IN THE

SUPREME COURT OF CALIFORNIA

THE PEOPLE ex rel. KAMALA D. HARRIS, as Attorney General, etc., Plaintiff and Appellant, v. PAC ANCHOR TRANSPORTATION, INC., et al., Defendants and Respondents.	Case Number S194388

After a Decision by the Court of Appeal
Second Appellate District, Division Five
[Case No. B220966]

Appeal from a Judgment of the Superior Court for Los Angeles County
Hon. Elizabeth A. White, Judge
[Case No. BC397600]

PETITION FOR REVIEW

Neil S. Lerner (SBN 134031)
Arthur A. Severance (SBN 246691)
SANDS LERNER
12400 Wilshire Blvd., Suite 1300
Los Angeles, CA 90603
Tel.: (310) 979-9144
Fax: (310) 979-9244
Email: nsl@sandslerner.com;
aas@sandslerner.com
Attorneys for Alfredo Barajas and Pac Anchor Transportation, Inc.

Service on the Office of the Attorney General and the District Attorney of the County of Los Angeles required by Bus. & Prof. Code § 17209

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SANDS LERNER
12400 Wilshire Blvd., Suite 1300
Los Angeles, CA 90603
Tel.: (310) 979-9144
Fax: (310) 979-9244
Email: nsl@sandslerner.com;
aas@sandslerner.com
Attorneys for Alfredo Barajas and Pac Anchor Transportation, Inc.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ISSUE PRESENTED

Can the State of California (the "State") enforce its employment laws against motor carriers by seeking an injunction under the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, to compel them to treat individuals who drive trucks for them as employees, rather than independent contractors, or is such an action unconstitutional because it is preempted by the Federal Aviation Administration Authorization Act ("FAAAA"), 49 U.S.C. § 14501(c)(1)? 1

WHY REVIEW SHOULD BE GRANTED 1

BACKGROUND 3

LEGAL DISCUSSION 5

I. Review Is Necessary Because the Issue Involves a Conflict Between an Express Federal Policy Against State Interference with the Forces of Competition Between Motor Carriers and a State Policy Favoring the Use of Employee Drivers Over Independent Contractors 5

II. Review Is Necessary to Resolve a Split Between the Divisions of the Second District of the Court of Appeal Regarding the Preemption of Claims Against Air and Motor Carriers Under the Unfair Competition Law 8

CONCLUSION 10

CERTIFICATE OF COMPLIANCE 11

DECLARATION OF SERVICE 12

EXHIBIT A: Opinion of the Court of Appeal

EXHIBIT B: Excerpt from H.R. Conf. Rep. 103-677 (1993), *reprinted in* 1994 U.S.C.C.A.N. 1715

TABLE OF AUTHORITIES

I. CASES

Am. Airlines, Inc., v. Wolens, 513 U.S. 219 (1995) 6-7

Am. Trucking Ass'ns v. City of Los Angeles, 559 F.3d 1046 (9th Cir. 2009) 7

Blackwell v. Skywest Airlines, Inc., No. 06cv0307 DMS (AJB), 2008 WL 5103195 (S.D. Cal. Dec. 3, 2008) 9-10

Californians for Safe & Competitive Dump Truck Transp. v. Mendonca, 152 F.3d 1184 (9th Cir. 1998), *cert. denied*, 526 U.S. 1060 (1999) 1, 4-5, 9-10

Fitz-Gerald v. Skywest Airlines, Inc., 155 Cal. App. 4th 411 (2007), *reh'g denied*, No. B187785, 2007 Cal. App. LEXIS 1719 (Oct. 16, 2007), *depublication denied*, No. S158366, 2008 Cal. LEXIS 1056 (Jan. 30, 2008) 1-5, 8-9

In re Korean Airlines, Co., No. 08-56385, 2011 WL 1458794 (9th Cir. Apr. 18, 2011) 9

Morales v. Trans World Airlines, Inc., 504 U.S. 374 (1992) 1, 4-5

Rowe v. N.H. Motor Transport Ass'n, 552 U.S. 364 (2008) 1-2, 5-6, 9

Tanen v. Southwest Airlines, Co., 187 Cal. App. 4th 1156 (2010) 9

II. STATUTES

1993 Cal. Stat. ch. 1226 § 4 (1993) ("AB 2015"), *codified at* Cal. Pub. Util. Code §§ 4120 *et seq.* (1994) 5-6

49 U.S.C. § 13102(14) 1

49 U.S.C. § 13501 1

49 U.S.C. § 13504 1

49 U.S.C. 14501(c) 1

Federal Aviation Administration Authorization Act ("FAAAA"), 49 U.S.C. § 14501(c)(1) ..... *passim*

Airline Deregulation Act ("ADA"), 49 U.S.C. 41713(b)(1) 2, 7-10

Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* 1-5, 7-10

Cal. Lab. Code § 226 3

Cal. Lab. Code § 1194 3

TABLE OF AUTHORITIES, CONTINUED

II. STATUTES, CONTINUED

Cal. Lab. Code § 2802 3
Cal. Lab. Code § 3700 3
Cal. R. Ct. § 8.504(b)(5) 4
Cal. R. Ct. § 8.504(e)(1)(A) 4
Cal. R. Ct. § 8.268(c) 5
Cal. R. Ct. § 805(e)(1)(C) 2
Cal. Unemp. Ins. Code § 976 3
Cal. Unemp. Ins. Code § 976.6 3
Cal. Unemp. Ins. Code § 984 3
Cal. Unemp. Ins. Code § 13020 3

III. REGULATIONS

I.W.C. Wage Order 9-2001 § 4 3
I.W.C. Wage Order 9-2001 § 7 3

IV. OTHER AUTHORITIES

A.B. 950, 2011-12 Leg., Reg. Sess. (Cal. 2011) 7
H.R. Conf. Rep. 103-677 (1993), *reprinted in* 1994 U.S.C.C.A.N. 1715 ..... 2, 5-6, 9

ISSUE PRESENTED

Can the State of California (the "State") enforce its employment laws against motor carriers by seeking an injunction under the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, to compel them to treat individuals who drive trucks for them as employees, rather than independent contractors, or is such an action unconstitutional because it is preempted by the Federal Aviation Administration Authorization Act ("FAAAA"), 49 U.S.C. § 14501(c)(1)?

