No. 11-798

In the Supreme Court of the United States

AMERICAN TRUCKING ASSOCIATIONS, INC., PETITIONER

v.

CITY OF LOS ANGELES, CALIFORNIA, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING REVERSAL

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QUESTIONS PRESENTED

Section 14501(c) of Title 49 preempts a state or local "law, regulation, or other provision having the force and effect of 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). Section 14506(a) similarly preempts a state or local "law, rule, regulation[,] standard, or other provision having the force and effect of law that requires a motor carrier * * * to display any form of identification on or in a commercial motor vehicle * * * other than forms of identification required by the Secretary of Transportation." 49 U.S.C. 14506(a). Through a standard-form concession agreement, the Port of Los Angeles, a municipal entity, requires motor carriers providing drayage services at the Port to comply with a number of requirements, including, as relevant here, (i) submitting an off-street parking plan; and (ii) displaying on vehicles placards that provide a phone number for members of the public to report environmental or safety concerns.

The questions presented are as follows:

1. Whether the off-street parking and placard requirements are not preempted by Sections 14501(c) and 14506(a) because they lack "the force and effect of law."

2. Whether *Castle* v. *Hayes Freight Lines, Inc.*, 348 U.S. 61 (1954), prohibits the Port from barring access by an interstate motor carrier as punishment for violating requirements of the concession agreement that are not preempted.

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INTEREST OF THE UNITED STATES

The questions presented in this case concern whether federal law preempts certain provisions of a concession agreement that the Port of Los Angeles requires motor carriers to sign in order to provide drayage services at the Port. The United States has an interest in achieving the deregulatory objectives of the pertinent federal statutes by eliminating unwarranted burdens on motor carriers imposed by state or local laws. At the Court's invitation, the United States filed a brief at the petition stage of this case.

STATEMENT

1. a. Federal regulation of trucking began in 1935 when Congress enacted the Motor Carrier Act, ch. 498, 49 Stat. 543. That statute prohibited, *inter alia*, common carriers of persons or property by motor ve-

hicle from engaging in interstate or foreign transportation unless they first obtained a "certificate of public convenience and necessity" from the Interstate Commerce Commission (ICC). ch. 498, §§ 203(14), 206(a), 49 Stat. 544, 551; see *McDonald* v. *Thompson*, 305 U.S. 263, 265 (1938). The ICC was authorized to issue a certificate only if it found that "the proposed service * * * is or will be required by the present or future public convenience and necessity." ch. 498, § 207(a), 49 Stat. 551-552. Once issued, however, a certificate could be suspended or revoked by the ICC only if the carrier willfully violated the terms of the certificate or federal law and only after notice and a hearing. § 212(a), 49 Stat. 555. The Motor Carrier Act also gave the ICC broad authority to regulate interstate motor carriers' rates, routes, and services. See §§ 204, 216-218, 49 Stat. 546, 558-563.

The Motor Carrier Act contained no provision expressly preempting state laws. In a number of cases, this Court applied conflict-preemption principles to assess the compatibility of state laws with the federal act and its implementing regulations, upholding a variety of state and local laws against preemption challenges. See *H.P. Welch Co.* v. *New Hampshire*, 306 U.S. 79, 83-85 (1939) (law limiting drivers' hours); *Ziffrin, Inc.* v. *Reeves*, 308 U.S. 132, 140 (1939) (law barring federally licensed motor carriers from transporting alcoholic beverages), abrogated on other grounds by *Granholm* v. *Heald*, 544 U.S. 460 (2005); *Maurer* v. *Hamilton*, 309 U.S. 598, 599, 604-610 (1940) (law prohibiting operation of certain vehicles carrying other vehicles); *California* v. *Zook*, 336 U.S. 725, 726-727, 735-738 (1949) (law prohibiting transportation by carrier without ICC permit); *Buck* v. *California*, 343

U.S. 99, 101-103 (1952) (permit requirement for taxicab drivers in excess of ICC regulations); *Lloyd A. Fry Roofing Co.* v. *Wood*, 344 U.S. 157, 158, 161-163 (1952) (permit requirement for contract carriers not registered with ICC).

In *Castle* v. *Hayes Freight Lines, Inc.*, 348 U.S. 61 (1954), this Court considered an Illinois statute limiting the weight of freight that could be carried in ICC-registered commercial trucks and punishing repeated violations through a "total suspension of the carrier's right to use Illinois state highways for periods of ninety days and one year." *Id.* at 62. The Court held, consistent with its prior holding in *Maurer*, *supra*, that the Motor Carrier Act left to the States the regulation of sizes and weights of trucks. See 348 U.S. at 64. But it concluded that forbidding the carrier from using the State's highways was "equivalent to a partial suspension of [the carrier's] federally granted certificate" and was therefore preempted. *Ibid.* Given that "Congress had placed within very narrow limits the [ICC's] power to suspend or revoke an outstanding certificate," the Court explained, "it would be odd if a state could take action amounting to a suspension or revocation of an interstate carrier's commission-granted right to operate." *Id.* at 63-64. The Court made clear, however, that States were free "to enforce their laws against recalcitrant motor carriers" through "conventional forms of punishment" and could petition the ICC to revoke the carriers' federal certificates. *Id.* at 64.

b. Congress partially deregulated the trucking industry in 1980 after finding that "the existing regulatory structure ha[d] tended in certain circumstances to inhibit market entry, carrier growth, maximum uti-

lization of equipment and energy resources, and opportunities for minorities and others to enter the trucking industry." Motor Carrier Act of 1980, Pub. L. No. 96-296, § 3, 94 Stat. 793. The 1980 act addressed those problems in part by making it easier to obtain a certificate from the ICC and by giving motor carriers "greater freedom to establish rates free of regulatory interference." H.R. Rep. No. 1069, 96th Cong., 2d Sess. 14, 24 (1980). Congress also found that "individual State regulations and requirements * * * [we]re in many instances confusing, lacking in uniformity, unnecessarily duplicative, and burdensome," and it directed relevant federal agencies to study the problem. § 19, 94 Stat. 811.

c. Fourteen years later, Congress enacted the Federal Aviation Administration Authorization Act of 1994 (FAAAA), Pub. L. No. 103-305, 108 Stat. 1569. Although that legislation principally addressed aviation issues, it included a provision preempting state and local regulation of trucking. See § 601(c), Tit. VI, 108 Stat. 1606. That provision, now codified at 49 U.S.C. 14501(c), generally bars state and local governments from "enact[ing] or enforc[ing] a law, regulation, or other provision having the force and effect of 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). A "motor carrier" is defined as "a person providing motor vehicle transportation for compensation." 49 U.S.C. 13102(14) (Supp. V 2011). Section 14501(c) expressly exempts from preemption, *inter alia*, "the safety regulatory authority of a State with respect to motor vehicles" and "the authority of a State to regulate motor carriers with regard to minimum amounts of

financial responsibility relating to insurance requirements and self-insurance authorization." 49 U.S.C. 14501(c)(2)(A).

In enacting Section 14501(c), Congress found that "the regulation of intrastate transportation of property by the States ha[d] * * * imposed an unreasonable burden on interstate commerce"; "impeded the free flow of trade, traffic, and transportation of interstate commerce"; and "placed an unreasonable cost on the American consumers." § 601(a)(1), Tit. VI, 108 Stat. 1605. The immediate impetus behind the provision was the Ninth Circuit's decision in *Federal Express Corp.* v. *California Public Utilities Commission*, 936 F.2d 1075 (1991), cert. denied, 504 U.S. 979 (1992). That case had held that the preemption provision of the Airline Deregulation Act of 1978 (ADA), 49 U.S.C. 41713(b), prohibited California from regulating Federal Express's motor-carrier operations because Federal Express was organized as an air carrier, but the decision's reasoning had left California free to regulate Federal Express's competitors not organized as air carriers, "putting [them] at a competitive disadvantage." H.R. Conf. Rep. No. 677, 103d Cong., 2d Sess. 87 (1994) (1994 Conference Report). Section 14501(c) was designed to ensure that both air carriers and motor carriers of property had the benefit of "the identical intrastate preemption of prices, routes, and services as that originally contained" in the ADA. 1994 Conference Report 83. Accordingly, the language of Section 14501(c) is nearly "identical to the preemption provision" in the ADA and was "intended to function in the exact same manner with respect to its preemptive effects." *Id.* at 85; see *Rowe* v. *New*

Hampshire Motor Transp. Ass'n, 552 U.S. 364, 368 (2008).

d. Three days after enacting Section 14501(c), Congress enacted the Trucking Industry Regulatory Reform Act of 1994, which further reduced the showing needed to obtain a certificate from the ICC. See Pub. L. No. 103-311, Tit. II, § 207, 108 Stat. 1687 (1994). The following year, Congress abolished the ICC and transferred many of its functions to the newly established Surface Transportation Board. See ICC Termination Act of 1995, Pub. L. No. 104-88, Tit. I, Subtit. IV, §§ 101, 201, 109 Stat. 804, 932-934. The Board and the Secretary of Transportation now have jurisdiction over interstate motor carriers, 49 U.S.C. 13501, which are required to register with the Secretary, 49 U.S.C. 13901. The Secretary must grant registration to any applicant "willing and able to comply" with relevant federal statutes and regulations, 49 U.S.C. 13902(a)(1) (Supp. V 2011); see *Department of Transp.* v. *Public Citizen*, 541 U.S. 752, 758-759, 766 (2004), and must follow statutorily prescribed procedures to suspend or revoke a license on specified grounds, 49 U.S.C. 13905(d) (Supp. V 2011), (e)-(f).

e. In a 2005 transportation statute, Congress added Section 14506(a) to Title 49, which, in language similar to Section 14501(c), generally preempts "any law, rule, regulation[,] standard, or other provision having the force and effect of law that requires a motor carrier * * * to display any form of identification on or in a commercial motor vehicle" other than those required by federal law. Unified Carrier Registration Act of 2005, Pub. L. No. 109-59, Tit. IV, Subtit. C, § 4306(a), 119 Stat. 1773. Unlike Section 14501(c),

however, that provision contains no safety exception. 49 U.S.C. 14506(b) (Supp. V 2011).

