No. 22-10774-AA

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

KATIA GAUTHIER,
Plaintiff-Appellant,

v.

TOTAL QUALITY LOGISTICS LLC,
Defendant-Appellee.

Appeal from the U.S. District Court for the
Southern District of Georgia
No. 6:20-cv-93-RSB-CLR

BRIEF FOR AMICUS CURIAE PUBLIC CITIZEN IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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No. 22-10774-AA, *Gauthier v. Total Quality Logistics LLC*

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Local Rule 26.1-2, the following parties, not identified in the earlier-filed briefs, have an interest in the outcome of this appeal:

- Public Citizen, Inc. – Amicus Curiae
- Public Citizen Litigation Group – law firm for Public Citizen, Inc.
- Adina H. Rosenbaum – counsel for Public Citizen, Inc.
- Allison M. Zieve – counsel for Public Citizen, Inc.
- Jeremy L. Kahn – counsel for Defendant-Appellee

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel certifies that amicus curiae Public Citizen, Inc. is a nonprofit, non-stock corporation. It has no parent corporation, and no publicly-held corporation has an ownership interest in it.

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT C-1

TABLE OF CITATIONS ii

INTEREST OF AMICUS CURIAE 1

STATEMENT OF THE ISSUE 2

BACKGROUND 2

SUMMARY OF ARGUMENT 7

ARGUMENT 9

I. Personal injury claims against freight brokers based on their negligent hiring of a motor carrier do not relate to broker prices, routes, or services. 9

II. Personal injury claims against freight brokers based on their negligent hiring of a motor carrier fall within the safety exception to preemption. 15

A. The safety exception applies to common-law claims. 17

B. Personal injury claims based on a broker's negligent hiring of a motor carrier invoke the state's safety regulatory authority "with respect to motor vehicles." 21

III. The district court's decision undermines safety without furthering the FAAAA's purposes. 24

CONCLUSION 26

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

TABLE OF CITATIONS

Cases **Page(s)**

American Airlines, Inc. v. Wolens,
513 U.S. 219 (1995) 3

Amerijet International, Inc. v. Miami-Dade County,
627 F. App'x 744 (11th Cir. 2015) 10, 14

Aspen American Insurance Co. v. Landstar Ranger, Inc.,
No. 3:21-CV-578-BJD-LLL, 2022 WL 806086,
(M.D. Fla. Feb. 3, 2022)..... 24

Bedoya v. American Eagle Express Inc.,
914 F.3d 812 (3d Cir. 2019)..... 1

Bertram v. Progressive Southeastern Insurance Co.,
No. 2:19-CV-01478, 2021 WL 2955740,
(W.D. La. July 14, 2021)..... 16

* *Branche v. Airtran Airways, Inc.*,
342 F.3d 1248 (11th Cir. 2003) ..... *passim*

Ciotola v. Star Transportation & Trucking, LLC,
481 F. Supp. 3d 375 (M.D. Pa. 2020) 14

* *City of Columbus v. Ours Garage & Wrecker Service, Inc.*,
536 U.S. 424 (2002) 4, 17, 18

Costello v. BeavEx, Inc.,
810 F.3d 1045 (7th Cir. 2016) 1, 15

Crouch v. Taylor Logistics Co.,
__ F. Supp. 3d __, 2021 WL 4355403,
(S.D. Ill. Sept. 24, 2021) 16

Dan's City Used Cars, Inc. v. Pelkey,
569 U.S. 251 (2013) 11, 21, 24

DiFiore v. American Airlines, Inc.,
646 F.3d 81 (1st Cir. 2011) 2

Dixon v. Stone Truck Line, Inc.,
No. 2:19-CV-000945-JCH-GJF, 2021 WL 5493076,
(D.N.M. Nov. 23, 2021) 15, 19

Finley v. Dyer,
No. 3:18-CV-78-DMB-JMV, 2018 WL 5284616,
(N.D. Miss. Oct. 24, 2018) 16, 18, 22

Gerred v. FedEx Ground Packaging System, Inc.,
No. 4:21-CV-1026-P, 2021 WL 4398033,
(N.D. Tex. Sept. 23, 2021) 16

Gilley v. C.H. Robinson Worldwide, Inc.,
No. CV 1:18-00536, 2019 WL 1410902,
(S.D.W. Va. Mar. 28, 2019) 12, 16

Grant v. Lowe's Home Centers, LLC,
No. CV 5:20-02278-MGL, 2021 WL 288372,
(D.S.C. Jan. 28, 2021) 16

Huffman v. Evans Transportation Services, Inc.,
No. CV H-19-0705, 2019 WL 4143896,
(S.D. Tex. Aug. 12, 2019) 12, 16