WHY REVIEW SHOULD BE GRANTED

The Court of Appeal misapplied the tests for FAAAA preemption when it considered this issue. Pursuant to those tests, the State's action under the Unfair Competition Law against the defendant motor carriers is preempted if it either refers to or affects the carrier's prices, routes, or services. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384, 388-90 (1992); *Rowe v. N.H. Motor Transport Ass'n*, 552 U.S. 364, 370 (2008). Even if the effect is remote, the State's action is still preempted if it interferes with the forces of competition between motor carriers. *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1188 (9th Cir. 1998), *cert. denied*, 526 U.S. 1060 (1999). In addition, the Court of Appeal erred by rejecting the holding in *Fitz-Gerald v. Skywest Airlines, Inc.*, 155 Cal. App. 4th 411, 423 (2007), *reh'g denied*, No. B187785, 2007 Cal. App. LEXIS 1719 (Oct. 16, 2007), *depublication denied*, No. S158366, 2008 Cal. LEXIS 1056 (Jan. 30, 2008), that the preemptive language employed by the FAAAA preempts all actions under the Unfair Competition Law against motor carriers.

The Court should grant review because this issue does not solely affect the defendant motor carriers, it affects all motor carriers engaged in the interstate transportation of property ("motor carriers") in California. 49 U.S.C. §§ 13102(14) 13501, 13504, 14501(c). Moreover, because the

FAAAA employs the same preemptive language as the Airline Deregulation Act ("ADA"), 49 U.S.C. § 41713(b)(1); *Rowe*, 552 U.S. at 369, the issue also affects all air carriers operting in California.

This issue embodies and ongoing conflict between a State policy favoring the use of employee drivers over independent contractors and a Congressional policy against state interference with the forces of competition between motor carriers. Congress specifically adopted its policy and enacted the FAAAA to thwart an attempt by the State to impose its policy on motor carriers operating in California. H.R. Conf. Rep. 103-677 ("HRCR") at 87 (1993), *reprinted in* 1994 U.S.C.C.A.N. 1715 ("USCCAN") at 1759 (1 Appx. at 270).[1] Nevertheless, the State and its political subdivisions (collectively the "State") have repeatedly sought to substitute the State's policy for the Congressional policy ever since. Review is necessary to resolve this policy conflict conclusively and to give effect to the Congressional policy against state interference by protecting motor carriers operating in California from the State's continuing efforts to impose the use of employee drivers on them.

Furthermore, review is necessary to secure the uniform application of the law to air and motor carriers. Two published decisions by the Court of Appeal for the Second Appellate District explicitly disagree whether the preemption language employed by the FAAAA and the ADA preempts all actions under the Unfair Competition Law against air and motor carriers. In this matter, Division Five held that it does not. Opn. at 5. In *Fitz-Gerald v. Skywest Airlines, Inc.*, Division Six held that it does.

Because the decision by the Court of Appeal has created this split within the Court of Appeal, because this case involves an ongoing conflict between Congressional and State policies regarding motor carriers, and

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[1] The relevant excerpt is attached as Exhibit "B." Cal. R. Ct. § 805(e)(1)(C).

because the issue is of importance not only to the defendant motor carriers, but to all air and motor carriers operating in California, the Court should grant review of this issue of first impression.

BACKGROUND

The State filed a complaint against the defendant motor carriers alleging that they violated various California employment laws (Cal. Lab. Code §§ 226, 1194, 2802, 3700; Cal. Unemp. Ins. Code §§ 976, 976.6, 984, 13020; I.W.C. Wage Order 9-2001 §§ 4, 7) by treating drivers who drive trucks owned by one carrier and leased together with the drivers' services to the other as independent contractors, rather than employees. Opn. at 1; 1 Appx. at 10:20-11:9, 13:6-14:7.

The State did not assert a single cause of action under the state employment laws the carriers allegedly violated. Instead, it chose to assert a single cause of action under the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, based on the alleged violation of those laws. The State's action alleges that the carriers "illegally lowered their costs of doing business," unfairly and unlawfully profited, and obtained an unfair advantage over their competitors by misclassifying the drivers, and seeks restitution, a civil penalty, and an injunction prohibiting the carriers from continuing to treat the drivers as independent contractors. Opn. at 1; 1 Appx. at 9:26-10:11, 14:8-12, 14:27-15:10.

The defendant motor carriers filed a motion for judgment on the pleadings. Opn. at 2. The trial court granted the motion, holding that the FAAAA preempts the State's action for three reasons:

1) Pursuant to *Fitz-Gerald v. Skywest Airlines, Inc.*, 155 Cal. App. 4th 411, 423 (2007), *reh'g denied*, No. B187785, 2007 Cal. App. LEXIS 1719 (Oct. 16, 2007), *depublication denied*, No. S158366, 2008 Cal. LEXIS 1056 (Jan. 30, 2008), the FAAAA preempts all actions under the Unfair Competition Law against motor carriers;

2) Under the first part of effect test for preemption set forth in *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992), the State's action logically has a forbidden direct and significant effect on the defendant motor carriers' prices, routes, and services; and

3) Even if that effect is remote, under the second part of the effect test as set forth in *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1188 (9th Cir. 1998), *cert. denied*, 526 U.S. 1060 (1999), the State's action is nevertheless preempted because it impermissibly interferes with the forces of competition between motor carriers by erecting an entry control that discourages the participation of independent contractor drivers in the market. 2 Appx. at 429:5-432:15; *see* Opn. at 2.