2. a. The Port of Los Angeles is an independent division of the City of Los Angeles. Pet. App. 5a. It owns terminal facilities and leases those facilities to "terminal operators," such as shipping lines and stevedoring companies, which load and unload cargo from docking ships. *Id.* at 5a-6a, 70a. The cargo is placed onto drayage trucks for transport to customers or long-distance shippers. *Id.* at 6a. Motor carriers, each of which may operate numerous trucks, provide drayage services through arrangements with ocean carriers, cargo owners, and others, but do not enter into drayage contracts with the Port itself. *Id.* at 71a.

The Port is self-sustaining through the revenues it receives from leases and dockage fees. Pet. App. 70a. Operations at the Port are governed by a tariff promulgated by the Board of Harbor Commissioners, a body whose members are appointed by the mayor of Los Angeles and confirmed by the city council. See *id.* at 83a & n.5. The tariff recites that a violation of its provisions constitutes a misdemeanor subjecting the violator to a fine of $500 and imprisonment of up to six months, and that "[e]ach person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Tariff is committed." J.A. 86; see L.A., Cal., Ordinance 180340 (adopting provision); see also Cal. Gov't Code § 36900(a) (West 2008).

b. In 2008, as part of a "Clean Air Action Plan" to address community opposition to expansion of the Port's facilities and to reduce the Port's contribution to air-quality problems in the region, the Board amended the tariff to require any drayage-service

provider seeking access to the Port's premises to enter into a standard-form "concession agreement" with the Port. Pet. App. 79a-90a; see J.A. 107-126. That agreement grants the concessionaire "a non-exclusive license to access [the] Port property for the purpose of transporting containers and/or other cargo to and from marine terminals." J.A. 42. In exchange, the concessionaire must agree to comply with a number of requirements. As particularly relevant here, it must (i) submit an off-street parking plan for all of its permitted trucks; (ii) display on its trucks placards that provide a phone number for reporting environmental or safety concerns; (iii) demonstrate that it has sufficient financial resources to perform its obligations under the agreement; and (iv) ensure that vehicle maintenance is conducted in accordance with the manufacturer's instructions. J.A. 49-52. The agreement also sets forth fees and insurance requirements. J.A. 59-69.

The concession agreement enumerates several "Events of Default," including "[a]ny failure to comply with the terms and conditions" of the agreement. J.A. 73-74. A concessionaire must cure a default within the time specified in the Port's notice of default or, if "the nature of the Default is such that it cannot be cured within" that time, "take substantial steps toward corrections within the cure period, and diligently continue efforts to complete the cure of the Default as soon as is reasonably practicable." J.A. 73. The Port may also impose penalties for cured defaults, subject to a hearing if the concessionaire chooses to contest the citation. For a "Minor Default" (a term that is not defined in the agreement), the penalties are limited to a warning letter, an order for corrective action or

course of education, or an order of restitution for the cost of the investigation. J.A. 81-82. For a "Major Default" (also generally undefined), the penalties also include suspension or revocation of the concession agreement and the right of the concessionaire to use the Port's facilities. J.A. 82. The Port may deem the failure to comply with an ordered remedy, including an order to cure, a Major Default. J.A. 83.

3. Petitioner, a trucking-industry trade group, filed this suit against the City of Los Angeles and the Port in July 2008 and ultimately sought to enjoin specified requirements of the concession agreement under, *inter alia*, Section 14501(c) and (with respect to the placard provision) Section 14506(a). Pet. App. 61a. After holding a bench trial, the district court found none of the provisions preempted. *Id.* at 137a.

4. A divided panel of the court of appeals largely affirmed the district court, Pet. App. 1a-58a, reversing only as to a requirement of the concession agreement not relevant here, *id.* at 41a-44a.

a. The court of appeals first held that the financial-capability requirement is not "related to a price, route, or service of any motor carrier." See Pet. App. 33a-34a. It rested that conclusion on the district court's finding that the Port was unlikely to invoke that requirement to deny any drayage-service provider access to the Port. *Id.* at 34a.

The court of appeals then held that the off-street parking requirement does not have "the force and effect of law" because, rather than regulating the drayage market, it advances the Port's own interest as a participant "in the market as a manager of Port facilities." Pet. App. 25a; see also *id.* at 16a, 38a-41a. The court viewed the concession agreement as a "con-

tract[] under which the Port exchanges access to its property for a drayage carrier's compliance with certain conditions," rather than as an exercise of the Port's regulatory power. *Id.* at 25a. The off-street parking requirement, it concluded, was "designed to address specific proprietary problems"—in particular, the need to "increase the community good-will necessary to facilitate Port expansion." *Id.* at 40a.

The court reached the same conclusion with respect to the placard requirement. See Pet. App. 44a-46a. The court also found that the placard requirement falls within Section 14501(c)'s safety exception, but held that if it had "the force and effect of law," it would be separately preempted by Section 14506(a), which contains no safety exception. *Id.* at 46a.

Finally, the court of appeals held that the maintenance requirement falls within the safety exception of Section 14501(c). Pet. App. 34a-38a.

b. The court of appeals rejected petitioner's argument that this Court's holding in *Castle* "preclude[s] the Port from permitting access only to motor carriers that comply with its safety restrictions." Pet. App. 30a-32a. "Even if the [FAAAA] incorporated (rather than modified) *Castle*'s limitations on the State's authority," it held, "a denial of access to the Port * * * does not rise to the level of the comprehensive ban at issue in *Castle*." *Id.* at 32a.

c. Judge N. Randy Smith dissented in part. Pet. App. 47a. He concluded that "the market participant exception to preemption does not apply" here because "[t]he Port acts as a regulator (rather than a market proprietor) of drayage services." *Id.* at 47a-48a. He also believed that "although the Port can avail itself of the traditional remedies discussed in *Castle*" to en-

force non-preempted safety regulations, "it cannot step into the shoes of the federal government and partially revoke drayage carriers' access to the channels of interstate commerce." *Id.* at 56a.

SUMMARY OF ARGUMENT

A. The court of appeals erred in concluding that the off-street parking and placard requirements of the concession agreement are not preempted.

1. Section 14501(c) preempts only "a law, regulation, or other provision having the force and effect of law." As this Court held in *American Airlines, Inc.* v. *Wolens*, 513 U.S. 219 (1995), with respect to the ADA's preemption provision, on which Section 14501(c) was modeled, that language is not naturally read to preempt contractual obligations that motor carriers voluntarily assume. See *id.* at 228-233 & n.5. Rather, the statute's concern is the "the *regulation* of intrastate transportation of property by the States." FAAAA § 601(a), Tit. VI, 108 Stat. 1605 (emphasis added). Ordinary, arms-length commercial agreements between government entities and motor carriers of property thus are not preempted under Section 14501(c).

As explained in this Court's dormant Commerce Clause and implied statutory-preemption cases, however, when a government entity is a counterparty to a commercial agreement, a risk exists that it will exercise essentially regulatory power through the guise of market activity. For that reason, the Court has identified certain principles for determining whether a government entity purporting to act as a market participant is instead acting as a market regulator. The chief inquiry is whether a government entity's actions have the purpose and effect of advancing general reg-

ulatory policies rather than focused proprietary interests, although other considerations are relevant as well.

2. The court of appeals was correct that arms-length agreements in which government-run commercial enterprises limit access to their property could in some circumstances constitute market participation rather than regulation. But four features particular to the Port and the off-street parking and placard requirements at issue here, especially taken together, indicate that they are "tantamount to regulation," *Chamber of Commerce* v. *Brown*, 554 U.S. 60, 70 (2008) (citation omitted), and are therefore preempted. First, the requirement that drayage-service providers enter into a concession agreement to gain access to the Port's facilities is punishable by criminal sanctions. Second, a container port, which furnishes access to interstate and foreign commerce and is typically publicly owned, is far more akin to a public highway or other infrastructure than a commercial enterprise. Third, the particular requirements at issue have a regulatory character because they are generally applicable, concern quintessential functions of government, and lack a concrete commercial justification. Finally, the Port does not otherwise directly contract with drayage-service providers or participate in that market.

B. The court of appeals erred in holding that *Castle* v. *Hayes Freight Lines, Inc.*, 348 U.S. 61 (1954), is altogether inapplicable here, but it is unclear whether the Port's enforcement of the requirements that petitioner challenges would contravene that decision.

1. Under *Castle*, even if a state law falls within an exception to Section 14501(c), the State may not pun-

ish past violations of the law by restricting the offending motor carrier's rates, routes, or services or otherwise curtailing its federal authorization to operate. Nothing in *Castle* suggests, however, that a State must allow vehicles that are not in compliance with valid state laws, including safety regulations, to operate on its highways or gain access to its other transportation infrastructure.

