No. 14-801

In The
Supreme Court of the United States

PENSKE LOGISTICS, LLC and
PENSKE TRUCK LEASING CO., L.P.,

Petitioners,

v.

MICKEY LEE DILTS, RAY RIOS,
and DONNY DUSHAJ,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RYDER SYSTEM, INC.'S *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Ryder System, Inc. is a national transportation and logistics provider. Ryder, as an interstate motor carrier, operates its business under the protection of the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), the statute at issue. Because the motor carrier industry is the engine of our interstate commerce, Congress enacted the FAAAA to facilitate maximum efficiency in the industry by deregulating it and forbidding individual states to fill perceived regulatory voids with laws or regulations of their own. But California's esoteric meal and rest break laws do just that. They significantly affect the ability of motor carriers, like Ryder, to schedule and deliver efficiently each day millions of products, packages, and other goods and services by preventing them from doing business nationally in the uniform manner the FAAAA aims to facilitate.

Unlike the FAAAA and other federal regulations, which explicitly govern meal and rest breaks for the motor carrier industry, California's break laws were enacted generally for all businesses operating in

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, other than *amicus curiae* or their counsel. Counsel of record for all parties received timely notice of the intent to file this brief under Rule 37.2. Both parties consented to the filing of this brief pursuant to Rule 37, as shown in the electronic communications submitted concurrently with this brief and the blanket consent Petitioner filed with this Court.

California and without attention to the particular needs of, nor the federal laws governing, the motor carrier industry. Those laws dictate that Ryder's drivers must comply with break rules, unique to California, which significantly interfere with Ryder's ability to meet delivery and other supply chain deadlines.

Ryder provides truck rental, leasing, maintenance services, and supply chain logistics that include dedicated fleets and drivers, transportation management, and distribution services for customers across the nation. Ryder's customers include retailers, defense and aerospace contractors, foodservice companies, manufacturers, and high tech companies, to name just a few. Ryder's drivers transport products ranging from wine to compressed gases to consumer packaged and perishable goods, including fresh and frozen food, from distribution centers and warehouses owned by customers to Big Box stores like Walmart. Precision is essential in scheduling deliveries; Ryder's customers, and the ultimate consumers, depend on it. Thus, Ryder has developed routes, services, and prices that respond to the market's demands and which are essential to maximizing efficiency and keeping transportation costs low.

***Routes*:** California's break laws affect Ryder's routes because they require its drivers to pull over and take specific types of breaks at certain defined intervals and for specified periods of time. Routes are thus impacted because drivers must now go out of their way – sometimes driving great distances – to

search for a place to pull over each and every time California law requires a duty-free break. Finding a safe and legal place to park commercial motor vehicles is already a difficult challenge for truckers nationwide.[2] The problem in California is particularly acute because the state's highways carry more commercial vehicle truck traffic than any other state in the U.S., and California also ranks first in the nation as having the biggest shortage in overall commercial vehicle parking.[3]

Stopping for a break is thus a challenge. Ryder's drivers, like all commercial drivers, cannot legally pull over at any spot they choose. Numerous restrictions prevent them from parking in non-designated areas. Drivers cannot simply exit onto any seemingly convenient street and park at will, merely because California law mandates that it is time for the driver to take a 10-minute rest or 30-minute duty-free meal break. They must also comply with the many motor vehicle safety laws and regulations

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[2] Betsy Morris, *See Too Many Trucks, Too Little Parking: New Rules Mandate Breaks, but Few Spots Are Being Built; Driver Death Cast Glare on Shortage*, Wall St. J., Jan. 20, 2015, at B1.

[3] A recent study performed by the University of California estimates that demand exceeds capacity at *all* public rest areas and at 88 percent of private truck stops on the 34 corridors in California with the highest volumes of truck travel. *See* Caroline J. Rodier, et al., Univ. of Cal., Berkeley, *Commercial Vehicle Parking in California: Exploratory Evaluation of the Problem and Solutions*, California PATH Research Report UCB-ITS-PRR-2010-4 (Mar. 2010).

applicable to the area in which they are traveling, such as state and local restrictions on idling time (no more than 5 minutes for trucks, even though drivers frequently need to idle to cool and heat cabs), as one example.