The State appealed the judgment, and on May 18, 2011, the Court of Appeal reversed it.[2] Opn. at 6. In its Opinion, the court rejected the reasoning of *Fitz-Gerald* and held the FAAAA does not preempt actions against motor carriers under the Unfair Competition Law. Opn. at 5.

However, the court only applied the first part of the effect test set forth in *Morales* to the state employment laws that the defendant motor carriers allegedly violated. *Id.* at 5-6. The court implicitly found those laws to be generally applicable to all businesses, and therefore found that they only remotely affect the carriers' prices, routes, and services. *Id.* The court reasoned that, because the State's action under the Unfair Competition Law is based on the violation of laws which only remotely affect the carriers' prices, routes, and services, the State's action itself also only remotely affects them. *Id.* at 6. Therefore, the court held that the FAAAA does not preempt the State's action. *Id.*

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[2] The Opinion of the Court of Appeal is attached as Exhibit "A." Cal. R. Ct. §§ 8.504(b)(5), (e)(1)(A).

The defendant motor carriers filed a petition for rehearing in which they asked the court to apply the reference test for preemption set forth in *Morales*, to apply the first part of the effect test from *Morales* directly to the State's action under the Unfair Competition Law, not just to the state employment laws that the carriers allegedly violated, and to apply the second part of the effect test set forth in *Californians*. In addition, the carriers asked the court to reexamine its position regarding *Fitz-Gerald* in light of the policies behind the Unfair Competition Law and the FAAAA, as well as the case law interpreting those laws. The Court of Appeal denied the petition on June 17, 2011. Cal. R. Ct. § 8.268(c).

LEGAL DISCUSSION

I. REVIEW IS NECESSARY BECAUSE THE ISSUE INVOLVES A CONFLICT BETWEEN AN EXPRESS FEDERAL POLICY AGAINST STATE INTERFERENCE WITH THE FORCES OF COMPETITION BETWEEN MOTOR CARRIERS AND A STATE POLICY FAVORING THE USE OF EMPLOYEE DRIVERS OVER INDEPENDENT CONTRACTORS.

Congress deregulated the trucking industry in 1980. *Rowe v. N.H. Motor Transport Ass'n*, 552 U.S. 364, 367 (2008). Since that time, the State has repeatedly attempted impose a state policy favoring the use of employee drivers over independent contractors on motor carriers operating in California. To that end, in 1993 the State enacted Assembly Bill 2015 ("AB 2015"), 1993 Cal. Stat. ch. 1226 § 4 (1993), *codified at* Cal. Pub. Util. Code §§ 4120 *et seq.* (1994), a law that exempted intermodal air and motor carriers from State regulation but denied the exemption to carriers using a large proportion of independent contractor drivers. *See* H.R. Conf. Rep. 103-677 ("HRCR") at 87 (1993), *reprinted in* 1994 U.S.C.C.A.N. 1715 ("USCCAN") at 1759 (1 Appx. at 270).

In direct response, in 1994 Congress intervened by enacting the preemptive provision of the FAAAA to strike down AB 2015. *Id.* To end

the patchwork of regulation created by AB 2015 and other laws enacted by the states after federal regulation of the trucking industry ended, Congress prohibited the State, the other states, and their political subdivisions from "enact[ing] or enforc[ing] any law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier," with certain exceptions that are not applicable here. 49 U.S.C. § 14501(c)(1); HRCR at 87, *reprinted in* USCCAN at 1759 (1 Appx. at 270).

In its findings regarding the FAAAA, Congress recognized that to foster competition between motor carriers, it had to leave carriers to themselves and to prevent the states from substituting their own policies for the competitive market forces Congress sought to promote:

> [P]reemption legislation is in the public interest as well as necessary to facilitate interstate commerce. State economic regulation of motor carrier operation causes significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology and curtails the expansion of markets . . . . The sheer diversity of these regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business.

HRCR at 87, *reprinted in* USCCAN at 1759 (1 Appx. at 270); *Rowe*, 552 U.S. at 372; *Am. Airlines, Inc., v. Wolens*, 513 U.S. 219, 227-28 (1995).

Congress singled out AB 2015 for scorn, indicating that it specifically intended to preempt the states from acting to discourage the use of independent contractor drivers where the states determined them to be undesirable and to encourage the use of independent contractor drivers where competitive forces determined them to be profitable. Despite this clear Congressional policy against state interference with competition in the trucking industry in general and against state interference with the use of independent contractor drivers specifically, the State has continued to

attempt to impose its policy favoring the use of employee drivers over independent contractors on motor carriers operating in California.

In the most recent attempt, the State Assembly introduced a bill designating all individuals that drive trucks for motor carriers operating in California ports as employees. A.B. 950, 2011-12 Leg., Reg. Sess. (Cal. 2011). At the same time, the Port of Los Angeles has been seeking to impose mandatory concession agreements on motor carriers operating there that will require the carriers to transition from the use of independent contractor drivers to employee drivers. *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1049 (9th Cir. 2009).

The State's action under the Unfair Competition Law against the defendant motor carriers and similar actions against other motor carriers operating in the Ports of Los Angeles and Long Beach are merely a pretext for another attempt to impose the State's policy disfavoring independent contractor drivers on motor carriers. By seeking an injunction to force the defendant motor carriers to treat the drivers under the current arrangement as employees, the State is attempting to force the carriers to use employee drivers rather than independent contractors. These ongoing efforts by the State to impose the very same state policy on motor carriers that prompted Congress to enact the FAAAA pose a federalism problem that the Court should review.

The U.S. Supreme Court has already determined that causes of action under state consumer protection laws such as the Unfair Competition Law are the sort of state interference with the forces of competition that Congress intended to preempt in enacting the preemptive language of the FAAAA. In *American Airlines, Inc., v. Wolens*, 513 U.S. 219, 227 (1995), a case interpreting the identical preemptive language employed by the ADA, the Court found that consumer protection laws present the potential for states to regulate carrier business practices by imposing state policies on

them and therefore held that causes of action against carriers under such laws are subject to preemption. Thus, the State's action not only interferes with the forces of competition between motor carriers by seeking to impose the very California policy that Congress intended to thwart by enacting the FAAAA, it does so using a cause of action that the U.S. Supreme Court has already deemed to be a vehicle for such interference.