2. The court of appeals incorrectly concluded that *Castle* is inapplicable here because enforcement of the concession agreement would bar access only to the Port, not to all of a State's highways. *Castle*, however, does not prevent the Port from barring a motor carrier's vehicles from gaining access if they are not in compliance with any non-preempted requirements set forth in the concession agreement. By contrast, *Castle* would prohibit the Port from barring access for a *past*, cured infraction. It is unclear from the concession agreement whether the Port would punish violations of the requirements at issue here through that sanction. The appropriate course is therefore to remand to the court of appeals for further development of that issue. In any event, *Castle* would support only a holding that cured breaches of the non-preempted requirements may not be punished through suspension of a motor carrier's right to gain access to the Port.

ARGUMENT

A. The Court Of Appeals Erred In Holding That The Off-Street Parking And Placard Requirements Are Not Preempted Because They Lack "The Force And Effect Of Law."

The court of appeals held that the Port acted as a market participant in adopting the off-street parking

and placard requirements and that those requirements therefore lack "the force and effect of law" within the meaning of Section 14501(c). See Pet. App. 16a, 38a-41a, 44a-46a. Because that determination was erroneous, this Court should reverse the holding below that those two requirements are not preempted.[1]

1. a. Section 14501(c) preempts only "a law, regulation, or other provision having the force and effect of law." When a challenged requirement is imposed on a motor carrier through an exercise of the regulatory power of a state or local government, such as through an ordinance restricting services that motor carriers may offer or a regulation setting rates, that prerequisite to preemption is readily satisfied. See, *e.g.*, *Rowe* v. *New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 368 (2008) (statute); *City of Columbus* v. *Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 428 (2002) (city regulations). Government entities, however, also sometimes act through arms-length commercial contracts with private actors that impose enforceable obligations on both parties. For example, state agencies enter into contracts to procure goods or services, see

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[1] The analysis set forth in this section applies not only to Section 14501(c), but also in large measure to Section 14506(a), which the court of appeals analyzed in connection with the placard requirement and which also uses the phrase "force and effect of law."

Respondents did not contest in their brief in opposition to the certiorari petition the court of appeals' conclusion that the placard requirement would be preempted by Section 14506(a) if it had the "force and effect of law." Pet. App. 46a. Nor did they challenge on appeal the district court's conclusion that the off-street parking provision meets the other requirements for preemption under Section 14501(c). See *id.* at 38a-39a.

Chamber of Commerce v. *Brown*, 554 U.S. 60, 70 (2008), and state-owned commercial enterprises contract with private entities as part of their production and sale of goods, see *Reeves, Inc.* v. *Stake*, 447 U.S. 429, 440 (1980).

Section 14501(c) is not naturally read to preempt contractual arrangements between government entities and motor carriers that do not differ from what private parties might agree to in the free market. As Congress's express findings explain, the provision was intended to preempt the "*regulation* of intrastate transportation of property by the States." FAAAA § 601(a), Tit. VI, 108 Stat. 1605 (emphasis added). The "[t]ypical forms of regulation" of motor carriers are "entry controls, tariff filing and price regulations, and [restrictions on the] types of commodities carried," 1994 Conference Report 86, not arms-length contracts. Although a contractual provision can be enforced in court, and so in that sense could be said to have "the force and effect of law," it differs fundamentally from "regulation" in that it does not represent an exercise of the government's coercive power over private parties.

That was the conclusion this Court reached in *American Airlines, Inc.* v. *Wolens*, 513 U.S. 219 (1995), which held that the ADA's similarly worded preemption provision, 49 U.S.C. 41713(b)(1), on which Section 14501(c) was modeled, did not bar "court enforcement of contract terms set by the parties themselves"—there, airlines and their passengers. 513 U.S. at 222; see *id.* at 228-233. Adopting the view of the United States, the Court held that "the word series 'law, rule, regulation, standard, or other provision * * * connotes official, *government-imposed* poli-

cies, not the terms of a private contract.'" *Id.* at 229 n.5 (emphasis added). "A remedy confined to a contract's terms," the Court explained, "simply holds parties to their agreements." *Id.* at 229.

As with the ADA provision, Section 14501(c)'s "ban on enacting or enforcing any law 'relat[ed] to [a price], route[], or service[]' is most naturally read, in light of [its] deregulatory purpose, to mean 'States may not seek to *impose* their own public policies or theories of competition on the operations of a[] [motor] carrier.'" *Wolens*, 513 U.S. at 229 n.5 (emphasis added). That does not occur when a motor carrier voluntarily assumes a contractual obligation, whether the counterparty is a private actor or a government entity. A commercial arrangement between a state or local government acting as a market participant and a motor carrier "does not 'regulate' the workings of the market forces that Congress expected to find; it exemplifies them." *Building & Constr. Trades Council* v. *Associated Builders & Contractors of Mass.*, 507 U.S. 218, 233 (1993) (*Boston Harbor*) (citation omitted).

To be sure, when a government entity is a counterparty to a commercial agreement, a risk exists that it will exercise essentially regulatory power through the guise of a contract. For that reason, this Court, in its dormant Commerce Clause and implied statutory preemption cases, has developed a set of principles for determining whether a government entity purporting to act as a market participant is instead acting as a market regulator. See pp. 19-21, *infra*.

This case involves express, not implied, preemption. Nonetheless, interpreting Section 14501(c) to preempt *all* contractual duties to a government entity that a motor carrier undertakes would expand its

scope beyond what Congress could have envisioned. Government agencies enter into many contracts with motor carriers that are "related to a price, route, or service"—for example, a contract with a trucking company to transport goods at a specified price. See *Defer No More: The Need to Repeal the 3% Withholding Provision: Hearing Before the House Subcomm. on Contracting and Workforce*, 112th Cong., 1st Sess. 116 (2011) (Statement of the American Trucking Ass'ns) ("Not only are private sector consumers dependent on trucks to deliver and ship their goods, but so are public entities at the federal, state and local government level."). It would be absurd to conclude that all terms relating to a price, route, or service agreed to in such contracts are preempted by Section 14501(c), and nothing in the statute's deregulatory objectives or legislative history suggests that it was intended to interfere with government contracting decisions or to render such contracts unenforceable. The court of appeals was thus correct in concluding that Section 14501(c) "preempt[s] only [S]tate regulation," not "direct [S]tate participation in the market." Pet. App. 21a (brackets in original; citations omitted).

b. Petitioner contends (Br. 26-28) that express proprietary exceptions to other preemption statutes demonstrate that Congress intended Section 14501(c) to preempt actions taken by a government entity in the role of a market participant. It principally relies on a subsection of the ADA's preemption provision stating that it "does not limit a State [or locality] * * * that owns or operates an airport served by an air carrier holding a certificate issued by the Secretary of Transportation from carrying out its proprietary powers and rights." 49 U.S.C. 41713(b)(3) (em-

phasis added). As originally enacted, that subsection stated that "[n]othing in [the preemption provision] *shall be construed* to limit the authority of any State or political subdivision thereof * * * as the owner or operator of an airport * * * to exercise its proprietary powers and rights." ADA § 4, 92 Stat. 1707-1708 (49 U.S.C. App. 1305(b)(1) (1992)) (emphasis added). That language was amended and relocated in 1994 as part of a statute intended to revise Title 49 "without substantive change." Act of July 5, 1994, Pub. L. No. 103-272, §§ 1(a), 1(e), 108 Stat. 745, 1143; see *id.* § 6(a), 108 Stat. 1378 ("Those sections may not be construed as making a substantive change in the laws replaced."); *CSX Transp., Inc.* v. *Alabama Dep't of Revenue*, 131 S. Ct. 1101, 1105 n.1 (2011). The airport provision thus serves to ensure that the ADA's preemption provision will not be construed to oust certain traditional proprietary activities of a municipal airport affecting air carriers that might otherwise have been viewed as more regulatory than commercial in character.[2] The absence of a comparable provision in Section 14501(c) does not suggest that *no* proprietary functions of a state or local government are saved from preemption—*i.e.*, that Section 14501(c)'s re-

[2] It should be noted that the Secretary of Transportation has significant authority over the operation of commercial airports, including with respect to fees and gate privileges. See, *e.g.*, 49 U.S.C. 47129, 47107.

The interpretation of the airport provision set forth above comports with this Court's observation in *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374 (1992), that the provision would have been unnecessary if the ADA's "relating to" standard were interpreted narrowly to preempt States only "from actually prescribing rates, routes, or services." *Id.* at 385-386.

quirement that a challenged act have "the force and effect of law" includes even indisputably commercial activities like contracts for shipments of property entered into by government entities acting as market participants.

The other statutes that petitioner cites do not use the phrase "force and effect of law," were not models for Section 14501(c), and have obvious reasons for specifying a proprietary exception. For example, petitioner cites a provision prohibiting a State or political subdivision from prescribing vehicle safety standards "applicable to the same aspect of performance" as a federal standard, but permitting a State or political subdivision to set more stringent standards for vehicles obtained for its own use. 49 U.S.C. 30103(b)(1). Unlike Section 14501(c), that provision addresses the reach of federal safety regulations that, in the absence of the exception, might have been read to apply to state proprietary action. The other cited provisions have the same structure. See 15 U.S.C. 1203(b), 1476(b), 2075(b); 49 U.S.C. 32304(i)(2), 32919(c).