Kurns v. Railroad Friction Products Corp.,
565 U.S. 625 (2012) 17

Lopez v. Amazon Logistics, Inc.,
458 F. Supp. 3d 505 (N.D. Tex. 2020) 16, 19, 22

Lupian v. Joseph Cory Holdings LLC,
905 F.3d 127 (3d Cir. 2018) 1, 14, 15

Mann v. C.H. Robinson Worldwide, Inc.,
No. 7:16-CV-00102, 2017 WL 3191516,
(W.D. Va. July 27, 2017) 12, 16

Mata v. Allupick, Inc.,
No. 4:21-CV-00865-ACA, 2022 WL 1541294,
(N.D. Ala. May 16, 2022) 15, 22

Medtronic, Inc. v. Lohr,
518 U.S. 470 (1996) 18

Mendoza v. BSB Transport, Inc.,
No. 4:20 CV 270 CDP, 2020 WL 6270743,
(E.D. Mo. Oct. 26, 2020) 16

* *Miller v. C.H. Robinson Worldwide, Inc.*,
976 F.3d 1016 (9th Cir. 2020) ..... *passim*

Mitchell v. U.S. Airways, Inc.,
720 F.3d 60 (1st Cir. 2013) 2

Montgomery v. Caribe Transport II, LLC,
No. 19-CV-1300-SMY, 2021 WL 4129327,
(S.D. Ill. Sept. 9, 2021) 16, 23

Morales v. Redco Transport Ltd.,
No. 5:14-CV-129, 2015 WL 9274068,
(S.D. Tex. Dec. 21, 2015) 17, 23

Morales v. Trans World Airlines, Inc.,
504 U.S. 374 (1992) 1, 2

Owens v. Anthony,
No. 2-11-0033, 2011 WL 6056409,
(M.D. Tenn. Dec. 6, 2011) 17

Papas v. Upjohn Co.,
985 F.2d 516 (11th Cir. 1993) 17

Popal v. Reliable Cargo Delivery,
No. P:20-CV-00039-DC, 2021 WL 1100097,
(W.D. Tex. Mar. 10, 2021) 16

Reyes v. Martinez,
No. EP-21-CV-00069-DCG, 2021 WL 2177252,
(W.D. Tex. May 28, 2021) 12, 14, 16

Rowe v. New Hampshire Motor Transport Ass'n,
552 U.S. 364 (2008) 9, 11, 25

Skowron v. C.H. Robinson Co.,
480 F. Supp. 3d 316 (D. Mass. Aug. 14, 2020) 16, 22

Taylor v. Sethmar Transportation, Inc.,
No. 2:19-CV-00770, 2021 WL 4751419,
(S.D.W. Va. Oct. 12, 2021) 15, 21

Uhrhan v. B&B Cargo, Inc.,
No. 4:17-CV-02720-JAR, 2020 WL 4501104,
(E.D. Mo. Aug. 5, 2020) 16

United Motorcoach Ass'n v. City of Austin,
851 F.3d 489 (5th Cir. 2017) 23

Wyeth v. Levine,
555 U.S. 555 (2009) 18

Statutes and Laws

49 U.S.C. § 13102(14) 23

* 49 U.S.C. § 14501(c)(1) ..... *passim*

* 49 U.S.C. § 14501(c)(2)(A) ..... *passim*

49 U.S.C. § 41713(b)(1) 3

Airline Deregulation Act,
Pub. L. No. 95-504, 92 Stat. 1705 (1978) 2

Federal Aviation Administration Authorization Act,
Pub. L. No. 103-305, 108 Stat. 1569 (1994) 3, 19, 24

Motor Carrier Act,
Pub. L. No. 96-296, 94 Stat. 793 (1980) 3

Other Authorities

Federal Rule of Appellate Procedure 29(a) 1

H.R. Conf. Rep. No. 103-677 (1994),
reprinted in 1994 U.S.C.C.A.N. 1715 3

INTEREST OF AMICUS CURIAE[1]

Public Citizen is a non-profit consumer-advocacy organization with members in all 50 states. Since its founding in 1971, Public Citizen has worked for enactment and enforcement of laws protecting consumers, workers, and the general public. Public Citizen has longstanding interests both in ensuring safety on our nation's roads and in fighting exaggerated claims that federal laws preempt state laws that protect consumers and the general public. It has appeared as amicus curiae in numerous cases raising preemption issues, including many cases involving the preemption provisions of the Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. § 14501(c)(1), and the related Airline Deregulation Act, *id.* § 41713(b)(1). *See*, *e.g.*, *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992); *Bedoya v. Am. Eagle Express Inc.*, 914 F.3d 812 (3d Cir. 2019); *Lupian v. Joseph Cory Holdings LLC*, 905 F.3d 127 (3d Cir. 2018); *Costello v. BeavEx, Inc.*, 810 F.3d 1045

[1] This brief is accompanied by a Motion for Leave to File as required by Federal Rule of Appellate Procedure 29(a). No party's counsel authored this brief in whole or in part, and no party or party's counsel made a monetary contribution to fund the preparation or submission of this brief. No person or entity other than Public Citizen made a monetary contribution to the preparation or submission of this brief.