The Court should grant review to conclusively resolve this conflict between the express Congressional policy against state interference with the forces of competition in the trucking industry and the State policy favoring the use of employee drivers and to protect air and motor carriers from further attempts by the State to use the Unfair Competition Law to substitute its policies for the forces of competition in their industries.

II. REVIEW IS NECESSARY TO RESOLVE A SPLIT BETWEEN THE DIVISIONS OF THE SECOND DISTRICT OF THE COURT OF APPEAL REGARDING THE PREEMPTION OF CLAIMS AGAINST AIR AND MOTOR CARRIERS UNDER THE UNFAIR COMPETITION LAW.

Furthermore, the Court should grant review because the decision in this matter by Division Five of the Second Appellate District of the Court of Appeal explicitly disagrees with an earlier decision by Division Six regarding the preemption of actions against air and motor carriers under the Unfair Competition Law.

In *Fitz-Gerald v. Skywest Airlines, Inc.*, 155 Cal. App. 4th 411, 423 (2007), *reh'g denied*, No. B187785, 2007 Cal. App. LEXIS 1719 (Oct. 16, 2007), *depublication denied*, No. S158366, 2008 Cal. LEXIS 1056 (Jan. 30, 2008), Division Six held that the preemptive language of the ADA preempts all causes of action against air carriers under the Unfair Competition Law, including a cause of action based on the violation of California employment laws.

The decision by Division Six in *Fitz-Gerald* extends to motor carriers as well. When Congress enacted the preemptive provision of the FAAAA, it borrowed the provision's preemptive language from the comparable provision of the ADA. *Compare* 49 U.S.C. § 14501(c)(1), *with* § 41713(b)(1); *Rowe v. N.H. Motor Transport Ass'n*, 552 U.S. 364, 370 (2008). Congress specifically intended the FAAAA to have the same preemptive effect regarding state action against motor carriers that the ADA has regarding state action against air carriers. HRCR at 83-85, *reprinted in* USCCAN at 1755-57 (1 Appx. at 266-68); *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d at 1188 nn.4-5; *see Rowe*, 552 U.S. at 370. Therefore, case law interpreting the ADA applies to the FAAAA and affects both air carriers and motor carriers. Similarly, case law interpreting the FAAAA applies to both air and motor carriers. *See Tanen v. Southwest Airlines, Co.*, 187 Cal. App. 4th 1156, 1165-66 (2010); *In re Korean Airlines, Co.*, No. 08-56385, 2011 WL 1458794 at *8 (9th Cir. Apr. 18, 2011).

Thus, by holding in *Fitz-Gerald* that the ADA preempts actions under the Unfair Competition Law against air carriers, Division Six also implicitly held that the FAAAA preempts actions against motor carriers under the Unfair Competition Law. In this matter, Division Five expressly rejected that holding, stating it saw no reason for the FAAAA to preempt such actions against motor carriers. Opn. at 5. Because the decision by Division Five also extends to air carriers, Division Five has created a split between within the Second Appellate District of the Court of Appeal regarding whether actions against air carriers and motor carriers under the Unfair Competition Law are preempted.

Furthermore, Division Five has created a potential split between state and federal courts in California on this issue. In *Blackwell v. Skywest Airlines, Inc.*, No. 06cv0307 DMS (AJB), 2008 WL 5103195 at *20 (S.D.

Cal. Dec. 3, 2008), the U.S. District Court for the Southern District of California agreed with Division Six. Citing *Fitz-Gerald* with approval, the court found it was settled that the ADA preempts actions against air carriers under the Unfair Competition Law and held that such an action based on the violation of California employment laws was preempted. *Blackwell* indicates that federal courts confronting the preemption issue may favor the approach taken by Division Six in *Fitz-Gerald*. If they do, plaintiffs filing actions against air and motor carriers under the Unfair Competition Law could very well obtain different results depending on whether they file the actions in state or federal court. Review is necessary to ensure the uniform application of the law in California.

CONCLUSION

The Court should review the issue of whether the FAAAA preempts the State's cause of action against the defendant motor carriers under the Unfair Competition Law not only to correct the errors committed by the Court of Appeal, but also to resolve a disagreement between the divisions of the Second Appellate District, to answer a question that affects all air and motor carriers operating in California, and to block the State's continuing efforts to substitute its policy favoring the use of employee drivers for the Congressional policy against such state interference with the forces of competition in the trucking industry.

Dated: June 27, 2011

Respectfully submitted,

SANDS LERNER

Neil S. Lerner
Arthur A. Severance
Attorneys for Defendant-Respondents Alfredo Barajas and Pac Anchor Transportation, Inc.

CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Rule 8.504(d)(1) of the California Rules of Court, the attached PETITION FOR REVIEW uses 13 point Times New Roman font including footnotes and contains 3,014 words, which is less than the total number of words permitted by the Rules of Court. I rely on the word count of the computer program used to prepare this brief in making this certification.

Dated: June 27, 2011

Respectfully submitted,

SANDS LERNER

Neil S. Lerner
Arthur A. Severance
Attorneys for Defendant-Respondents Alfredo Barajas and Pac Anchor Transportation, Inc.

Filed 5/18/11

MAY 18 2011

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE ex rel. KAMALA D. HARRIS, as Attorney General, etc., Plaintiff and Appellant, v. PAC ANCHOR TRANSPORTATION, INC., et al., Defendants and Respondents.	B220966 (Los Angeles County Super. Ct. No. BC397600)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elizabeth A. White, Judge. Reversed.