California's break laws exacerbate and complicate the already-difficult task by mandating that drivers pull over when the state of California says it is time to pull over, regardless of whether the driver needs a break at that time, or whether it is safe to do so. This significantly affects Ryder's routes.

In addition, because Ryder's drivers' routes are not static but change daily, breaks mandated under California law cannot simply be "scheduled in," they must be scheduled *around*, and at great expense to consumers, as Ryder is required to reconfigure all of its routes, adding more drivers and commercial vehicles to its fleet, in order complete the same number of deliveries.

California's break laws force Ryder's engineers, who strive to find the optimal route for each transport (i.e., the route that covers the shortest distance, requires the least amount of fuel, and takes the shortest amount of time), to select sub-optimal routes that will allow for vehicles maneuvering off and on the road to comply with state law. In some cases, Ryder's engineers are unable to route drivers through downtown Los Angeles – even when it is the optimal route given operational considerations – because California commands that the driver take a meal break

and traffic conditions prevent the driver from finding a safe parking space. In that case, Ryder's engineers have to route the driver *around* the downtown area, on longer routes, that require more time and expense.

***Services*:** By requiring Ryder to re-schedule its services around each required break, California break laws deny Ryder's drivers the operational and scheduling flexibility that federal law permits. This directly affects the type and manner of services Ryder can provide because it necessarily requires that Ryder either increase its workforce and investment in equipment at great expense to Ryder and Ryder's customers, or reduce the amount and level of timely, coordinated, and efficient transportation and logistics-related service Ryder can offer its customers.

Under operative federal laws and regulations, Ryder can confidently schedule a delivery window knowing drivers have some control over their schedules and can stop for meal and rest breaks when and as needed, within the uniform – but more flexible – parameters established by the U.S. Department of Transportation ("DOT"). If traffic or weather conditions threaten on-time delivery, for example, a driver can make the choice to postpone a break temporarily to ensure that appointments are not missed and customer service requirements are met. Similarly, if dock congestion creates a delay during a delivery, the driver can take advantage of the wait time to take a break or have a meal, so that when the unloading is finished, the driver can go on to the next stop without being required by law to take a break that is not

needed. Under the more onerous requirements of California's break laws, however, those reasonable options are frequently unavailable to Ryder's drivers, who are required to take breaks at mandated times, without regard to whether a break is needed.

***Prices*:** Changing or extending routes, adding drivers, and purchasing more equipment necessarily either increases the prices Ryder will have to charge for its services, or limits the scope of services Ryder can offer its clients. Complying with the laws costs Ryder more in wages, more in vehicle maintenance expenses, more in fuel due to increased mileage associated with drivers traveling to and returning from the California-required breaks, decreased fuel efficiency due to more frequent starting and stopping of vehicles, and more in administrative costs incurred to monitor drivers' compliance with California's break laws. All of these expenses inevitably impact the prices Ryder charges its customers. These are facts.

The value proposition involved with outsourcing transportation and supply chain logistics is to maximize efficiencies in supply chain management, including distribution and routing, bringing value to the customer. Every mandated change to a driver's route will inevitably impact the time frames within which Ryder's drivers can deliver, whether they can provide the same delivery services at all, the wages Ryder pays its drivers, and the prices Ryder charges its customers. California's break laws also impact many of Ryder's contracts that require the performance of specific logistic or transportation tasks and bind

Ryder to terms that are substantially tied to Ryder's ability to schedule its distribution operations unhindered by route restrictions and mandated break schedules. If California can adopt its own particular break laws mandating when and how often Ryder's drivers must pull over to take a break, so too can other states. Such a patchwork of state regulation is precisely what the FAAAA prohibits.

The question presented for this Court's review is thus critically important to Ryder, and indeed, to all motor carriers that operate within California – and within any other state that enacts similar break laws in the future. The issue also has far-reaching implications on interstate commerce.

