAAAA.

Respectfully submitted,

Dated: May 13, 2020

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 29(a)(5) because it contains 4,249 words, exclusive of the portions of the brief exempted by Federal Rule of Appellate Procedure 32(f). I certify that that this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6).

Date: May 13, 2020

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