Edmund G. Brown, Jr., and Kamala D. Harris, Attorneys General, Dane R. Gillette, Chief Assistant Attorney General, Mark J. Breckler, Senior Assistant Attorney General, Jon M. Ichinaga and Satoshi Yanai, Deputy Attorneys General, for Plaintiff and Appellant.

Sands Lerner, Neil S. Lerner and Arthur A. Severance for Defendants and Respondents.

Plaintiff and appellant State of California appeals from a judgment following an order granting judgment on the pleadings in favor of defendants and respondents Alfredo Barajas and Pac Anchor Transportation, Inc. The State contends the Federal Aviation Administration Authorization Act (FAAAA) (49 U.S.C. § 14501 et seq.) does not preempt this action under California's unfair competition law (UCL) (Bus. & Prof. Code, § 17200 et seq.) based on alleged violations of California labor and unemployment insurance laws. We agree the State's unfair competition action is not related to a price, route, or service of a motor carrier with respect to the transportation of property, and therefore, the action is not preempted by the FAAAA. We reverse.

FACTS

Pac Anchor is a trucking company in Long Beach, California. Barajas is an owner of Pac Anchor, where he works as a manager and truck dispatcher. Pac Anchor has contracts with shipping companies to transport shipping containers from the ports of Los Angeles and Long Beach to locations in Southern California, including warehouses and railroad freight depots.

Barajas owns 75 trucks. He recruits drivers, then leases his trucks and the drivers to Pac Anchor. Barajas and Pac Anchor classify the drivers as independent contractors. As a result, Barajas and Pac Anchor do not obtain workers' compensation insurance, withhold state disability insurance or income taxes, pay unemployment insurance or employment training fund taxes on behalf of the drivers, reimburse business expenses, insure payment of the state minimum wage, or provide itemized written statements of hours and pay to the drivers.

The drivers do not invest any capital, however, or own the trucks that they drive. They use trucks, tools, and equipment furnished by Barajas and Pac Anchor. The drivers are employed for extended periods of time, but can be discharged without cause. The drivers take all their instructions from Barajas and Pac Anchor. They are not skilled workers and do not have substantial control over operational details. The drivers do not

have other customers or their own businesses. The drivers do not have Department of Transportation operating authority or other necessary permits and/or licenses to independently engage in the transport of cargo. They are an integrated part of Barajas's and Pac Anchor's trucking business, because they perform the core activity of delivering cargo.

PROCEDURAL HISTORY

On September 5, 2008, the State filed a complaint against Barajas and Pac Anchor for violation of the UCL. The complaint alleged that Barajas and Pac Anchor misclassified drivers as independent contractors and, as a result, "illegally lowered their costs of doing business." Specifically, Barajas and Pac Anchor violated the UCL "by engaging in acts of unfair competition including, but not limited to, the following: [¶] a. Failing to pay unemployment insurance taxes as required by Unemployment Insurance Code [section] 976; [¶] b. Failing to pay Employment Training Fund taxes as required by Unemployment Insurance Code [section] 976.6; [¶] c. Failing to withhold State Disability Insurance taxes as required by Unemployment Insurance Code [section] 984; [¶] d. Failing to withhold State income taxes as required by Unemployment Insurance Code [section] 13020; [¶] e. Failing to provide workers' compensation as required by Labor Code [section] 3700; [¶] f. Failing to provide employees with itemized written statements as required by Labor Code [section] 226 and to maintain and provide employees with records required by [California Industrial Welfare Commission (IWC)] Wage Order [No.] 9, subsection 7; [¶] g. Failing to reimburse employees for business expenses and losses as required by Labor Code [section] 2802; [and] [¶] h. Failing to ensure payment at all times of California's minimum wage as required by Labor Code [section] 1194 and [IWC] Wage Order 9, subsection 4." As a result of these practices, Barajas and Pac Anchor "have obtained an unfair advantage over its competitors, deprived employees of benefits and protections to which they are entitled under California law, harmed their truck driver employees, harmed the general public, and

deprived the State . . . of payments for California state payroll taxes." The State sought restitution, civil penalties, and injunctive relief.

Barajas and Pac Anchor filed a motion for judgment on the pleadings on August 21, 2009. After a hearing on September 22, 2009, the trial court found the action was preempted by the FAAAA for three reasons. First, the court concluded that the holding of *Fitz-Gerald v. SkyWest, Inc.* (2007) 155 Cal.App.4th 411 (*Fitz-Gerald*) required finding all UCL causes of action against motor carriers preempted by the FAAAA. Second, the court found that requiring Barajas and Pac Anchor to treat its truck drivers as employees would increase the motor carrier's operational costs, and therefore, the action related to the motor carrier's prices, routes, and services. Third, the court concluded that the action threatened to interfere with the forces of competition by discouraging independent contractors from competing in the trucking market. The court entered an order granting judgment on the pleadings on October 13, 2009, and entered judgment in favor of Barajas and Pac Anchor on October 14, 2009. The State filed a timely notice of appeal.

DISCUSSION

Standard of Review

"A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. (Code Civ. Proc., § 438, subd. (c)(3)(B)(ii).) A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review. [Citations.] All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law; judicially noticeable matters may be considered. [Citations.]" (*Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672.)

Federal Preemption Principles

"The supremacy clause of the United States Constitution establishes a constitutional choice-of-law rule, makes federal law paramount, and vests Congress with the power to preempt state law. (U.S. Const., art. VI, cl. 2; *Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 516; *Jevne v. Superior Court* (2005) 35 Cal.4th 935, 949.) There are four species of federal preemption: express, conflict, obstacle, and field. [Citation.]" (*Viva! Internat. Voice For Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935, fns. omitted.)