2. a. Although an ordinary commercial contract is not preempted by Section 14501(c), this Court has recognized that government entities sometimes exercise regulatory power through contractual arrangements. See *Boston Harbor*, 507 U.S. at 226-228. Because the "government occupies a unique position of power in our society," *Wisconsin Department of Industry, Labor & Human Relations* v. *Gould, Inc.*, 475 U.S. 282, 290 (1986), it can engage in ostensibly commercial activity that "for all practical purposes * * * [is] tantamount to regulation," *Brown*, 554 U.S. at 69 (citation omitted).

This Court has accordingly set forth principles elucidating "the basic distinction between government as regulator and government as proprietor" in cases involving constitutional or statutory preemption. *Boston Harbor*, 507 U.S. at 227. Although those cases did not interpret a statutory phrase such as "force and effect of law," their analysis is relevant because, for the reasons set forth above, Section 14501(c) preempts regulation but not commercial activity. The chief inquiry is whether a government entity's actions, even if otherwise commercial, have the purpose and effect of advancing general regulatory policies rather than focused proprietary interests. Thus, for example, in *Gould* this Court held that a Wisconsin statute barring repeat violators of the National Labor Relations Act from doing business with the State was preempted. See 475 U.S. at 283. The "manifest purpose and inevitable effect" of the statute, the Court reasoned, was "to enforce the requirements of the NLRA," rather than to respond "to state procurement constraints or to local economic needs." *Id.* at 291.

In determining whether government action taking the form of commercial activity should be regarded in substance as regulatory, the Court has also considered whether the challenged action is "specifically tailored to one particular job," *Brown*, 554 U.S. at 70 (citation omitted); whether it represents an attempt to affect the behavior of all businesses that are impacted by its "economic ripple effect," *White* v. *Massachusetts Council of Constr. Employers, Inc.*, 460 U.S. 204, 211 (1983) (citation omitted); and whether the government entity is "burdened with the same restrictions imposed on private market participants," *Reeves*, 447 U.S. at 439. In addition, a government en-

tity "acts as a market regulator when it employs tools in pursuit of compliance that no private actor could wield, such as the threat of civil fines, criminal fines and incarceration." *United Haulers Ass'n* v. *Oneida-Herkimer Solid Waste Mgmt. Auth.*, 438 F.3d 150, 157 (2d Cir. 2006), aff'd, 550 U.S. 330 (2007).

b. The off-street parking and placard requirements that petitioner challenges are imposed through concession agreements that the court of appeals described as "contracts under which the Port exchanges access to its property for a drayage carrier's compliance with certain conditions." Pet. App. 25a. In some circumstances, property-access agreements could represent market activity by a government-run commercial operation and therefore lack "the force and effect of law." For example, a government-owned factory, see *Reeves*, 447 U.S. at 430-431, presumably could enter into contracts with trucking companies establishing the conditions under which they may enter its premises to pick up goods and deliver supplies. As this Court explained in *Boston Harbor*, the government does not engage in "regulation" when it merely "manages property" by "interact[ing] with private participants in the marketplace," and "[i]n the absence of any express or implied indication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, * * * this Court will not infer such a restriction." 507 U.S. at 227, 231-232. Even petitioner agrees (Br. 30) that a State can act as a market participant when it manages "state-allocated funds," and there is no reason why the same cannot be true with respect to the management of real property. The mere fact that restrictions are prompted in part by environmental concerns,

moreover, does not categorically render them regulatory in character. See *Hughes* v. *Alexandria Scrap Corp.*, 426 U.S. 794, 809 (1976). Numerous Fortune 500 companies have launched "green" initiatives. See NRDC Br. in Opp. 18-20.

But four considerations particular to the Port and to the requirements challenged here, especially taken together, establish that they have been imposed by the Port in a regulatory capacity and therefore have "the force and effect of law."

First, the Port's demand that drayage-service providers enter into a concession agreement is incorporated into a tariff that is "penally enforceable." Pet. App. 83a n.5. The tariff states that "no Terminal Operator shall permit access into any Terminal in the Port of Los Angeles to any Drayage Truck unless such Drayage Truck is registered under a Concession or a Day Pass." J.A. 105. It further warns that each day the violation persists constitutes a separate misdemeanor offense punishable by up to six months in prison. J.A. 85. Unlike what an ordinary private participant in the marketplace could do, therefore, the requirement that drayage-service providers operating on its facilities enter into a standard-form concession agreement is enforced with the threat of special criminal penalties (although it is not clear that a breach of the agreement would constitute a crime). Any common-sense understanding of the term "force and effect of law" is satisfied by a requirement backed by "criminal penalties which only a state and not a mere proprietor can enforce." *Washington State Bldg. & Constr. Trades Council* v. *Spellman*, 684 F.2d 627, 631 (9th Cir. 1982), cert. denied, 461 U.S. 913 (1983).

Second, a container port is far more akin to publicly managed transportation infrastructure, like a highway or a bridge, than to an ordinary commercial operation. The largest container ports in the Nation are owned and administered by public agencies. See Eno Ctr. for Transp., *Intermodal Transportation: Moving Freight In A Global Economy* 284 (2010) ("[P]ublic ownership is a key feature of the US port network."); U.S. Dep't of Transportation, Bureau of Transp. Statistics, *America's Container Ports: Linking Markets at Home and Abroad* 6 (2011) (listing twenty largest container ports); see also 4/27/10 Trial Tr. 64-65, 2:08-cv-04920 Docket entry No. 337 (C.D. Cal. Jan. 14, 2011) ("The port has its own police force."). And like an ordinary highway, a container port furnishes access to channels of interstate and international trade. For that reason, the concession agreement resembles a license more than an arms-length commercial contract. Although the Port faces competition from other public ports, Pet. App. 73a, it is common for regulatory agencies, such as agencies overseeing industrial development, to compete in this sense with counterpart agencies of other governments to attract investment to their region.

Third, the off-street parking and placard requirements that the Ninth Circuit upheld on market-participant grounds are more regulatory than commercial in character. They are both provisions of general applicability insofar as they govern on a permanent basis all drayage-service providers that wish to gain access to the Port, and they each concern quintessential functions of government (parking restrictions and vehicle identification). Neither requirement is "specifically tailored to one particular [transac-

tion]," nor are they responsive "to state procurement constraints or to local economic needs" or other concrete commercial objectives. *Brown*, 554 U.S. at 70 (citation omitted); see also Pet. App. 23a. Rather, as the district court found, they "were designed specifically to generate goodwill among local residents and to minimize exposure to litigation from them." *Id.* at 127a; see also *id.* at 40a, 46a. Although the court of appeals was correct that "[e]nhancing good-will in the community" can be an "objectively reasonable business interest," *id.* at 40a, a government entity could claim such an interest for even the most thinly veiled regulatory action. Unlike restrictions aimed at ensuring the completion of specific commercial objectives "as quickly and effectively as possible at the lowest cost," *Boston Harbor*, 507 U.S. at 232, a general interest in public approval does not suffice to establish that a government entity is acting as a market participant.

Finally, the Port does not itself contract with drayage-service providers (apart from the concession agreement itself). See Pet. App. 50a (Smith, J., dissenting in part). Standing alone, that fact might not preclude a market-participant finding. It is conceivable that a government entity managing access to its property may act as a market participant even if it does not directly participate in the market it seeks to affect. See *White*, 460 U.S. at 211 n.7 (explaining that market participation does not "stop at the boundary of formal privity of contract," but that "there are some [Commerce Clause] limits on a state or local government's ability to impose restrictions that reach beyond the immediate parties with which the government transacts business"). A state-owned sports arena, for example, might impose some restrictions on trucks

entering its premises to deliver supplies to food vendors leasing the facilities, even though the arena does not directly contract with trucking companies or participate in the food-service industry. But a more attenuated relationship between the government entity and the motor carrier calls for a substantial commercial justification to dispel the inference that the government entity is "using its leverage in [one] market to exert a regulatory effect in [another] market." *South-Central Timber Dev., Inc.* v. *Wunnicke*, 467 U.S. 82, 98 (1984) (opinion of White, J.). For the reasons discussed above, such a compelling business interest has not been demonstrated here with respect to the two challenged requirements.

Accordingly, the off-street parking and placard requirements have "the force and effect of law" and are therefore preempted.

B. The Court Of Appeals Erred In Holding That *Castle* Is Altogether Inapplicable Here

Petitioner argues (Br. 40) that this Court's decision in *Castle* v. *Hayes Freight Lines, Inc.*, 348 U.S. 61 (1954), bars the Port from denying access to motor carriers for violation of concession-agreement requirements that are not preempted. As explained above, see pp. 22-25, *supra*, the placard and off-street parking requirements of the agreement are preempted, so the question whether the Port could deny access for violation of those requirements does not arise. That question therefore arises only in connection with the financial-capability and maintenance requirements, which, in this case as now presented, are not preempted. The court of appeals held that the financial-capability requirement is not preempted because it is not "related to a price, route, or service of any

motor carrier," see Pet. App. 33a-34a, and the Court did not grant certiorari on Question 2 in the petition, which sought review of that holding. And petitioner did not seek review of the court of appeals' holding that the maintenance requirement falls within the safety exception to preemption under Section 14501(c)(2)(A). See Pet. App. 34a-38a.

In addressing the application of *Castle*, it is important to distinguish between two different aspects of the concession agreement's enforcement scheme: (i) the authority of the Port to bar *non-compliant* trucks from its premises, and (ii) its authority to punish motor carriers for *past*, cured breaches through suspension or revocation of the agreement. A challenge to the first would fail under *Castle*, but it does not appear that petitioner now contests the authority of the Port to bar trucks that do not comply with non-preempted requirements of the concession agreement. A challenge to the second type of enforcement would succeed under *Castle*, but it is not clear that the Port intends to exercise its authority in that manner.