SUMMARY OF ARGUMENT

The transportation industry plays a critical role in our national economy because virtually every business depends on it substantially. The industry generates more than $600 billion annually in revenues and employs over seven million people, including more than three million drivers.[4] Improvements

[4] *See* American Trucking Association, *Reports, Trends & Statistics*, http://www.trucking.org/News_and_Information_Reports_Industry_Data.aspx (last visited Feb. 5, 2015) (reporting that the trucking industry generated $603.9 billion in gross freight revenues in 2011, "[n]early 70% of all the freight tonnage moved in the U.S. goes on trucks," and that "[t]o move 9.2 billion tons of

(Continued on following page)

or greater efficiency in prices, routes or services in this industry have far-reaching impacts throughout the national economy; conversely, burdens on those prices, routes or services can have exponential adverse impacts that ripple through our economy. Because providers of transportation services often operate in multiple states, they can more efficiently provide lower prices and better routes and services if they can develop uniform systems for delivering the services across the multiple states in which they operate, as Ryder has done.

To minimize regulatory burdens and to allow market forces instead to drive prices, routes and services, Congress enacted the Airline Deregulation Act ("ADA") and the FAAAA, broadly preempting state laws that impact directly or indirectly prices, routes or services in these industries.[5]

Under this Court's recent analysis in *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 371-72 (2008), FAAAA preemption applies when the state law at issue forces carriers to modify the manner in which they perform deliveries and therefore interferes with competitive market forces, which would otherwise dictate. *Id.* (FAAAA preempts Maine

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freight annually requires nearly 3 million heavy-duty Class 8 trucks and over 3 million truck drivers").

[5] The ADA and FAAAA preemption clauses are identical, and courts regularly cite precedents on either act interchangeably. *See, e.g., DiFiore v. Am. Airlines, Inc.*, 646 F.3d 81, 86 n.4 (1st Cir. 2011), *cert. denied*, 132 S. Ct. 761 (2011).

statute regulating tobacco retailers' use of "delivery service" because it interfered with "competitive market forces"). The test laid down in *Rowe* is more than met here, as California's break laws clearly burden motor carriers' routes, services, and prices, in both significant and direct ways, forcing them to modify the manner in which deliveries are performed.

But the Ninth Circuit's novel and narrow reading of *Rowe* and other Supreme Court precedent led it to a different conclusion, *to wit* that the FAAAA does not preempt California's break laws because they do not "interfere[ ] with the competitive market forces within the industry" since they do not "*bind*[ ] the carrier to a particular price, route or service." *Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 646-47 (9th Cir. 2014) (California break laws "plainly are not the sorts of laws 'related to' prices, routes, or services that Congress intended to preempt [since they] do not set prices, mandate or prohibit certain routes, or tell motor carriers what services they may or may not provide, either directly or indirectly."). This conclusion was in error.

The Ninth Circuit's novel "binds to" test is nowhere found in this Court's precedents and is out of step with the majority of other circuits. The "binds to" test also fails utterly to take into account the real-world logistical consequences state laws as sweeping as California's break laws will have – a factor both this Court and Congress have determined must be weighed in any preemption analysis.

Additionally, the Ninth Circuit's conclusion that "[a] state law governing hours is . . . not 'related to' prices, routes or services," is as incorrect as it is confusing. Under the Ninth Circuit's reasoning and logic, a state could pass a law requiring that hourly workers be provided with a 10-minute rest break every 60 minutes, or every 90 minutes, and such a law would still not, in the Ninth Circuit's view, "relate to" prices, routes or services of motor carriers because it is "a state law governing hours." Such a result is not what Congress intended when it enacted the ADA and the FAAAA.

The Court should grant Penske's petition for review and evaluate the critically important, broadly impactful, and unsettled question of law raised therein. The Ninth Circuit's decision is flawed and out of step with the Supreme Court and the majority of other circuits. If the Ninth Circuit's ruling is not reversed by this Court, it will have sweeping unintended regulatory effects on the provision of services in *both* the trucking *and* the airline industries.

ARGUMENT

THE FAAAA PREEMPTS CALIFORNIA'S BREAK LAWS BECAUSE THEY FRUSTRATE MOTOR CARRIERS' ABILITY TO PROVIDE UNIFORM NATIONAL SERVICES BY DIRECTLY AND SIGNIFICANTLY IMPACTING THEIR ROUTES, SERVICES, AND PRICES