"First, express preemption arises when Congress 'define[s] explicitly the extent to which its enactments pre-empt state law. [Citation.] Pre-emption fundamentally is a question of congressional intent, [citation], and when Congress has made its intent known through explicit statutory language, the courts' task is an easy one.' [Citations.] Second, conflict preemption will be found when simultaneous compliance with both state and federal directives is impossible. [Citations.] Third, obstacle preemption arises when '"under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."' [Citations.] Finally, field preemption, i.e., 'Congress' intent to pre-empt all state law in a particular area,' applies 'where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation.' [Citations.]" (*Viva! Internat. Voice For Animals v. Adidas Promotional Retail Operations, Inc.*, *supra*, 41 Cal.4th at p. 936.)

Express Preemption Provision of the FAAAA

The FAAAA preempts state and local regulation relating to the prices, routes or services of motor carriers with respect to the transportation of property. (49 U.S.C. § 14501(c).) Specifically, section 14501(c) of title 49 of the United States Code provides in pertinent part: "(1) . . . Except as provided in paragraphs (2) and (3), a State . . . 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 . . . with respect to the transportation of property."

As part of the deregulation of motor carriers, Congress believed it was necessary to eliminate non-uniform state regulations which had caused "'significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology, and curtail[ed] the expansion of markets.' H.R. Conf. Rep. No. 103-677, at 86-88 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1758-60." (*Californians for Safe & Competitive Dump Truck Transp. v. Mendonca* (9th Cir. 1998) 152 F.3d 1184, 1187 (*Mendonca*).)

The preemption provision of the FAAAA is identical to the preemption provision of the Airline Deregulation Act of 1978 (ADA) to "'even the playing field' between air carriers and motor carriers. [H.R. Conf. Rep. No. 103-677, *supra*,] at 85, 1994 U.S.C.C.A.N. at 1757, 1759." (*Mendonca, supra*, 152 F.3d at p. 1187.)

The preemption clauses of the FAAAA and the ADA are interpreted broadly and expansively. (*Mendonca, supra,* 152 F.3d at p. 1188, fn. 5.) "The phrase 'related to' in this general preemption provision is 'interpreted quite broadly.' [Citation.] Thus, '"[a] state or local regulation is related to the price, route, or service of a motor carrier if the regulation has more than an indirect, remote, or tenuous effect on the motor carrier's prices, routes, or services."' [Citations.]" (*CPF Agency Corp. v. Sevel's 24 Hour Towing Service* (2005) 132 Cal.App.4th 1034, 1044.)

The issue before us in this case is whether the State's unfair competition action relates to "a price, route, or service" provided by Barajas and Pac Anchor.

Relevant Cases Applying the Preemption Standard

Three relevant federal court cases have interpreted and applied the preemption provisions of the ADA and the FAAAA. In *Morales v. Trans World Airlines, Inc.* (1992) 504 U.S. 374, 383 (*Morales*), the United States Supreme Court considered whether enforcement of certain fare advertising guidelines through state consumer protection laws

was preempted by the ADA. The *Morales* court held that "[s]tate enforcement actions having a connection with, or reference to, airline 'rates, routes, or services' are pre-empted under [the ADA]." (*Id.* at p. 384.) The court found that the guidelines were indisputably related to fares. (*Id.* at pp. 387-388.) Therefore, the court held that the fare advertising guidelines were preempted by the ADA. (*Id.* at p. 391.)

The United States Supreme Court further developed the scope of the ADA preemption in *American Airlines, Inc. v. Wolens* (1995) 513 U.S. 219 (*Wolens*). The plaintiffs in *Wolens* had filed class action lawsuits for breach of contract and violation of state consumer protection and deceptive business practices laws, based on changes to American Airlines' frequent flyer program. (*Id.* at pp. 224-225.) "Plaintiffs' claims relate to 'rates,' *i.e.*, American's charges in the form of mileage credits for free tickets and upgrades, and to 'services,' *i.e.*, access to flights and class-of-serve upgrades unlimited by retrospectively applied capacity controls and blackout dates." (*Id.* at p. 226.) The *Wolens* court held that the plaintiffs' claims under the state consumer protection law amounted to enforcement of a law related to air carrier rates, routes, or services and, therefore, were preempted. (*Id.* at p. 228.) However, common-law remedies for breach of contract were not a requirement imposed under state law, and therefore, the plaintiffs' breach of contract claims based on the airline's voluntary contractual commitments were not preempted. (*Id.* at pp. 228-229.)

In *Mendonca, supra*, 152 F.3d at page 1189, the Ninth Circuit held that enforcement of California's Prevailing Wage Law (CPWL) (Lab. Code, §§ 1770-80) was not preempted by the FAAAA. CPWL requires contractors and subcontractors awarded public works contracts to pay workers the prevailing wages. (Lab. Code, § 1771.) A group of motor carriers argued that CPWL directly affected "prices, routes, or services," because rates were based on costs, performance factors, and conditions, including prevailing wage requirements. (*Mendonca, supra*, at p. 1189.) The appellate court concluded that although the wage law was "related to" the motor carrier's prices, routes, and services in a sense, the effect was "no more than indirect, remote, and tenuous."

(*Ibid.*) CPWL did not frustrate "the purpose of deregulation by *acutely* interfering with the forces of competition." (*Ibid.*)

Division Six of this appellate district similarly found in *Fitz-Gerald, supra,* 155 Cal.App.4th at page 423, that actions to enforce California's minimum wage laws and labor laws governing meal and rest breaks are not preempted by the ADA. Specifically, the *Fitz-Gerald* court concluded the plaintiffs' causes of action for unpaid minimum wages under Labor Code section 1194, unpaid meal and rest breaks, unpaid overtime, and waiting time penalties under Labor Code section 203 were not preempted by the ADA. (*Fitz-Gerald, supra,* at p. 415.) The *Fitz-Gerald* court found that although state minimum wage laws ultimately result in higher fares, fewer routes, and less service, the connection was too tenuous for preemption to apply. (*Id.* at p. 423, fn. 7.) "If the rule was otherwise, 'any string of contingencies is sufficient to establish a connection with price, route or service, [and] there will be no end to ADA preemption. [Citation.]' [Citation.]" (*Id.* at p. 423.)