1. A number of this Court's decisions between the enactment of the Motor Carrier Act in 1935 and the *Castle* decision in 1954 made clear that States retained ample authority to enact and enforce safety regulations. See pp. 2-3, *supra*. In *Maurer* v. *Hamilton*, 309 U.S. 598 (1940), the Court upheld the application to interstate carriers of a Pennsylvania statute providing that "[n]o person shall operate a vehicle on the highways of this Commonwealth carrying any other vehicle" in specified ways. *Id.* at 599-600 & n.1 (quoting statute). The Court interpreted the Motor Carrier Act not to alter "[t]he power of the states to regulate the sizes and weights of loaded motor vehicles" and

therefore held that the statute was not preempted. *Id.* at 610, 617. Because the Pennsylvania regulation was valid, the Court evidently saw no problem with the fact that "enforcement of [the provision] would deprive [the motor carriers] of the use of their property in that they * * * cannot feasibly reroute their traffic so as to avoid traveling through the State." U.S. and ICC Amicus Br. at 5, *Maurer*, *supra* (No. 380).

Castle applied the holding of *Maurer* to conclude that Illinois' limits on "the weight of freight that can be carried in commercial trucks over Illinois highways" were not preempted. 348 U.S. at 62, 64. But the Court went on to hold that a provision of the Illinois statute punishing repeated violations by prohibiting the carrier from using state highways for up to one year for interstate transit was preempted. See *id.* at 63-64. The Court reasoned that the Motor Carrier Act vested the ICC with exclusive authority to determine if a carrier could operate in interstate commerce and imposed significant procedural requirements before the ICC could suspend or revoke a carrier's authorization, so "it would be odd if a state could take action amounting to a suspension or revocation of an interstate carrier's commission-granted right to operate." *Id.* at 64. The Court deemed "suspension of this common carrier's right to use Illinois highways * * * the equivalent of a partial suspension of its federally granted certificate" insofar as it excluded the carrier from a portion of the Nation's highways for an extended period of time, "seriously disrupt[ing]" its "carriage of interstate goods into Illinois and other states." *Ibid.* The decision made clear, however, that States could enforce non-preempted

regulations through more "conventional forms of punishment." *Ibid.*[3]

Castle thus stands for the proposition that even where a State seeks to enforce non-preempted requirements against federally licensed motor carriers, the enforcement mechanism chosen by the State may conflict with federal law. In particular, a partial suspension of the carrier's right to operate in the manner permitted by its federal registration as punishment for a past infraction of state law is preempted by the federal licensing scheme—a scheme that still exists, in heavily deregulated form, today.

By contrast, neither the Court nor any party in *Castle* suggested that a State must allow vehicles that are out of compliance with safety regulations or other non-preempted laws to continue to operate on its highways. The motor carrier in *Castle* framed the issue as "the denial of the use of state highways to interstate motor carriers as a sanction for *prior* violation of state law" and acknowledged that a State may "stop and prevent from continuing on the highway any motor vehicle which it finds not to be in compliance." Resp. Br. at 4-5, 23, *Castle*, *supra* (No. 44) (emphasis added). And petitioner explained in an amicus curiae brief that "[t]he vehicle itself that fails to comply with the state's regulations may be barred from the state's highways." American Trucking Ass'ns Amicus Br. at 12, *Castle*, *supra* (No. 44) (citations omitted).

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[3] In *Service Storage & Transfer Co.* v. *Virginia*, 359 U.S. 171 (1959), this Court cited *Castle* for the proposition that Virginia could not impose criminal fines on a federally licensed motor carrier, but in that case the State was not exercising non-preempted authority. See *id.* at 179.

As applied to the modern statutory regime for motor carriers, *Castle* teaches that even if a state law is not preempted because it falls within an exception to Section 14501(c), the method the State chooses to punish violations of the law might be independently preempted by that provision or due to a conflict with the federal licensing scheme. For example, Section 14501(c) does "not restrict the safety regulatory authority of a State with respect to motor vehicles," 49 U.S.C. 14501(c)(2)(A), and thus state and local governments generally may enact motor-carrier regulations that are "genuinely responsive to safety concerns." *City of Columbus*, 536 U.S. at 442.[4] But punishing past safety infractions through a restriction on the services that a carrier may offer or the routes that it may serve in the future—rather than through "more conventional means of punishment" like fines or imprisonment—would be preempted. See also 1994 Conference Report 84 ("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."). Nothing in *Castle*, however, supports the view that a State is required to allow unsafe vehicles to use its highways or gain access to its other transportation infrastructure.

2. Under the reasoning of *Castle*, petitioner is correct that the Port may not punish past breaches of non-preempted requirements of the concession agreement by denying a carrier the ability to gain access to its premises and provide drayage services

[4] Notwithstanding this general state authority, the Secretary of Transportation may preempt state safety laws and regulations in certain instances. See 49 U.S.C. 31141.

there. The court of appeals erred in distinguishing *Castle* on the ground that it involved "all of a State's freeways" rather than "access to a single Port." Pet. App. 32a. A major container port is an important gateway to interstate and international commerce, and in any event barring access would plainly restrict a carrier's routes and services within the meaning of Section 14501(c).

As relevant here, however, the concession agreement's actual enforcement scheme does not necessarily contravene *Castle*. The Port has conditioned access to its facilities on a carrier's registration under the concession agreement (or attainment of a day pass). See Pet. App. 12a; J.A. 105. The Port has also reserved the authority to require that a drayage-service provider cure any default within a reasonable time. J.A. 73. If the carrier does not timely comply with an order to cure the default, the Port could bar it from entering its premises. See J.A. 73, 82-83.

At the certiorari stage, petitioner appeared principally to challenge this aspect of the enforcement scheme. See Pet. Supp. Br. 10 (arguing that provision permitting Port to bar access "in the event of a default not timely cured * * * cannot be reconciled with *Castle*'s holding"); see also Pet. 4, 6-8, 26, 33. Petitioner continues to cite (Br. 38) these provisions as encompassed within its *Castle* challenge. But as explained above, prohibiting a carrier's truck from gaining access to Port facilities until it is brought into compliance with non-preempted regulations is fully consistent with *Castle*. Congress would not have intended that the Port be powerless to bar trucks that have not complied with valid safety requirements from gaining access to its facilities until the problems—

faulty brakes, for example, or blown headlights—are fixed. Likewise, given Section 14501(c)'s exception for "the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements," 49 U.S.C. 14501(c)(2)(A), the Port would be under no federal obligation to allow a carrier to bring its trucks onto the Port's premises if the carrier has not obtained the requisite level of insurance. See J.A. 63-69 (concession agreement's insurance requirements).

Petitioner concedes (Br. 40), in fact, that *Castle* permits a state or local government to "tak[e] out of service a truck that does not meet a state or local safety regulation." If only a single truck were out of compliance with a non-preempted requirement of the concession agreement, presumably the carrier could cure the default by simply "taking the truck out of service" itself until the problem is fixed. Cf. Resp. Br. at 15, *Castle*, *supra* (No. 44) (arguing that suspension "cannot be complied with in any way except by complete cessation of operations during the period of suspension"). Nothing in the agreement suggests that the Port would not accept that as a cure, and *Castle* would require it to do so.

Petitioner is correct (Br. 38, 40-41) that barring access to the Port's facilities as a penalty for a *past*, cured breach of the concession agreement would be preempted under the reasoning of *Castle*. But although the concession agreement contains provisions authorizing penalties for breach, the penalties for a "Minor Default" do not include suspension or revocation of the drayage-service provider's right to use the Port. J.A. 81-82. Because the agreement does not define what constitutes a "Major Default," it is not clear

whether the Port would deem a cured breach of the financial-capability or maintenance requirements to warrant suspension or revocation.[5]

The court of appeals, in fact, expressly determined that the Port would not enforce the financial-capability requirement by denying access to its facilities. See Pet. App. 34a. In addition, the Port's Director of Operations testified that "something egregious would have to happen" for the default provisions to be invoked at all, 4/23/10 Trial Tr. 51, 120, 2:08-cv-04920 Docket entry No. 336 (C.D. Cal. Jan. 14, 2011), and its expert witness testified that the authority to terminate a concession agreement was designed to be "the ultimate tool if someone continues to be *noncompliant* and threatens the port environment," 4/28/10 Trial Tr. 86, 2:08-cv-04920 Docket entry No. 338 (C.D. Cal. Jan. 14, 2011) (emphasis added). In its arguments before the court of appeals, the Port maintained only that it could "prohibit a non-compliant drayage truck from entering Port property," not that it could use suspension or revocation as a form of punishment for past violations of the requirements that petitioner has challenged. Intervenor-Appellee C.A. Br. at 38-39; see Appellee C.A. Br. at 57 (adopting intervenor's arguments).

Given the uncertainty over whether the Port claims the authority to punish past, cured violations of the requirements challenged here through suspension or revocation, the most appropriate course is to remand to the courts below for determination of that question

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[5] It is similarly unclear whether, if this Court were to hold that the placard and off-street parking requirements are not preempted, the Port would regard a violation of either of those requirements as a Major Default.

in the first instance in light of a proper understanding of *Castle*.[6] If the Court chooses to reach the issue, however, it should hold that under *Castle*, the Port may not punish past violations of non-preempted requirements through suspension or termination of access to the Port. See J.A. 54 (concession agreement's severability clause). But *Castle* does not provide an independent basis to challenge the substance of such requirements or curtail the Port's authority to bar access to non-compliant motor carriers.