(7th Cir. 2016); *Mitchell v. U.S. Airways, Inc.*, 720 F.3d 60 (1st Cir. 2013); *DiFiore v. Am. Airlines, Inc.*, 646 F.3d 81 (1st Cir. 2011).

Public Citizen submits this amicus curiae brief because it is concerned that the district court's overly broad reading of the FAAAA's preemptive scope, if adopted by this Court, would decrease freight brokers' incentives to ensure that they do not place dangerous motor vehicles on the road and would deprive people who are injured due to brokers' negligence of redress for their injuries.

STATEMENT OF THE ISSUE

Whether the FAAAA, 49 U.S.C. § 14501(c)(1), preempts personal injury and wrongful death claims against a freight broker arising from the broker's negligent hiring of an unsafe motor carrier.

BACKGROUND

A. The Airline Deregulation Act of 1978 (ADA), Pub. L. No. 95-504, 92 Stat. 1705, eliminated federal economic regulation of the airline industry. "To ensure that the States would not undo federal deregulation with regulation of their own," *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992), the ADA included a preemption provision "designed to promote maximum reliance on competitive market forces,"

Am. Airlines, Inc. v. Wolens, 513 U.S. 219, 230 (1995) (internal quotation marks and citation omitted). That provision prohibits states from enacting or enforcing laws "related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1).

In 1980, Congress similarly deregulated the trucking industry, *see* Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793, but did not preempt state trucking regulation. By 1994, many states regulated "intrastate prices, routes and services of motor carriers." H.R. Conf. Rep. No. 103-677, at 86 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1715. Concerned that state controls were anti-competitive and advantaged airlines over motor carriers, Congress enacted a provision regarding the "preemption of state economic regulation of motor carriers." FAAAA, Pub. L. No. 103-305, § 601(c), 108 Stat. 1569, 1606 (1994). As later amended, that provision preempts state laws "related to a price, route, or service of any motor carrier … or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1).

At the same time that it enacted the preemption provision, Congress sought to "ensure that its preemption of States' economic

authority over motor carriers of property" would "'not restrict' the preexisting and traditional state police power over safety." *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 439 (2002) (quoting 49 U.S.C. § 14501(c)(2)(A)). Accordingly, Congress specified that the preemption provision "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). This exception from preemption is often called the "safety exception." *Ours Garage*, 536 U.S. at 435.

B. Defendant-appellee Total Quality Logistics LLC is a freight broker that selected Hard to Stop LLC, a motor carrier, and/or Ronald Bernard Shingles, one of Hard to Stop's employees/agents, to transport a product from a poultry plant on Georgia State Route 73 to a customer. Doc. 27 ¶¶ 15–16.[2] Mr. Shingles drove to pick up the product in a truck owned by Hard to Stop. *Id.* ¶ 5. Distracted, and driving a truck with improperly maintained brakes, Mr. Shingles missed his turn into the plant. *Id.* ¶ 19. He subsequently attempted to make an illegal U-turn on the highway, but the turning radius of the truck prevented him from

[2] "Doc." refers to the document number in the district court docket.

completing the U-turn. *Id.* ¶¶ 20–21. Accordingly, he ended up blocking multiple lanes of the road. *Id.* ¶ 22.

Peter Gauthier was driving on Georgia State Route 73 while Mr. Shingles was attempting the U-turn. He was unable to avoid hitting the truck that was blocking multiple lanes and died as a result of the injuries that he suffered during the collision. *Id.* ¶¶ 25–26.

Peter Gauthier's wife, Katia Gauthier, brought this case on behalf of herself, Peter's estate, and their minor daughters. *Id.* ¶ 1. Among other things, Ms. Gauthier alleges that Total Quality was negligent in hiring and retaining Mr. Shingles and/or Hard to Stop because it knew or should have known of prior wrecks, dangerous behavior, and traffic violations by Mr. Shingles, including multiple speeding tickets, driving with a suspended license on multiple occasions, battery, and constructive possession of controlled substances, and knew or should have known that Hard to Stop had a history of lack of proper licensing, improper maintenance of its vehicles, and a lack of the federally-mandated minimum insurance for motor carriers. *Id.* ¶¶ 51–52.

C. The district court held that Ms. Gauthier stated a claim against Total Quality for negligent hiring and retention. Doc. 69 at 10–12.

However, breaking with the only court of appeals' decision to have considered whether the FAAAA preempts personal injury claims against freight brokers, *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016 (9th Cir. 2020), *petition for cert. pending*, No. 20-1425 (filed Apr. 8, 2021), as well as with the majority of district courts to have considered the issue, the district court held that Ms. Gauthier's negligent hiring and retention claim (hereafter, "negligent hiring claim") is preempted by the FAAAA. Doc. 69 at 12.