The court in *Fitz-Gerald* also held, however, that the ADA bars causes of action under the UCL. (*Fitz-Gerald, supra,* 155 Cal.App.4th at p. 423.) We disagree with *Fitz-Gerald's* cursory citation to *Morales* and *Wolens* to support the conclusion that all state unfair business practices statutes are preempted by the ADA. Where a cause of action is based on allegations of unlawful violations of the State's labor and unemployment insurance laws, we see no reason to find preemption merely because the pleading raised these issues under the UCL, as opposed to separately stated causes of action. We respectfully disagree with *Fitz-Gerald's* contrary conclusion as to preemption of causes of action under the UCL.

The State's UCL Action

The State contends its action under the UCL is not preempted by the FAAAA, because it is not related to the price, route or service of any motor carrier. We agree.

The UCL defines "unfair competition" as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law (Bus. & Prof. Code, § 17500 et seq.)]." (Bus. & Prof. Code, § 17200.) "The UCL's purpose is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services. [Citation.]" (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949 (*Kasky*).) "'Because Business and Professions Code section 17200 is written in the disjunctive, it establishes three varieties of unfair competition—acts or practices which are *unlawful, or unfair, or fraudulent.*' [Citation.]" (*Shvarts v. Budget Group, Inc.* (2000) 81 Cal.App.4th 1153, 1157, emphasis added.)

"An 'unlawful' business practice or act within the meaning of the UCL 'is an act or practice, committed pursuant to business activity, that is at the same time *forbidden by law.* [Citation.]' [Citation.] The California Supreme Court has explained that '[b]y proscribing "any unlawful" business practice, "[Business and Professions Code] section 17200 'borrows' violations of other laws and treats them as unlawful practices" that the unfair competition law makes independently actionable. [Citation.]' [Citation.]" (*Bernardo v. Planned Parenthood Federation of America* (2004) 115 Cal.App.4th 322, 351-352.) "In addition, under [Business and Professions Code] section 17200, 'a practice may be deemed unfair even if not specifically proscribed by some other law.' [Citation.]" (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1143.)

The State's action against Barajas and Pac Anchor under the UCL is based on alleged violations of statutory obligations concerning employees. Specifically, the State alleges violations of certain laws governing minimum labor standards, including Labor Code section 1194 (requiring the payment of California's minimum wage), Labor Code section 226 (requiring issuance of itemized wage statements to employees), Labor Code section 2802 (requiring reimbursement of employee expenses), Labor Code section 3700 (requiring employers to secure workers' compensation insurance or receive certification to self-insure), and certain laws governing generally applicable state payroll tax requirements, including Unemployment Insurance Code section 976 (requiring

contributions to the State Unemployment Fund), Unemployment Insurance Code section 976.6 (requiring contributions to the State Employment Training Fund), Unemployment Insurance Code section 984 (requiring employee contributions to the State Disability Fund, which employers must withhold from employee wages under Unemployment Insurance Code section 986), and Unemployment Insurance Code section 13020 (requiring employers to withhold income taxes from employee wages).

"'States possess broad authority under their police powers to regulate the employment relationship to protect workers within the State. Child labor laws, minimum and other wage laws, laws affecting occupational health and safety . . . are only a few examples.' [Citation.] State laws requiring that employers contribute to unemployment and workmen's compensation funds, laws prescribing mandatory state holidays, and those dictating payment to employees for time spent at the polls or on jury duty all have withstood scrutiny. [Citation.]" (*Metropolitan Life Ins. Co. v. Massachusetts* (1985) 471 U.S. 724, 756.)

In this case, the State's action to enforce Barajas's and Pac Anchor's statutory obligations as an employer is not related to Pac Anchor's prices, routes, or services, even though it may remotely affect the prices, routes, or services that the motor carrier provides. Case law supports finding that the effect of California's minimum wage law (Lab. Code, § 1194) on a motor carrier's prices, routes, and services is too tenuous for preemption under the FAAAA. (See *Fitz-Gerald, supra,* 155 Cal.App.4th at p. 423 [connection of minimum wage law to higher fares, fewer routes, and less service is tenuous]; *Mendonca, supra,* 152 F.3d at p. 1189 [California's prevailing wage law applicable to public works contractors is not preempted by the FAAAA].) Other California labor and unemployment insurance provisions that Barajas and Pac Anchor allegedly violated have a similarly indirect and tenuous connection to Pac Anchor's prices, routes, and services. We hold that the State's UCL action based on Barajas's and Pac Anchor's alleged violations of generally applicable state laws governing an employer's relationship with employees is not an action related to the price, route, or service of a motor carrier and, therefore, not preempted by the FAAAA.

DISPOSITION

The judgment is reversed. Costs on appeal are awarded to appellant State of California.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.

H.R. CONF. REP. 103-677, H.R. Conf. Rep. No. 677, 103RD
Cong., 2ND Sess. 1994, 1994 U.S.C.C.A.N. 1715, 1994 WL 440339

***1 *1 P.L. 103–305, FEDERAL AVIATION ADMINISTRATION AUTHORIZATION ACT OF 1994

DATES OF CONSIDERATION AND PASSAGE

House: October 7, 13, 1993; August 8, 1994

Senate: June 9, 10, 14, 15, 16, August 8, 1994

Cong. Record Vol. 139 (1993)

Cong. Record Vol. 140 (1994)

House Report (Public Works and Transportation Committee) No. 103–240,
Sept. 14, 1993 (To accompany H.R. 2739)

Senate Report (Commerce, Science and Transportation Committee) No. 103–181,
Nov. 12, 1993 (To accompany S. 1491)

House Conference Report No. 103–677,
Aug. 5, 1994 (To accompany H.R. 2739)

HOUSE CONFERENCE REPORT NO. 103–677

August 5, 1994

[To accompany H.R. 2739]

**0 The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2739) to amend the Airport and Airway Improvement Act of 1982 to authorize appropriations for fiscal years 1994, 1995, and 1996, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.–This Act may be cited as the "Federal Aviation Administration Authorization Act of 1994".