In 1994, Congress adopted the FAAAA "to preempt state trucking regulation." *Rowe,* 552 U.S. at 367 (citing 108 Stat. 1605-1606; ICC Termination Act of 1995, 109 Stat. 899). Congress's "overarching goal [was to] help[ ] ensure transportation rates, routes, and services that reflect 'maximum reliance on competitive market forces,' thereby stimulating 'efficiency, innovation, and low prices,' as well as 'variety' and 'quality.'" *Id.* at 371 (quoting *Morales v. Trans World Airlines, Inc.,* 504 U.S. 374, 378 (1992)). As this Court explained in *Rowe*, the FAAAA borrowed language from the Airline Deregulation Act of 1978 so that "motor carriers will enjoy 'the identical intrastate preemption of prices, routes and services as that originally contained in' the Airline Deregulation Act." *Id.* at 370, 372 (holding that "Maine's efforts to regulate carrier delivery services themselves" are preempted and noting that in preempting state trucking regulation in the FAAAA, Congress borrowed language from the ADA) (quoting H.R. Conf. Rep. No. 103-677, at 83 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1676, 1755 (hereinafter H.R. Conf. Rep.)).

Congress recognized that widespread disparate regulation of the motor carrier industry was inefficient, increased costs, and reduced competition and innovation. H.R. Conf. Rep. 103-677, at 87-88 (1994) ("The sheer diversity of these regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business. . . . Service options will be dictated by the marketplace; and not by an artificial regulatory structure."). Thus, the Federal Motor Carrier Safety Administration ("FMCSA") of the DOT promulgated uniform regulations governing hours of service ("HOS") for commercial motor vehicle operators, which it began doing in the late 1930s under the Motor Carrier Act of 1935. *Owner-Operator Indep. Drivers Ass'n, Inc. v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 193 (D.C. Cir. 2007). Interstate drivers' hours of service are now regulated comprehensively by the FMCSA pursuant to Congress's continuing mandate. *See* 49 U.S.C. §§ 31136(a), 31502(b).

Within the purview of the HOS regulations promulgated by FMCSA are highway safety, driver health, operational and scheduling flexibility, and nationwide uniformity of regulations. The parameters of the uniformly applicable HOS afford commercial drivers discretion as to when to drive and when to take breaks as business and other circumstances require. Under the HOS regulations,

> [t]he . . . rule requires that if more than 8 consecutive hours on duty . . . have passed

> since the last off-duty (or sleeper-berth) period of at least half an hour, a driver must take a break of at least 30 minutes before driving. For example, if the driver started driving immediately after coming on duty, he or she could drive for 8 consecutive hours, take a half-hour break, and then drive another 3 hours, for a total of 11 hours. Alternatively, this driver could drive for 3 hours, take a half-hour break, and then drive another 8 hours, for a total of 11 hours. In other words, this driver could take the required break anywhere between the 3rd and 8th hour after coming on duty.

Hours of Service of Drivers; Final Rule, 75 Fed. Reg. 81134, 81136 & 81145 (Dec. 27, 2011) (codified at 49 C.F.R. pts. 385, 386, 390, et al.), available at: http://www.gpo.gov/fdsys/pkg/FR-2011-12-27/pdf/2011-32696.pdf. Thus, the HOS regulations permit drivers to take multiple breaks during their workday but only mandate that a driver take one off-duty, 30-minute break, during an 8-hour period, which the driver is permitted to schedule when and as needed. *Id.*

By contrast, California's break laws require employers to provide a 30-minute meal period for every work period of more than five hours and a second 30-minute meal period for every work period of more than ten hours and further regulate the timing of the breaks requiring drivers to be permitted to take their meal periods no later than the end of fifth and tenth hour of work, respectively. Cal. Lab. Code § 512(a). California also requires every employer to permit all

employees to take rest periods at the rate of ten minutes per four hours worked, in the middle of the work period if possible, and prohibits employers from requiring employee to do any work during meal or rest periods mandated by the applicable order of the state Industrial Welfare Commission. Cal. Lab. Code § 226.7; California Industrial Welfare Commission ("IWC") Order 9-2001(12).

California's break laws also mandate that employees must be "relieved of *all* duty" during the required 30-minute meal periods unless agreed to in writing and the nature of the work prevents the employee from being relieved of all duty – a requirement that is generally very difficult to satisfy. IWC Order 9-2001(11-12).

California's break laws thus create numerous obstacles impeding the ability of national transportation and logistics providers, like Ryder, to provide its services with the nationwide uniformity Congress mandated when it enacted the FAAAA.