The district court first held that the claim falls within the scope of the FAAAA's preemption provision, 49 U.S.C. § 14501(c)(1). Doc. 69 at 18–23. The court then held that the claim does not fall within the scope of the safety exception. *Id*. at 23–28. The court rejected the argument that the "safety regulatory authority of a State" does not include common-law claims. *Id.* at 24–26. However, although the claim alleges that Total Quality was negligent in selecting a motor carrier to provide motor vehicle transportation, resulting in a motor vehicle crash, the court held that the claim was not "with respect to motor vehicles." *Id*. at 26.

SUMMARY OF ARGUMENT

The FAAAA, 49 U.S.C. § 14501(c)(1), does not preempt personal-injury and wrongful-death claims (hereafter collectively referred to as "personal injury-claims") against freight brokers based on their negligent hiring of a motor carrier for two independent reasons.

First, such claims do not fall within the scope of the FAAAA's preemption provision, 49 U.S.C. § 14501(c)(1). The term "service" in the FAAAA refers to the "*bargained-for* aspects of [motor carrier or broker] operations over which carriers [or brokers] compete." *Branche v. Airtran Airways, Inc.*, 342 F.3d 1248, 1258 (11th Cir. 2003). Brokers and their customers—the shippers who hire them—do not bargain over the extent to which the brokers will fulfill their duties to members of the public to ensure that they are not placing dangerous motor carriers on the road. Because they do not relate to the bargained-for aspects of broker operations (or the prices for such services), personal-injury claims against brokers are not preempted.

Second, if such claims against brokers fell within the scope of 49 U.S.C. § 14501(c)(1), they would be saved from preemption by the safety exception in 49 U.S.C. § 14501(c)(2)(A). As the only court of appeals to

have addressed the issue explained in holding that the FAAAA did not preempt a personal injury claim against a broker, the "'safety regulatory authority of a State' encompasses common-law tort claims," which are an "important component of the States' power over safety." *Miller*, 976 F.3d at 1026. Moreover, a claim alleging that a broker breached its duty to exercise care to ensure that the motor carrier it hired would not place unsafe motor vehicles on the road has the "requisite 'connection with' motor vehicles" to fall within the exception's scope. *Id*. at 1031.

If the FAAAA preempted personal-injury claims against freight brokers, a broker would have no duty of care in hiring a motor carrier to provide motor vehicle transportation. It could not be held accountable even if it hired a motor carrier that it affirmatively knew posed a serious risk to other drivers and passengers on the road. In deregulating the economic aspects of motor carrier transportation but preserving the traditional state power over safety, Congress could not have intended this result. This Court should hold that the FAAAA does not preempt personal-injury claims against brokers based on their negligent hiring of an unsafe motor carrier.

ARGUMENT

I. Personal injury claims against freight brokers based on their negligent hiring of a motor carrier do not relate to broker prices, routes, or services.

Ms. Gauthier's negligent hiring claim is not preempted by the FAAAA because it is not "related to" a broker's "price, route, or service." 49 U.S.C. § 14501(c)(1). The term "service" in the ADA and FAAAA refers to the "*bargained-for* aspects of [airline or motor carrier] operations over which carriers compete." *Branche*, 342 F.3d at 1258 (interpreting "service" in the ADA); *see Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008) (relying on ADA precedent to interpret the FAAAA). "By contrast, those elements of … carrier operations over which [carriers] do not compete are not 'services' within the meaning" of the ADA and FAAAA, and "state laws related to these elements are not pre-empted." *Branche*, 342 F.3d at 1258.

Thus, in *Branche*, this Court held that the ADA did not preempt a claim under a state whistleblower law alleging that an airline had discharged an employee in retaliation for reporting safety violations. "[S]afety is not a basis on which airlines compete for passengers, and as such is not something for which air travelers bargain," the Court

explained. *Id*. at 1260. "Accordingly, it does not serve the purposes of the ADA to pre-empt state law employment claims related to safety." *Id*. Because the plaintiff's whistleblower claim "was fundamentally an employment discrimination claim that d[id] not implicate any arena in which airlines compete," the Court concluded that his claim did not "relate to the services of an air carrier within the meaning" of the ADA. *Id*. at 1261.

Like the retaliatory discharge claim at issue in *Branche*, personal-injury claims against freight brokers based on their negligent hiring of an unsafe motor carrier do not "relate[] to … service[s]" within the meaning of the ADA and FAAAA. Such claims are based on the broker's failure to exercise reasonable care to ensure that the motor carrier with whom it contracted was safe. The duty underlying such a claim is one the broker owes to members of the public. It is not part of the "bargained-for exchange … between [a broker] and its consumers." *Amerijet Int'l, Inc. v. Miami-Dade Cty.*, 627 F. App'x 744, 749 (11th Cir. 2015). Although brokers and their customers may bargain over the brokers' efforts to ensure that the shipment will successfully arrive at its destination without being harmed, they do not bargain over whether the broker will

fulfill its duty to members of the public to ensure that it is not putting unsafe motor carriers on the road with them. Because personal injury claims brought against brokers by people injured or the families of people killed in motor vehicle accidents relate to elements of broker operations that are not "bargained-for by [brokers] and their [customers]," *Branche*, 342 F.3d at 1258, they do not fall within the scope of 49 U.S.C. § 14501(c)(1).