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[6] Petitioner contends (Br. 40) that this Court's decisions in *City of Chicago* v. *Atchinson, T. & S. F. Railway*, 357 U.S. 77 (1958), and *Railroad Transfer Service* v. *City of Chicago*, 386 U.S. 351 (1967), require that its *Castle* challenge be heard at this time even if the Port does not assert the authority to suspend or revoke a carrier's access for cured breaches of the financial-capability and maintenance requirements. In those cases, this Court held that Chicago's licensing scheme for a railway transfer company was preempted by the Interstate Commerce Act, 49 Cong. Ch. 104, 24 Stat. 379. See *Railroad Transfer*, 386 U.S. at 353, 360. In the first case, the Court found the controversy ripe because the applicability of the licensing scheme was clear. 357 U.S. at 84. In *Railroad Transfer*, in permitting the company to challenge the scheme before the denial of a license, the Court found that the city had asserted the authority to deny the company a license and had "not give[n] up its power under [its] ordinance to fine [the company] and arrest its drivers for operating without licenses or its power to revoke for discretionary reasons all licenses which [the company] may obtain." 386 U.S. at 357-358. The Court explained that "the City [sought] to enforce *each and all* of [its scheme's] related requirements," such as financial-disclosure requirements, "by denial of a license and then criminal sanctions for operation without a license." *Id.* at 360 (emphasis added). Here, by contrast, it is not apparent that "the Port claims the authority to suspend or revoke a motor carrier's access to the Port" to punish a past, cured breach of the challenged requirements. Pet. Br. 40 (emphasis omitted).

CONCLUSION

The judgment of the court of appeals should be reversed. With respect to the financial-capability and maintenance requirements, the case should be remanded for further consideration.

Respectfully submitted.

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APPENDIX

1. The Supremacy Clause of the United States Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

2. 49 U.S.C. 13102 (2006 & Supp. III 2011) provides:

Definitions

In this part, the following definitions shall apply:

(1) BOARD.—The term "Board" means the Surface Transportation Board.

(2) BROKER.—The term "broker" means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

(3) CARRIER.—The term "carrier" means a motor carrier, a water carrier, and a freight forwarder.

(4) CONTRACT CARRIAGE.—The term "contract carriage" means—

(A) for transportation provided before January 1, 1996, service provided pursuant to a permit issued under section 10923, as in effect on December 31, 1995; and

(B) for transportation provided after December 31, 1995, service provided under an agreement entered into under section 14101(b).

(5) CONTROL.—The term "control", when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by—

(A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or

(B) any other means.

(6) FOREIGN MOTOR CARRIER.—The term "foreign motor carrier" means a person (including a motor carrier of property but excluding a motor private carrier)—

(A)(i) that is domiciled in a contiguous foreign country; or

(ii) that is owned or controlled by persons of a contiguous foreign country; and

(B) in the case of a person that is not a motor private carrier, that provides interstate transportation of property by motor vehicle under an agreement or contract entered into with a person (other than a motor carrier of property or

motor private carrier described in subparagraph (A)).

(7) FOREIGN MOTOR PRIVATE CARRIER.—The term "foreign motor private carrier" means a person (including a motor private carrier but excluding a motor carrier of property)—

(A)(i) that is domiciled in a contiguous foreign country; or

(ii) that is owned or controlled by persons of a contiguous foreign country; and

(B) in the case of a person that is not a motor private carrier, that provides interstate transportation of property by motor vehicle under an agreement or contract entered into with a person (other than a motor carrier of property or a motor private carrier described in subparagraph (A)).

(8) FREIGHT FORWARDER.—The term "freight forwarder" means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—

(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle.

The term does not include a person using transportation of an air carrier subject to part A of subtitle VII.

(9) HIGHWAY.—The term "highway" means a road, highway, street, and way in a State.

(10) HOUSEHOLD GOODS.—The term "household goods", as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is—

(A) arranged and paid for by the householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or

(B) arranged and paid for by another party.

(11) HOUSEHOLD GOODS FREIGHT FORWARDER —The term "household goods freight forwarder" means a freight forwarder of one or more of the following items: household goods, unaccompanied baggage, or used automobiles.

(12) HOUSEHOLD GOODS MOTOR CARRIER.—

(A) In general.—The term "household goods motor carrier" means a motor carrier that, in

the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:

(i) Binding and nonbinding estimates.

(ii) Inventorying.

(iii) Protective packing and unpacking of individual items at personal residences.

(iv) Loading and unloading at personal residences.

(B) INCLUSION.—The term includes any person that is considered to be a household goods motor carrier under regulations, determinations, and decisions of the Federal Motor Carrier Safety Administration that are in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005.

(C) LIMITED SERVICE EXCLUSION.—The term does not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier).

(13) INDIVIDUAL SHIPPER.—The term "individual shipper" means any person who—

(A) is the shipper, consignor, or consignee of a household goods shipment;

(B) is identified as the shipper, consignor, or consignee on the face of the bill of lading;

(C) owns the goods being transported; and

(D) pays his or her own tariff transportation charges.

(14) MOTOR CARRIER.—The term "motor carrier" means a person providing motor vehicle transportation for compensation.

(15) MOTOR PRIVATE CARRIER.—The term "motor private carrier" means a person, other than a motor carrier, transporting property by motor vehicle when—

(A) the transportation is as provided in section 13501 of this title;

(B) the person is the owner, lessee, or bailee of the property being transported; and

(C) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

(16) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Secretary, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service.

(17) NONCONTIGUOUS DOMESTIC TRADE.—The term "noncontiguous domestic trade" means transportation subject to jurisdiction under chapter 135

involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

(18) PERSON.—The term "person", in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

(19) PRE-ARRANGED GROUND TRANSPORTATION SERVICE.—The term "pre-arranged ground transportation service" means transportation for a passenger (or a group of passengers) that is arranged in advance (or is operated on a regular route or between specified points) and is provided in a motor vehicle with a seating capacity not exceeding 15 passengers (including the driver).

(20) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(21) STATE.—The term "State" means the 50 States of the United States and the District of Columbia.

(22) TAXICAB SERVICE.—The term "taxicab service" means passenger transportation in a motor vehicle having a capacity of not more than 8 passengers (including the driver), not operated on a regular route or between specified places, and that—

(A) is licensed as a taxicab by a State or a local jurisdiction; or

(B) is offered by a person that—

(i) provides local transportation for a fare determined (except with respect to transportation to or from airports) primarily on the basis of the distance traveled; and

(ii) does not primarily provide transportation to or from airports.

(23) TRANSPORTATION.—The term "transportation" includes—

(A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

(24) UNITED STATES.—The term "United States" means the States of the United States and the District of Columbia.

(25) VESSEL.—The term "vessel" means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water.

(26) WATER CARRIER.—The term "water carrier" means a person providing water transportation for compensation.

(27) OVER-THE-ROAD BUS.—The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

3. 49 U.S.C. 13501 provides:

General jurisdiction

The Secretary and the Board have jurisdiction, as specified in this part, over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier—

(1) between a place in—

(A) a State and a place in another State;

(B) a State and another place in the same State through another State;

(C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;

(D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or

(E) the United States and a place in a foreign country to the extent the transportation is in the United States; and

(2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.

4. 49 U.S.C. 13901 provides:

Requirements for registration

A person may provide transportation or service subject to jurisdiction under subchapter I or III of chapter 135 or be a broker for transportation subject to jurisdiction under subchapter I of that chapter, only if the person is registered under this chapter to provide the transportation or service.

5. 49 U.S.C. 13902 (2006 & Supp. V 2011) provides:

Registration of motor carriers

(a) MOTOR CARRIER GENERALLY.—

(1) IN GENERAL.—Except as provided in this section, the Secretary shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 of this title as a motor carrier if the Secretary finds that the person is willing and able to comply with—

(A) this part and the applicable regulations of the Secretary and the Board;

(B)(i) any safety regulations imposed by the Secretary;

(ii) the duties of employers and employees established by the Secretary under section 31135; and

(iii) the safety fitness requirements established by the Secretary under section 31144;

(C) the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus; and

(D) the minimum financial responsibility requirements established by the Secretary under sections 13906, 31138.

(2) ADDITIONAL REGISTRATION REQUIREMENTS FOR HOUSEHOLD GOODS MOTOR CARRIERS.—In addition to meeting the requirements of paragraph (1), the Secretary may register a person to provide transportation of household goods as a household goods motor carrier only after that person—

(A) provides evidence of participation in an arbitration program and provides a copy of the notice of the arbitration program as required by section 14708(b)(2);

(B) identifies its tariff and provides a copy of the notice of the availability of that tariff for inspection as required by section 13702(c);

(C) provides evidence that it has access to, has read, is familiar with, and will observe all applicable Federal laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage; and

(D) discloses any relationship involving common stock, common ownership, common man-

agement, or common familial relationships between that person and any other motor carrier, freight forwarder, or broker of household goods within 3 years of the proposed date of registration.

(3) CONSIDERATION OF EVIDENCE; FINDINGS.—The Secretary shall consider, and to the extent applicable, make findings on any evidence demonstrating that the registrant is unable to comply with any applicable requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2).