A. A Majority Of Circuits Have Rejected The Ninth Circuit's Restrictive Reading Of The FAAAA's Preemption Clause, As Have Recent Supreme Court Cases

The Ninth Circuit's decision rests largely on its novel "binds to" test, uniquely a creation of that court, and its unreasonably narrow reading of the "related to" test in the FAAAA's preemption clause, as set forth in *Charas v. Trans World Airlines, Inc.*, 160 F.3d

1259 (9th Cir. 1998) (*en banc*). *Dilts,* 769 F.3d at 646-48. Both are out of step with this Court's precedents and a majority of other circuits.

In *Charas*, the Ninth Circuit interpreted the term "service" narrowly under the ADA as including *only* "prices, schedules, origins and destinations of the point-to-point transportation passengers, cargo, or mail," and not "provision of in-flight beverages, personal assistance to passengers, the handling of luggage, and similar amenities." *Charas*, 160 F.3d at 1261. A majority of other circuits, however, have rejected that restrictive reading, and more than one circuit has concluded that the Ninth Circuit's approach is *foreclosed* by the Supreme Court's ruling in *Rowe*. *See Bower v. Egyptair Airlines Co.,* 731 F.3d 85, 94 (1st Cir. 2013) (rejecting the Ninth Circuit's narrow reading of "service" in *Charas* because "the Supreme Court's opinion in *Rowe* . . . treat[s] service more expansively" and "[b]y narrowly interpreting 'service' to relate to scheduling and 'service to' certain destinations, the [Ninth Circuit] does little to distinguish 'service' from 'route' "); *Air Transp. Ass'n of Am., Inc. v. Cuomo*, 520 F.3d 218, 223 (2d Cir. 2008) (a narrow reading of the "related to" provision of the preemption clause is inconsistent with *Rowe*, which abrogated the minority reading adopted in the Ninth and Third Circuits); *see also DiFiore*, 646 F.3d at 88 & n.9 (declining to follow the Ninth Circuit's narrow interpretation of "service"); *Smith v. Comair, Inc.*, 134 F.3d 254, 259 (4th Cir. 1998) (same); *Hodges v. Delta Airlines, Inc.*, 44 F.3d 334, 336 (5th Cir. 1995) (*en banc*)

(interpreting air carrier "services" broadly for preemption purposes as including items such as boarding and baggage handling services because those are features "Congress intended to de-regulate as 'services' and broadly to protect from state regulation"); *Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1433 (7th Cir. 1996) (adopting the definition of "services" set forth in *Hodges*); *Branche v. Airtran Airways, Inc.*, 342 F.3d 1248, 1256-57 (11th Cir. 2003) (same); *see also Nw. Airlines, Inc. v. Duncan*, 531 U.S. 1058 (2000) (O'Connor, J., dissenting from denial of petition for *certiorari* in a case regarding interpretation of the ADA) (identifying circuit split and noting the Ninth and Third Circuits are in the minority). [6]

Swimming against this tide of opinions issued by her sister circuits, the Ninth Circuit here held that California's break laws are not preempted by federal law because they do not *significantly* or *directly* effect a motor carrier by expressly regulating it, and thus the laws are too "tenuous, remote, or peripheral" to be preempted. *Dilts*, 769 F.3d at 646-47. But as this Court recently *again* clarified, when it confirmed in *Rowe* what it earlier held in *Morales*: "preemption

[6] Only the Third Circuit has expressly agreed with the Ninth Circuit's narrow interpretation. *See Taj Mahal Travel, Inc. v. Delta Airlines, Inc.*, 164 F.3d 186, 193 (3d Cir. 1998) (reading "service" narrowly as referring only to "'prices, schedules, origins and destinations of the point-to-point transportation'" and not to boarding or baggage handling services).

may occur even if a state law's effect on rates, routes, or services 'is only indirect. . . .'" *Rowe,* 552 U.S. at 370 (quoting *Morales*, 504 U.S. at 386).

The Ninth Circuit's "binds to" test essentially holds that state laws which do not "bind" carriers to a particular price, route, or service do not "interfere[ ] with competitive market forces within the industry" and are thus "too tenuous, remote, or peripheral" to be preempted by federal law. *Dilts*, 769 F.3d at 645-47. That test, however, simply cannot be reconciled with *Rowe, Morales*, and the cases coming out of the majority of other circuits, which make clear that to be preempted, a state law need not "bind" a carrier to any particular price, route or service; and that such laws may be preempted even where effects are *indirect*. *Rowe,* 552 U.S. at 370 (quoting *Morales*, 504 U.S. at 386).