In holding that Ms. Gauthier's negligent hiring claim was preempted, the district court stated that the negligent hiring allegations "are directly related to the core service provided by [Total Quality]—hiring motor carriers to transport shipments—because they are based entirely upon Total Quality's decision to select Hard to Stop as the motor carrier." Doc. 69 at 19 (internal quotation marks and citation omitted). But Total Quality's customer did not hire it specifically to select Hard to Stop as a motor carrier; it hired it generally to select and arrange for a motor carrier to pick up and deliver goods. Total Quality's negligence does not relate to that service in more than a "tenuous, remote, or peripheral … manner," *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261 (2013) (quoting *Rowe*, 552 U.S. at 371), where the negligence does

not relate to "elements of [selecting a motor carrier] that are bargained for by [shippers] with [brokers]," *Branche*, 342 F.3d at 1258; *see*, *e.g.*, *Reyes v. Martinez*, No. EP-21-CV-00069-DCG, 2021 WL 2177252, at *5–6 (W.D. Tex. May 28, 2021) (explaining that negligent hiring personal-injury claim affected broker services in too tenuous, remote, or peripheral a manner to be preempted); *Huffman v. Evans Transp. Servs., Inc.*, No. CV H-19-0705, 2019 WL 4143896, at *3 (S.D. Tex. Aug. 12, 2019), report and recommendation adopted, No. 4:19-CV-705, 2019 WL 4142685 (S.D. Tex. Aug. 28, 2019) (same); *Gilley v. C.H. Robinson Worldwide, Inc.*, No. CV 1:18-00536, 2019 WL 1410902, at *5 (S.D.W. Va. Mar. 28, 2019) (same); *Mann v. C.H. Robinson Worldwide, Inc.*, No. 7:16-CV-00102, 2017 WL 3191516, at *7 (W.D. Va. July 27, 2017) (same).

Although ensuring "onboard safety" is something airlines do as part of providing their transportation services to passengers, this Court recognized in *Branche* that "state law personal injury claims are not preempted" by the ADA. 342 F.3d at 1258. "[A]irlines do not compete on the basis of likelihood of personal injury, i.e., onboard safety," the court explained, "and as such it does not undermine the pro-competitive purpose of the ADA … to permit states to regulate this aspect of air

carrier operations." *Id*. Likewise, here, where brokers do not compete on the likelihood that the motor carriers they hire will cause personal injury or death to other people on the road, holding brokers accountable for their negligence in hiring unsafe motor carriers does not undermine the FAAAA's competitive purposes, and such claims do not relate to broker prices, routes, and services within the meaning of the FAAAA.

The district court also stated that the negligent hiring claim would have "an impermissible significant and direct impact on Total Quality's services and prices because it seeks to impose heightened (and potentially costly) common law duties to investigate the motor carriers with which it contracts." Doc. 69 at 20. But the district court did not explain *how* requiring Total Quality to investigate motor carriers before contracting with them will impact the services it provides its customers or the price it charges for those services. Customers hire Total Quality to "arrang[e] transportation of goods." Doc. 27 ¶ 48. Total Quality can provide customers with that service while also conducting a reasonable investigation into motor carriers' safety practices. To be sure, the investigations might result in Total Quality hiring a different motor carrier to transport a particular load of goods than it might have

otherwise, but the identity of the motor carrier that is ultimately hired does not change the service that the customer receives from the broker—the arrangement for the transportation of the property. And although conducting a reasonable investigation might cost Total Quality some amount of money, there has been no showing that any costs it incurs will have any impact, let alone a "significant economic impact," *Branche*, 342 F.3d at 1259, on the services it provides its customers or the prices it charges for those services. Moreover, "such indirect economic influences are insufficient to trigger preemption." *Amerijet*, 627 F. App'x at 751 (internal quotation marks and citation omitted; rejecting the argument that a law was preempted because it would increase the carrier's costs and increased costs would cause the carrier to increase its prices). *See*, *e.g.*, *Reyes*, 2021 WL 2177252, at *5 ("At best, the effect of common law negligence on a broker's prices, routes or services [is] merely incidental." (internal quotation marks and citation omitted)); *Ciotola v. Star Transp. & Trucking, LLC*, 481 F. Supp. 3d 375, 390 (M.D. Pa. 2020) (explaining that the law underlying a negligent hiring claim "does not place a significant financial impact on a broker or motor carrier's prices, routes, or services"); *see generally Lupian v. Joseph Cory Holdings LLC*, 905 F.3d

127, 136 (3d Cir. 2018) (explaining that a law is not necessarily preempted just because it would have "negative financial" consequences for a motor carrier); *Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1055 (7th Cir. 2016) (holding that a law that only "indirectly affect[ed] prices by raising costs" was not preempted).