(4) WITHHOLDING.—If the Secretary determines that a registrant under this section does not meet, or is not able to meet, any requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2), the Secretary shall withhold registration.

(5) LIMITATION ON COMPLAINTS.—The Secretary may hear a complaint from any person concerning a registration under this subsection only on the ground that the registrant fails or will fail to comply with this part, the applicable regulations of the Secretary and the Board (including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus), the safety regulations of the Secretary, or the safety fitness or minimum financial responsibility requirements of paragraph (1) of

this subsection. In the case of a registration for the transportation of household goods as a household goods motor carrier, the Secretary may also hear a complaint on the ground that the registrant fails or will fail to comply with the requirements of paragraph (2) of this subsection.

(b) MOTOR CARRIERS OF PASSENGERS.—

(1) REGISTRATION OF PRIVATE RECIPIENTS OF GOVERNMENTAL ASSISTANCE.—The Secretary shall register under subsection (a)(1) a private recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

(2) REGISTRATION OF PUBLIC RECIPIENTS OF GOVERNMENTAL ASSISTANCE.—

(A) CHARTER TRANSPORTATION.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that—

(i) the recipient meets the requirements of subsection (a)(1); and

(ii)(I) no motor carrier of passengers (other than a motor carrier of passengers which is a public recipient of governmental assistance) is providing, or is willing to provide, the transportation; or

(II) the transportation is to be provided entirely in the area in which the public recipient provides regularly scheduled mass transportation services.

(B) REGULAR-ROUTE TRANSPORTATION.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide regular-route transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

(C) TREATMENT OF CERTAIN PUBLIC RECIPIENTS.—Any public recipient of governmental assistance which is providing or seeking to provide transportation of passengers subject to jurisdiction under subchapter I of chapter 135 shall, for purposes of this part, be treated as a person which is providing or seeking to provide transportation of passengers subject to such jurisdiction.

(3) INTRASTATE TRANSPORTATION BY INTERSTATE CARRIERS.—A motor carrier of passengers that is registered by the Secretary under subsection (a) is authorized to provide regular-route transportation entirely in one State as a motor carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.

(4) PREEMPTION OF STATE REGULATION REGARDING CERTAIN SERVICE.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to the provision of pickup and delivery of express packages, newspapers, or mail in a commercial zone if the shipment has had or will have a prior or subsequent movement by bus in intrastate commerce and, if a city within the commercial zone, is served by a motor carrier of passengers providing regular-route transportation of passengers subject to jurisdiction under subchapter I of chapter 135.

(5) JURISDICTION OVER CERTAIN INTRASTATE TRANSPORTATION.—Subject to section 14501(a), any intrastate transportation authorized by this subsection shall be treated as transportation subject to jurisdiction under subchapter I of chapter 135 until such time as the carrier takes such action as is necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation, but in no case later than the 30th

day following the date on which the motor carrier of passengers first begins providing transportation entirely in one State under this paragraph.

(6) SPECIAL OPERATIONS.—This subsection shall not apply to any regular-route transportation of passengers provided entirely in one State which is in the nature of a special operation.

(7) SUSPENSION OR REVOCATION.—Intrastate transportation authorized under this subsection may be suspended or revoked by the Secretary under section 13905 of this title at any time.

(8) DEFINITIONS.—In this subsection, the following definitions apply:

(A) PUBLIC RECIPIENT OF GOVERNMENTAL ASSISTANCE.—The term "public recipient of governmental assistance" means—

(i) any State,

(ii) any municipality or other political subdivision of a State,

(iii) any public agency or instrumentality of one or more States and municipalities and political subdivisions of a State,

(iv) any Indian tribe, and

(v) any corporation, board, or other person owned or controlled by any entity described in clause (i), (ii), (iii), or (iv),

which before, on, or after January 1, 1996, received governmental assistance for the purchase or operation of any bus.

(B) PRIVATE RECIPIENT OF GOVERNMENT ASSISTANCE.—The term "private recipient of government assistance" means any person (other than a person described in subparagraph (A)) who before, on, or after January 1, 1996, received governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus.

(c) RESTRICTIONS ON MOTOR CARRIERS DOMICILED IN OR OWNED OR CONTROLLED BY NATIONALS OF A CONTIGUOUS FOREIGN COUNTRY.—

(1) PREVENTION OF DISCRIMINATORY PRACTICES.—If the President, or the delegate thereof, determines that an act, policy, or practice of a foreign country contiguous to the United States, or any political subdivision or any instrumentality of any such country is unreasonable or discriminatory and burdens or restricts United States transportation companies providing, or seeking to provide, motor carrier transportation to, from, or within such foreign country, the President or such delegate may—

(A) seek elimination of such practices through consultations; or

(B) notwithstanding any other provision of law, suspend, modify, amend, condition, or restrict operations, including geographical restriction of operations, in the United States by motor carriers of property or passengers domiciled in such foreign country or owned or controlled by persons of such foreign country.

(2) EQUALIZATION OF TREATMENT.—Any action taken under paragraph (1)(A) to eliminate an act, policy, or practice shall be so devised so as to equal to the extent possible the burdens or restrictions imposed by such foreign country on United States transportation companies.

(3) REMOVAL OR MODIFICATION.—The President, or the delegate thereof, may remove or modify in whole or in part any action taken under paragraph (1)(A) if the President or such delegate determines that such removal or modification is consistent with the obligations of the United States under a trade agreement or with United States transportation policy.

(4) PROTECTION OF EXISTING OPERATIONS.—Unless and until the President, or the delegate thereof, makes a determination under paragraph (1) or (3), nothing in this subsection shall affect—

(A) operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country permitted in the commercial zones along the United States-Mexico border as such zones were defined on December 31, 1995; or

(B) any existing restrictions on operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country or any modifications thereof pursuant to section 6 of the Bus Regulatory Reform Act of 1982.

(5) PUBLICATION; COMMENT.—Unless the President, or the delegate thereof, determines that expeditious action is required, the President shall publish in the Federal Register any determination under paragraph (1) or (3), together with a description of the facts on which such a determination is based and any proposed action to be taken pursuant to paragraph (1)(B) or (3), and provide an opportunity for public comment.

(6) DELEGATION TO SECRETARY.—The President may delegate any or all authority under this subsection to the Secretary, who shall consult with other agencies as appropriate. In accordance with the directions of the President, the Secretary may issue regulations to enforce this subsection.

(7) CIVIL ACTIONS.—Either the Secretary or the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this subsection or a regulation prescribed or order issued under this subsection. The court may award appropriate relief, including injunctive relief.

(8) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection shall not be construed as affecting the requirement for all foreign motor carriers and foreign motor private carriers operating in the United States to comply with all applicable laws and regulations pertaining to fitness, safety of operations, financial responsibility, and taxes imposed by section 4481 of the Internal Revenue Code of 1986.

(d) TRANSITION RULE.—

(1) IN GENERAL.—Pending the implementation of the rule-making required by section 13908, the Secretary may register a person under this section—

(A) as a motor common carrier if such person would have been issued a certificate to provide transportation as a motor common carrier under this subtitle on December 31, 1995; and

(B) as a motor contract carrier if such person would have been issued a permit to provide transportation as a motor contract carrier under this subtitle on such day.

(2) DEFINITIONS.—In this subsection, the terms "motor common carrier" and "motor contract carrier" have the meaning such terms had under section 10102 as such section was in effect on December 31, 1995.

(3) TERMINATION.—This subsection shall cease to be in effect on the transition termination date.

(e) PENALTIES FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS.—In addition to other penalties available under law, motor carriers that fail to register their operations as required by this section or that operate beyond the scope of their registrations may be subject to the following penalties:

(1) OUT-OF-SERVICE ORDERS.—If, upon inspection or investigation, the Secretary determines that a motor vehicle providing transportation requiring registration under this section is operating without

a registration or beyond the scope of its registration, the Secretary may order the vehicle out-of-service. Subsequent to the issuance of the out-of-service order, the Secretary shall provide an opportunity for review in accordance with section 554 of title 5, United States Code; except that such review shall occur not later than 10 days after issuance of such order.

(2) PERMISSION FOR OPERATIONS.—A person domiciled in a country contiguous to the United States with respect to which an action under subsection (c)(1)(A) or (c)(1)(B) is in effect and providing transportation for which registration is required under this section shall maintain evidence of such registration in the motor vehicle when the person is providing the transportation. The Secretary shall not permit the operation in interstate commerce in the United States of any motor vehicle in which there is not a copy of the registration issued pursuant to this section.

(f) MODIFICATION OF CARRIER REGISTRATION.—

(1) IN GENERAL.—On and after the transition termination date, the Secretary—

(A) may not register a motor carrier under this section as a motor common carrier or a motor contract carrier;

(B) shall register applicants under this section as motor carriers; and

(C) shall issue any motor carrier registered under this section after that date a motor carrier certificate of registration that specifies

whether the holder of the certificate may provide transportation of persons, household goods, other property, or any combination thereof.

(2) PRE-EXISTING CERTIFICATES AND PERMITS.—The Secretary shall redesignate any motor carrier certificate or permit issued before the transition termination date as a motor carrier certificate of registration. On and after the transition termination date, any person holding a motor carrier certificate of registration redesignated under this paragraph may provide both contract carriage (as defined in section 13102(4)(B)) and transportation under terms and conditions meeting the requirements of section 13710(a)(1). The Secretary may not, pursuant to any regulation or form issued before or after the transition termination date, make any distinction among holders of motor carrier certificates of registration on the basis of whether the holder would have been classified as a common carrier or as a contract carrier under—

(A) subsection (d) of this section, as that section was in effect before the transition termination date; or

(B) any other provision of this title that was in effect before the transition termination date.