In any event, California's break laws significantly affect – *both* directly and indirectly – Ryder's routes by limiting the number of available routes Ryder can now choose from in scheduling deliveries and other services performed by its drivers. As the district court correctly concluded, the connection between California's break laws and motor carriers like Ryder's routes, services and prices is "far from tenuous." *Dilts v. Penske Logistics, LLC*, 819 F. Supp. 2d 1109, 1119 (S.D. Cal. 2011).

Moreover, as the First Circuit aptly noted in *DiFiore*, "[w]hen the Supreme Court invoked the rubric ('tenuous, remote, or peripheral'), it used as

examples limitations on ***gambling***, ***prostitution***, or ***smoking in public places*** – state regulation comparatively remote to the transportation function." *DiFiore*, 646 F.3d at 89 (citing *Morales*, 504 U.S. at 390; *Rowe*, 552 U.S. at 371, 375) (emphasis added). California's break laws are in no way "remote to the transportation function"; they impact it significantly and contravene Congress's deregulatory mandate by forcing Ryder "to offer different services than what the market would otherwise dictate." *Dilts*, 819 F. Supp. 2d at 1118 (citing *Rowe,* 552 U.S. at 371-72).

B. As The District Court Below And A Majority Of District Courts Have Found, California's Break Laws Have Significant Practical Effects On The Frequency And Scheduling Of Transportation

District Judge Sammartino considered the practical effects and real-world consequences of California's break laws and determined that the FAAAA preempts Plaintiffs' claims because they "relate to" a motor carrier's "rates, routes, or services." *Id.* at 1122. She noted that it is undisputed that California's break laws limit the number of routes available to drivers in California. *Id.* at 1118-19. She also noted that it is undisputed that the break laws, in turn, impact the amount of time it takes for drivers to reach their destinations. *Id.* at 1119. She therefore concluded that the connection to the scheduling and availability of routes is "far from tenuous," *id.*, it is

direct and significant. That conclusion hardly seems questionable, or even controversial, given that California's break laws undisputedly burden the manner in which national transportation and logistics providers, like Ryder, are permitted to perform deliveries. *Rowe*, 552 U.S. at 371-72.

But the Ninth Circuit reversed Judge Sammartino's ruling, without giving any serious consideration to the practical effects California's break laws will have on the transportation industry, just as it had done in the context of the airline industry in *Nw., Inc. v. Ginsberg*, ___ U.S. ___, 134 S.Ct. 1422, 1431 (2014). In *Ginsberg*, Judge Sammartino dismissed, as preempted, claims against an airline for breach of the covenant of good faith and fair dealing, negligent misrepresentation, and intentional misrepresentation, because the claims were "relate[d] to" Northwest's rates and services. There, as here, the Ninth Circuit reversed. *Ginsberg v. Nw., Inc.*, 695 F.3d 873 (9th Cir. 2012). It held in *Ginsberg* that the claims were not preempted because they: were "too tenuously connected to airline regulation to trigger preemption under the ADA"; did not have a "direct effect" on either routes, services, or prices; did not "force the Airlines to adopt or change their prices, routes or services"; and, therefore did not trigger the ADA's deregulatory mandate. 695 F.3d at 877-81 (internal quotation marks omitted).

This Court granted *certiorari* and rejected the Ninth Circuit's narrow reading of the preemption clause's "related to" test. *Ginsberg,* 134 S.Ct. at 1430.

This Court explained that "'[i]t defies logic to think that Congress would disregard real-world consequences and give dispositive effect to the form of a clear intrusion into a federally regulated industry.'" *Id.* at 1430 (citing with approval *Brown v. United Airlines, Inc.*, 720 F.3d 60, 66-67 (1st Cir. 2013)).