Because Ms. Gauthier's negligent hiring claim does not have a sufficient relationship to broker prices, routes, or services, the FAAAA does not preempt it.

II. Personal injury claims against freight brokers based on their negligent hiring of a motor carrier fall within the safety exception to preemption.

Ms. Gauthier's negligent hiring claim is also not preempted because personal injury claims against brokers based on the negligent selection of a motor carrier invoke the "safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). Accordingly, as numerous courts have recognized, such claims fall within the FAAAA's safety exception to preemption, 49 U.S.C. § 14501(c)(2)(A). *See Miller*, 976 F.3d at 1031; *Mata v. Allupick, Inc.*, No. 4:21-CV-00865-ACA, 2022 WL 1541294, at *6 (N.D. Ala. May 16, 2022); *Dixon v. Stone Truck Line, Inc.*, No. 2:19-CV-000945-JCH-GJF, 2021 WL 5493076, at *14 (D.N.M.

Nov. 23, 2021); *Taylor v. Sethmar Transp., Inc.*, No. 2:19-CV-00770, 2021 WL 4751419, at *16 (S.D.W. Va. Oct. 12, 2021); *Crouch v. Taylor Logistics Co.*, __ F. Supp. 3d __, 2021 WL 4355403, at *5 (S.D. Ill. Sept. 24, 2021), *appeal dismissed*, No. 21-2927, 2021 WL 8129683 (7th Cir. Nov. 9, 2021); *Gerred v. FedEx Ground Packaging Sys., Inc.*, No. 4:21-CV-1026-P, 2021 WL 4398033, at *3 (N.D. Tex. Sept. 23, 2021); *Montgomery v. Caribe Transp. II, LLC*, No. 19-CV-1300-SMY, 2021 WL 4129327, at *2 (S.D. Ill. Sept. 9, 2021); *Bertram v. Progressive Se. Ins. Co.*, No. 2:19-CV-01478, 2021 WL 2955740, at *6 (W.D. La. July 14, 2021); *Reyes*, 2021 WL 2177252, at *6; *Popal v. Reliable Cargo Delivery*, No. P:20-CV-00039-DC, 2021 WL 1100097, at *4 (W.D. Tex. Mar. 10, 2021); *Grant v. Lowe's Home Ctrs., LLC*, No. CV 5:20-02278-MGL, 2021 WL 288372, at *4 (D.S.C. Jan. 28, 2021); *Mendoza v. BSB Transp., Inc.*, No. 4:20 CV 270 CDP, 2020 WL 6270743, at *4 (E.D. Mo. Oct. 26, 2020); *Skowron v. C.H. Robinson Co.*, 480 F. Supp. 3d 316, 322 (D. Mass. Aug. 14, 2020); *Uhrhan v. B&B Cargo, Inc.*, No. 4:17-CV-02720-JAR, 2020 WL 4501104, at *5 (E.D. Mo. Aug. 5, 2020); *Lopez v. Amazon Logistics, Inc.*, 458 F. Supp. 3d 505, 515 (N.D. Tex. 2020); *Gilley*, 2019 WL 1410902, at *5; *Huffman*, 2019 WL 4143896, at *4; *Finley v. Dyer*, No. 3:18-CV-78-DMB-JMV, 2018 WL 5284616, at *6

(N.D. Miss. Oct. 24, 2018); *Mann*, 2017 WL 3191516, at *8; *Morales v. Redco Transp. Ltd.*, No. 5:14-CV-129, 2015 WL 9274068, at *2 (S.D. Tex. Dec. 21, 2015); *Owens v. Anthony*, No. 2-11-0033, 2011 WL 6056409, at *4 (M.D. Tenn. Dec. 6, 2011).

A. The safety exception applies to common-law claims.

As the district court correctly recognized, the "safety regulatory authority of a State" includes common-law damages claims. Doc 69 at 24. The text, purpose, and statutory context of the exception all support this conclusion.

First, the term "safety regulatory authority of a State" comfortably and logically includes common-law damages claims. State courts' ability to develop and enforce common law duties is part of the "authority of [the] State." This Court has explained that "[c]ommon law damages awards are one form of state regulation." *Papas v. Upjohn Co.*, 985 F.2d 516, 518 (11th Cir. 1993); *see also Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (explaining that "state regulation can be ... effectively exerted through an award of damages" (internal quotation marks and citation omitted)). And common-law duties, such as those at issue here, can be "genuinely responsive to safety." *Ours Garage*, 536 U.S. at 442.