(3) TRANSITION TERMINATION DATE DEFINED.—In this section, the term "transition termination date" means the first day of January occurring more than 12 months after the date of enactment of the Unified Carrier Registration Act of 2005.

(g) MOTOR CARRIER DEFINED.—In this section and sections 13905 and 13906, the term "motor carrier" includes foreign motor private carriers.

6. 49 U.S.C. 14501 provides:

Federal authority over intrastate transportation

(a) MOTOR CARRIERS OF PASSENGERS.—

(1) LIMITATION ON STATE LAW.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to—

(A) scheduling of interstate or intrastate transportation (including discontinuance or reduction in the level of service) provided by a motor carrier of passengers subject to jurisdiction under subchapter I of chapter 135 of this title on an interstate route;

(B) the implementation of any change in the rates for such transportation or for any charter transportation except to the extent that notice, not in excess of 30 days, of changes in schedules may be required; or

(C) the authority to provide intrastate or interstate charter bus transportation.

This paragraph shall not apply to intrastate commuter bus operations, or to intrastate bus transportation of any nature in the State of Hawaii.

(2) MATTERS NOT COVERED.—Paragraph (1) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle, or the authority of a State to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.

(b) FREIGHT FORWARDERS AND BROKERS.—

(1) GENERAL RULE.—Subject to paragraph (2) of this subsection, no State or political subdivision thereof and no intrastate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker.

(2) CONTINUATION OF HAWAII'S AUTHORITY.—Nothing in this subsection and the amendments made by the Surface Freight Forwarder Deregulation Act of 1986 shall be construed to affect the authority of the State of Hawaii to continue to regulate a motor carrier operating within the State of Hawaii.

(c) MOTOR CARRIERS OF PROPERTY.—

(1) GENERAL RULE.—Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related

to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

(2) MATTERS NOT COVERED.—Paragraph (1)—

(A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;

(B) does not apply to the intrastate transportation of household goods; and

(C) does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

(3) STATE STANDARD TRANSPORTATION PRACTICES.—

(A) CONTINUATION.—Paragraph (1) shall not affect any authority of a State, political subdivision of a State, or political authority of 2 or

more States to enact or enforce a law, regulation, or other provision, with respect to the intrastate transportation of property by motor carriers, related to—

(i) uniform cargo liability rules,

(ii) uniform bills of lading or receipts for property being transported,

(iii) uniform cargo credit rules,

(iv) antitrust immunity for joint line rates or routes, classifications, mileage guides, and pooling, or

(v) antitrust immunity for agent-van line operations (as set forth in section 13907),

if such law, regulation, or provision meets the requirements of subparagraph (B).

(B) REQUIREMENTS.—A law, regulation, or provision of a State, political subdivision, or political authority meets the requirements of this subparagraph if—

(i) the law, regulation, or provision covers the same subject matter as, and compliance with such law, regulation, or provision is no more burdensome than compliance with, a provision of this part or a regulation issued by the Secretary or the Board under this part; and

(ii) the law, regulation, or provision only applies to a carrier upon request of such carrier.

(C) ELECTION.—Notwithstanding any other provision of law, a carrier affiliated with a direct air carrier through common controlling ownership may elect to be subject to a law, regulation, or provision of a State, political subdivision, or political authority under this paragraph.

(4) NONAPPLICABILITY TO HAWAII.—This subsection shall not apply with respect to the State of Hawaii.

(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to prevent a State from requiring that, in the case of a motor vehicle to be towed from private property without the consent of the owner or operator of the vehicle, the person towing the vehicle have prior written authorization from the property owner or lessee (or an employee or agent thereof) or that such owner or lessee (or an employee or agent thereof) be present at the time the vehicle is towed from the property, or both.

(d) PRE-ARRANGED GROUND TRANSPORTATION.—

(1) IN GENERAL.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law requiring a license or fee on account of the fact that a motor vehicle is providing pre-arranged ground transportation service if the motor carrier providing such service—

(A) meets all applicable registration requirements under chapter 139 for the interstate transportation of passengers;

(B) meets all applicable vehicle and intrastate passenger licensing requirements of the State or States in which the motor carrier is domiciled or registered to do business; and

(C) is providing such service pursuant to a contract for—

(i) transportation by the motor carrier from one State, including intermediate stops, to a destination in another State; or

(ii) transportation by the motor carrier from one State, including intermediate stops in another State, to a destination in the original State.

(2) INTERMEDIATE STOP DEFINED.—In this section, the term "intermediate stop", with respect to transportation by a motor carrier, means a pause in the transportation in order for one or more passengers to engage in personal or business activity, but only if the driver providing the transportation to such passenger or passengers does not, before resuming the transportation of such passenger (or at least 1 of such passengers), provide transportation to any other person not included among the passengers being transported when the pause began.

(3) MATTERS NOT COVERED.—Nothing in this subsection shall be construed—

(A) as subjecting taxicab service to regulation under chapter 135 or section 31138;

(B) as prohibiting or restricting an airport, train, or bus terminal operator from contracting to provide preferential access or facilities to one or more providers of pre-arranged ground transportation service; and

(C) as restricting the right of any State or political subdivision of a State to require, in a nondiscriminatory manner, that any individual operating a vehicle providing prearranged ground transportation service originating in the State or political subdivision have submitted to pre-licensing drug testing or a criminal background investigation of the records of the State in which the operator is domiciled, by the State or political subdivision by which the operator is licensed to provide such service, or by the motor carrier providing such service, as a condition of providing such service.

7. 49 U.S.C. 14506 (2006 & Supp. V 2011) provides:

Identification of vehicles

(a) RESTRICTION ON REQUIREMENTS.—No State, political subdivision of a State, interstate agency, or other political agency of two or more States may enact or enforce any law, rule, regulation standard, or other provision having the force and effect of law that requires a motor carrier, motor private carrier, freight forwarder, or leasing company to display any form of identification on or in a commercial motor vehicle (as

defined in section 14504a), other than forms of identification required by the Secretary of Transportation under section 390.21 of title 49, Code of Federal Regulations.

(b) EXCEPTION.—Notwithstanding subsection (a), a State may continue to require display of credentials that are required—

(1) under the International Registration Plan under section 31704;

(2) under the International Fuel Tax Agreement under section 31705 or under an applicable State law if, on October 1, 2006, the State has a form of highway use taxation not subject to collection through the International Fuel Tax Agreement;

(3) under a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate;

(4) in connection with Federal requirements for hazardous materials transportation under section 5103; or

(5) in connection with the Federal vehicle inspection standards under section 31136.

8. 49 U.S.C. 41713 provides:

Preemption of authority over prices, routes, and service

(a) DEFINITION.—In this section, "State" means a State, the District of Columbia, and a territory or possession of the United States.

(b) PREEMPTION.—(1) Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart.

(2) Paragraphs (1) and (4) of this subsection do not apply to air transportation provided entirely in Alaska unless the transportation is air transportation (except charter air transportation) provided under a certificate issued under section 41102 of this title.

(3) This subsection does not limit a State, political subdivision of a State, or political authority of at least 2 States that owns or operates an airport served by an air carrier holding a certificate issued by the Secretary of Transportation from carrying out its proprietary powers and rights.

(4) TRANSPORTATION BY AIR CARRIER OR CARRIER AFFILIATED WITH A DIRECT AIR CARRIER.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier or carrier affiliated with a direct air carrier through common controlling ownership when such carrier is transporting property by aircraft or by motor vehicle (whether or not such property has had or will have a prior or subsequent air movement).

(B) MATTERS NOT COVERED.—Subparagraph (A)—

(i) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization; and

(ii) does not apply to the transportation of household goods, as defined in section 13102 of this title.

(C) APPLICABILITY OF PARAGRAPH (1).—This paragraph shall not limit the applicability of paragraph (1).

9. 49 App. U.S.C. 1305 (1992) provides:

(a) Preemption

(1) Except as provided in paragraph (2) of this subsection, no State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier having authority under subchapter IV of this chapter to provide air transportation.

(2) Except with respect to air transportation (other than charter air transportation) provided pursuant to a certificate issued by the Board under section 1371 of this Appendix, the provisions of paragraph (1) of this subsection shall not apply to any transportation by air of persons, property, or mail conducted wholly within the State of Alaska.

(b) Proprietary power and rights

(1) Nothing in subsection (a) of this section shall be construed to limit the authority of any State or political subdivision thereof or any interstate agency or other political agency of two or more States as the owner or operator of an airport served by any air carrier certificated by the Board to exercise its proprietary powers and rights.

(2) Any aircraft operated between points in the same State (other than the State of Hawaii) which in the course of such operation crosses a boundary between two States, or between the United States and any other country, or between a State and the beginning of the territorial waters of the United States, shall not, by reason of crossing such boundary, be considered to be operating in interstate or overseas air transportation

(c) Existing State authority

When any intrastate air carrier which on August 1, 1977, was operating primarily in intrastate air transportation regulated by a State receives the authority to provide interstate air transportation, any authority received from such State shall be considered to be part of its authority to provide air

transportation received from the Board under subchapter IV of this chapter, until modified, suspended, amended, or terminated as provided under such subchapter

(d) "State" defined

For purposes of this section, the term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and any territory or possession of the United States.