Undaunted by this Court's admonition in *Ginsberg,* the Ninth Circuit again defied logic in this case and "disregard[ed] real-world consequences and [failed to] give dispositive effect to the form of a clear intrusion into a federally regulated industry," *id.*, and again reversed Judge Sammartino based on the same overly narrow interpretation of Congress's deregulatory mandate that this Court has rejected in two recent cases. *See, e.g., Ginsberg*, 134 S.Ct. 1422 (reversing the Ninth Circuit's narrow reading of "relates to" and "services" and holding that a state law claim over an airline's frequent flyer program *was* preempted); and, *American Trucking Associations, Inc. v. City of Los Angeles*, ___ U.S. ___, 133 S.Ct. 2096 (2013) (reversing Ninth Circuit's holding that a concession agreement's provision regarding parking and placards at the Port of Los Angeles was *not* preempted by the FAAAA).

The Ninth Circuit's ruling here also disregards, without any meaningful analysis, decisions issued by the numerous California district courts, which have carefully considered the real-world implications of California's break laws using a common sense approach, and concluded that they are preempted by federal law.

In *Esquivel v. Vistar Corp.*, No. 2:11-cv-07284-JHN-PJWx, 2012 WL 516094 (C.D. Cal. Feb. 8, 2012), for example, the court held that the FAAAA preempts California's meal and rest break laws because "'the length and timing of meal and rest breaks [is] directly and significantly related to such things as the frequency and scheduling of transportation,' such that requiring off-duty breaks 'at specific times throughout the workday . . . would interfere with competitive market forces within the . . . industry.'" *Id.* at *5. The court determined that prevailing wage cases, such as *Californians for Safe & Competitive Dump Truck Transportation v. Mendonca,* 152 F.3d 1184, 1187 (9th Cir. 1998), a case the Ninth Circuit here relied on almost exclusively, "are *fundamentally distinguishable* from those involving meal and rest break laws for purposes of FAAAA preemption." *Esquivel*, 2012 WL 516094, at *5 (emphasis added); *see also Rodriguez v. Old Dominion Freight Line, Inc.,* No. CV 13-891 DSF (RZx), 2013 WL 6184432, at *4 & n.3 (C.D. Cal. Nov. 27, 2013) (California's break laws are preempted because they indirectly affect rates, routes or service, citing *Rowe*, 552 U.S. at 370-71, and noting that "it is important to distinguish meal and rest break laws from other wage laws").

Ignoring the analysis in *Esquivel,* the Ninth Circuit erroneously equated – without explanation – California's meal and rest break laws with state "wage law[s]." *Dilts*, 769 F.3d at 647-48 (citing *Mendonca*, 152 F.3d at 1189 (holding that the FAAAA does not preempt a state's prevailing wage law)). In so doing, it

also ignored recent California Supreme Court case law holding that meal and rest break laws are *not* the same as labor wage and hour laws because "[n]onpayment of wages is not the gravamen of a [meal and rest break claim under] section 226.7." *Kirby v. Immoos Fire Prot., Inc.*, 53 Cal.4th 1244, 1256 (2012) (holding that a party who prevails on a claim under Labor Code section 226.7 (meal and rest breaks) is not entitled to attorney's fees under California's fee-shifting statute for wage and hour claims because meal and rest break claims are not wage claims).

Moreover, carrying the Ninth Circuit's reasoning to its logical conclusion reveals the flaws therein. If preemption does not apply to California's break laws because they are akin to state wage laws, *Dilts*, 769 F.3d at 647-48, then states would be permitted to pass any break laws they want, including laws requiring that hourly workers be provided with frequent rest breaks – for example, a 10-minute rest break every 60 or 90 minutes – which would not only undeniably "relate to" prices, routes or services of motor carriers, it would bring the trucking industry to a standstill.

That the Ninth Circuit's reasoning is flawed in this regard is also evidenced by the fact that its ruling is internally inconsistent. It simultaneously holds that California's break laws are *not* service-determining laws, because state wage laws governing "hours" are not "related to price, routes or service," while at the same time acknowledging that complying with the laws may well *require* "*adjustments* to

drivers' routes." *Id.* at 647, 649. Requiring Ryder to change its routes to comply with state laws – of any stripe – will unquestionably relate to, indeed it will *determine* which routes and *services* Ryder can provide, and at what cost.