Second, the purpose of the safety exception confirms that the "safety regulatory authority of a State" encompasses common-law duties. As the Supreme Court explained in *Ours Garage*, "Congress' clear purpose in § 14501(c)(2)(A) is to ensure that its preemption of States' economic authority over motor carriers of property, § 14501(c)(1), 'not restrict' the preexisting and traditional state police power over safety." 536 U.S. at 439. Common-law claims fall squarely within the traditional state police power that Congress sought to preserve in enacting the safety exception. *See*, *e.g.*, *Wyeth v. Levine*, 555 U.S. 555, 565 (2009); *see also*, *e.g.*, *Finley*, 2018 WL 5284616, at *6 (in holding that personal injury claim against broker was not preempted, stating that "there can be no serious dispute that common law claims arising from the negligent procurement of a trailer represent a valid exercise of the state's police power to regulate safety"). Indeed, in discussing the police powers of the states, *Ours Garage* quoted *Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996), in which the Supreme Court relied on a presumption against preemption of "the historic police powers of the States" in holding that common-law claims were not preempted. *See Ours Garage*, 536 U.S. at 438 (quoting *Medtronic*, 518 U.S. at 485).

Reading the safety exception in light of other provisions in the statute provides further confirmation that the exception encompasses common-law claims. As the district court explained, "[w]hereas the FAAAA's preemption provision applies to any 'law, *regulation*, or other provision having the force and effect of law,' 49 U.S.C. § 14501(c)(1) (emphasis added), the exception in Section 14501(c)(2)(A) applies more broadly to a state's 'safety *regulatory* authority,' *id.* § 14501(c)(2)(A) (emphasis added)." Doc. 69 at 25; *see also Dixon*, 2021 WL 5493076, at *12; *Lopez*, 458 F. Supp. 3d at 515. Congress's choice to reserve all of a state's safety regulatory authority, rather than limiting the exception to safety regulations, indicates its "desire to preserve more than just a state's power to enact regulations with respect to motor vehicles." Doc. 69 at 25.

Moreover, the safety exception is not the only place in the FAAAA where Congress used the term "regulatory." In the Act's "findings," Congress declared that "certain aspects of the State *regulatory* process should be preempted." FAAAA § 601(a)(2) (emphasis added). The argument that the claims here are preempted rests on the notion that common-law claims are among the "aspects of the State regulatory

process" that Congress sought to preempt in the FAAAA. After all, if the FAAAA does not preempt common-law claims at all, then it is irrelevant whether such claims fall within the safety exception. There can be no sound basis, however, for holding that common-law claims are an aspect of the state's "regulatory process" for purposes of describing what is preempted, but that they fall outside the state's "regulatory authority" for purposes of describing what is not preempted. Congress's use of the term "regulatory" to describe both what it intended to preempt and what it was saving from preemption underscores that the preemption provision and safety exception work in tandem: If the FAAAA preempts some common-law claims, the safety exception saves some common-law claims from preemption.

Finally, reading the "safety regulatory authority of a State" to exclude state common-law duties would lead to odd results. State-law damages actions can be established by state legislatures, as well as through common law. *See Miller*, 976 F.3d at 1027 (discussing states that have codified their common law). Holding that the term "safety regulatory authority of a State" does not include common-law claims would thus read the FAAAA to allow some damages claims related to

safety but not others, depending on whether the state has codified its common law into statute. "It seems unlikely that Congress would have made the availability of this exception dependent on codification, particularly in light of the FAAAA's goal of uniformity." *Id.*

In sum, in enacting the safety exception, "Congress intended to preserve the States' broad power over safety, a power that includes the ability to regulate conduct not only through legislative and administrative enactments, but also though common-law damages awards." *Id.* at 1020. The language Congress enacted achieves that purpose, and the safety exception encompasses common-law damages actions.

B. Personal injury claims based on a broker's negligent hiring of a motor carrier invoke the state's safety regulatory authority "with respect to motor vehicles."

Although the district court correctly concluded that common-law claims fall within the "safety regulatory authority of a State," it erred in holding that Ms. Gauthier's claim did not invoke that authority "with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A).

A state law is "with respect to" a topic when it "concern[s]" that topic. *Dan's City*, 569 U.S. at 261. "A claim seeking damages for personal

injury against a broker for negligently placing an unsafe carrier on the highways is a claim that concerns motor vehicles and their safe operation." *Lopez*, 458 F. Supp. 3d at 516. Such claims "incentivize[] brokers to select safe and competent motor carriers to drive motor vehicles in the state," *Taylor*, 2021 WL 4751419, at *16, and "help to protect citizens from injuries caused by motor vehicles," *Skowron*, 480 F. Supp. 3d at 321. Because they invoke state laws that are concerned with safety and motor vehicles, such claims fall within the scope of the safety exception. *See Finley*, 2018 WL 5284616, at *6 ("[S]uch claims, which are centered on a defendant's efforts to place trailers on the highways, concern motor vehicles so as to fall under the exemption provision.").

Below, the district court stated that Ms. Gauthier's claim was "too tenuously connected to motor vehicle safety" because it was based on Total Quality's "alleged failure to properly vet Defendant Shingles and/or Hard to Stop before selecting either of them as the motor carrier for the shipment." Doc. 69 at 27. But "the selection of a motor carrier to transport goods necessarily implicates the use of a motor vehicle." *Mata*, 2022 WL 1541294, at *5. And state laws do not need to directly regulate motor vehicles to concern motor vehicles and their safe operation. *See*, *e.g.*,

Miller, 976 F.3d at 1030 (noting that "the FAAAA's safety exception exempts from preemption safety regulations that 'hav[e] a connection with' motor vehicles,' whether directly or indirectly"); *United Motorcoach Ass'n v. City of Austin*, 851 F.3d 489, 495 (5th Cir. 2017) (explaining that the "referred-to authority is not merely as to the mechanical safety of motor vehicles themselves"); *Morales v. Redco Transp. Ltd.*, 2015 WL 9274068, at *2 ("[T]he FAAAA does not restrict the safety exemption only to those with some control over motor vehicles."). State laws can also address the safety of motor vehicles by holding liable brokers who negligently hire unsafe motor carriers to "provid[e] motor vehicle transportation." 49 U.S.C. § 13102(14); *see*, *e.g.*, *Montgomery*, 2021 WL 4129327, at *3 (explaining that negligence claims against brokers serve the state's "interest in regulating the safety of drivers on the road").

The district court was also incorrect in stating that, if Ms. Gauthier's claim was "with respect to motor vehicles," the "safety exception would swallow Section 14501(c)(1)'s broad rule of preemption related to brokers' services." Doc. 69 at 27 (internal quotation marks, citation, and alterations omitted). Many state-law claims relating to broker prices, routes, or services do not concern the safety of motor

vehicles, and the safety exception accordingly does not apply. *See*, *e.g.*, *Aspen Am. Ins. Co. v. Landstar Ranger, Inc.*, No. 3:21-CV-578-BJD-LLL, 2022 WL 806086 (M.D. Fla. Feb. 3, 2022) (holding that negligence claim against broker by shipper's insurance company relating to cargo loss, which did not arise from a motor vehicle accident or otherwise involve the safety of motor vehicles, did not fall within the safety exception). In contrast, negligent hiring claims against brokers by people injured or killed in motor vehicle accidents and their families invoke duties related to ensuring the safety of motor vehicles on the road. Such claims have the "requisite 'connection with' motor vehicles," and the safety exception applies. *Miller*, 976 F.3d at 1020.

III. The district court's decision undermines safety without furthering the FAAAA's purposes.

In enacting the FAAAA, "Congress resolved to displace '*certain* aspects of the State regulatory process.'" *Dan's City*, 569 U.S. at 263 (quoting FAAAA § 601(a)(2); emphasis in *Dan's City*). Specifically, it sought to reduce "state economic regulation of motor carriers." FAAAA § 601(c). At the same time, however, Congress made clear that it did not want to preempt certain other aspects of the regulatory process. It limited the preemption provision to laws related to "the bargained-for aspects" of

motor carrier and broker services, *Branche*, 342 F.3d at 1255, and it explicitly preserved the "the safety regulatory authority of a State with respect to motor vehicles," 49 U.S.C. § 14501(c)(2)(A).

Personal injury claims against brokers exemplify why Congress needed to include these limitations on FAAAA preemption. Although "competitive market forces" may further "efficiency, innovation, and low prices" in the market for airline services, *Rowe*, 552 U.S. at 371 (citation omitted), those forces do not promote safety in the broker/motor carrier market. To the contrary, if brokers were immunized against liability for negligently hiring unsafe motor carriers, they would have little incentive to choose motor carriers that operate safely. Instead, there would be a race to the bottom, in which motor carriers would be incentivized to cut safety corners to compete for brokers' business. The accompanying reduction in safety would come at the expense of people who drive on America's highways—people like Mr. Gauthier, who are not part of the marketplace for motor carrier services and have no effect on that marketplace, but who pay a heavy price when brokers like Total Quality fail to exercise reasonable care.

Recognizing that the FAAAA does not require this result, the only federal court of appeals to have addressed the issue held that the FAAAA does not preempt negligence claims against brokers arising out of motor vehicle accidents. *See Miller*, 976 F.3d at 1031. This court should do the same and hold that the FAAAA does not preempt personal injury claims against freight brokers arising from their negligent hiring of a motor carrier.

CONCLUSION

For the foregoing reasons, the Court should reverse the dismissal of Ms. Gauthier's negligent hiring claim.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the word limit of Federal Rule of Appellate Procedure 29(a)(5). Excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Eleventh Circuit Rule 32-4, the brief contains 5,202 words, less than half the number of words permitted by the Court for the parties' principal briefs. The brief also 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). The brief is composed in a 14-point proportional typeface, Century Schoolbook.

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CERTIFICATE OF SERVICE

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