Declining to follow the "common sense" approach used by the court in *Esquivel*, and the other California district courts, the Ninth Circuit ignored, or gave short shrift to, the salient points raised in those cases where this issue has been percolating over the last few years. *See, e.g., Parker v. Dean Transp. Inc.* ("*DTI*"), No. CV 13-02621 BRO (VBKx), 2013 WL 7083269, at *6 & n.11, *8 (C.D. Cal. Oct. 15, 2013) ("when applied to motor carriers," California's break laws "fall within the preemption language of [the FAAAA]" because "complying with California's meal and rest breaks would [significantly] impact DTI's prices, routes, or services. . . ." (internal citations omitted). As the district court explained in *DTI*, under California law,

> **[*f*]*ive separate times*** . . . drivers must pull their trucks off the road, find a place to park, and then rest or eat without any job-related duties. Not only must the drivers stop hauling cargo for a total of ninety minutes throughout the day, they also are forced to travel only on routes that have access to five different locations where they can find a place to park their truck throughout the workday. **Common sense dictates that an eighteen-wheeled vehicle cannot simply park on the side of any given road.**

> *Consequently, these required meal and rest breaks certainly add a layer of complexity to a motor carrier's schedule planning, undoubtedly limit the number of routes available, and absolutely reduce the total time a driver can possibly be on the road actually hauling cargo.* **This impact strikes the Court as significant.**

DTI, 2013 WL 7083269, at *9 (emphasis added).[7]

As Judge Sammartino correctly observed below, it is undisputed that California's break laws "significant[ly] impact" services because they "require one or two less deliveries per day per driver" and "reduce driver flexibility, interfere with customer service, and, by virtue of simple mathematics, reduce the amount

[7] *See also Ortega v. J.B. Hunt Transp., Inc.*, No. CV 07-08336 (BRO) (FMOx), 2013 WL 5933889, at *6 (C.D. Cal. Oct. 2, 2013) (California break laws "are substantive schedule requirements" that impact routes and prices); *Cole v. CRST, Inc.*, No. EDCV 08-1570-VAP (OPx), 2012 WL 4479237, at *4-6 (C.D. Cal. Sept. 27, 2012) (California's laws limit a carrier's routes to those that logistically allow for stopping and breaking, affect services by dictating when services may not be performed, increasing the time it takes to complete deliveries, and regulating the scheduling of transportation, and affect price by virtue of the laws' effect on routes and services); *Aguiar v. Cal. Sierra Express, Inc.*, No. 2:11-cv-02827-JAM-GGH, 2012 WL 1593202, at *1 (E.D. Cal. May 4, 2012) (preempted because the laws bind carriers to schedules and frequencies of routes that allow for off-duty breaks at specific times and interfere with competitive market forces within the industry); *Miller v. Sw. Airlines Co*., 923 F. Supp. 2d 1206, 1212-13 (N.D. Cal. 2013) (California's break laws are preempted under the ADA).

of on-duty work time allowable to drivers." *Dilts*, 819 F. Supp. 2d at 1119. Yet these uncontested facts did not enter into the Ninth Circuit's analysis.

Other real-world considerations the Ninth Circuit failed to consider include the fact that drivers must comply with numerous other state and local laws and ordinances, in determining when and where to stop for their breaks. *See, e.g.,* 49 C.F.R. § 392.14 (Dec. 25, 1968; amended July 28, 1995) (commercial motor vehicle operators must use "extreme caution" when hazardous weather conditions exist); 49 C.F.R. §§ 397.7 (Dec. 12, 1994), 397.69 (Oct. 12, 1994) (parking and routing restrictions for vehicles carrying hazardous materials); Cal. Veh. Code § 21718(a) (prohibiting stopping on the freeway except under limited circumstances); Cal. Veh. Code §§ 22500, 22502 (parking restrictions); Cal. Veh. Code §§ 22505, 22507.5 (stopping or parking restrictions for vehicles over six feet in height); Cal. Veh. Code § 35701 (weight restrictions on parking or using commercial vehicles on designated roadways).

CONCLUSION

The Ninth Circuit here erroneously concluded, as it did in *Ginsberg*, that federal law does not preempt state laws like California's meal and rest break laws, which directly and indirectly affect the rates, routes, and services of motor carriers (or airlines). This Court should grant Penske's petition for

certiorari and review this important question, which has profound implications for the transportation industry and for the millions of consumers and businesses who rely on that industry daily to keep our robust economy moving.

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Respectfully submitted,

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