(b) TABLE OF CONTENTS.–

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Amendment of title 49, United States Code.

TITLE I–AIRPORT AND AIRWAY IMPROVEMENT

Sec. 101. Airport improvement program.
Sec. 102. Airway improvement program.
Sec. 103. Operations of FAA.
Sec. 104. Innovative technology policy.
Sec. 105. Inclusion of explosive detection devices and
universal access systems.
Sec. 106. Submission and approval of project grant applications.
Sec. 107. Preventive maintenance.
Sec. 108. Repeal of general aviation airport project grant
application approval.
Sec. 109. Reports on impacts of new airport projects.
Sec. 110. Airport fees policy.
Sec. 111. Airport financial reports.
Sec. 112. Additional enforcement against illegal diversion

of airport revenue.
Sec. 113. Resolution of airport-air carrier disputes concerning airport fees.
Sec. 114. Terminal development.
Sec. 115. Letters of intent.
Sec. 116. Military airport program.
Sec. 117. Terminal development costs.
Sec. 118. Airport safety data collection.
Sec. 119. Soundproofing and acquisition of certain residential buildings and properties.
Sec. 120. Landing aids and navigational equipment inventory pool.
Sec. 121. Review of passenger facility charge program.

TITLE II–OTHER AVIATION PROGRAMS

Sec. 201. Term of office of FAA Administrator.
Sec. 202. Assistance to foreign aviation authorities.
Sec. 203. Use of passenger facility charges to meet Federal mandates.
Sec. 204. Passenger facility charges.
Sec. 205. Gambling on commercial aircraft.
Sec. 206. Slots for air carriers at airports.
Sec. 207. Air service termination notice.
Sec. 208. State taxation of air carrier employees.
Sec. 209. Foreign fee collection.

TITLE III–RESEARCH, ENGINEERING, AND DEVELOPMENT

Sec. 301. Short title.
Sec. 302. Aviation research authorization of appropriations.
Sec. 303. Joint aviation research and development program.
Sec. 304. Aircraft cabin air quality research program.
Sec. 305. Use of domestic products.
Sec. 306. Purchase of American made equipment and products.
Sec. 307. Cooperative agreements for research, engineering, and development.
Sec. 308. Research program on quiet aircraft technology.

TITLE IV–EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

Sec. 401. Expenditures from Airport and Airway Trust Fund.

TITLE V–MISCELLANEOUS PROVISIONS

Sec. 501. Rulemaking on random testing for prohibited drugs.
Sec. 502. Transportation security report.
Sec. 503. Repeal of annual report requirement.
Sec. 504. Advanced landing system.
Sec. 505. Asbestos removal and building demolition and removal, vacant air force station, Marin County, California.
Sec. 506. Land acquisition costs.
Sec. 507. Information on disinsection of aircraft.
Sec. 508. Contract tower assistance.
Sec. 509. Discontinuation of aviation safety journal.
Sec. 510. Monroe airport improvement.

Sec. 511. Soldotna airport improvement.
Sec. 512. Sturgis, Kentucky.
Sec. 513. Rolla airport improvement.
Sec. 514. Palm Springs, California.
Sec. 515. Real estate transfers in Alaska and weather observation services.
Sec. 516. Relocation of airway facilities.
Sec. 517. Safety at Aspen-Pitkin County Airport.
Sec. 518. Collective bargaining at Washington airports.
Sec. 519. Report on certain bilateral negotiations.
Sec. 520. Study on innovative financing.
Sec. 521. Safety of Juneau International Airport.
Sec. 522. Study on child restraint systems.
Sec. 523. Sense of Senate relating to DOT Inspector General.
Sec. 524. Sense of Senate on issuance of report on usage of radar at the Cheyenne, Wyoming, airport.
Sec. 525. North Korea.

TITLE VI–INTRASTATE TRANSPORTATION OF PROPERTY

Sec. 601.Preemption of intrastate transportation of property.

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) Administrator.–The term "Administrator" means the Administrator of the Federal Aviation Administration.

(2) Secretary.–The term "Secretary" means the Secretary of Transportation.

SEC. 3. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

TITLE I–AIRPORT AND AIRWAY IMPROVEMENT

SEC. 101. AIRPORT IMPROVEMENT PROGRAM.

(a) Authorization of Appropriations.–Section 48103 is amended–

(1) by striking "Not more" and all that follows through "1993," and inserting "The total amounts which shall be available after September 30, 1981, to the Secretary of Transportation"; and

(2) by inserting before the period at the end "shall be $17,583,500,000 for fiscal years ending before October 1, 1994, $19,744,500,000 for fiscal years ending before October 1, 1995, and $21,958,500,000 for fiscal years ending before October 1, 1996".

(b) Obligational Authority.–Section 47104(c) is amended by striking "After" and all that follows through "Secretary" and inserting "After September 30, 1996, the Secretary".

SEC. 102. AIRWAY IMPROVEMENT PROGRAM.

(a) Airway Facilities and Equipment.–Section 48101(a) is amended–

(1) in paragraph (1) by striking "for" and inserting "For";

(2) in paragraph (2)–

(A) by striking "for" and inserting "For"; and

The Conferees agree to accept the House language.

H.R. 2739 SECTION 307

Present law

No provision.

Senate bill

No provision.

House bill

This provision expresses the sense of the Congress that any recipient of a grant by this Act should purchase, when available and cost-effective, American made equipment and products.

Conference agreement

The Conferees agree to accept the House language.

TITLE IV. EXPENDITURES FROM AIRPORT AND AIRWAY TRUST FUND

Present law

The present Airport and Airway Trust Fund ("Trust Fund") (sec. 9502(d) of the Internal Revenue Code) authorizes amounts to be paid out of the Trust Fund for obligations incurred under the previous airport and airway authorization Acts from 1970 and 1944 (as those Acts were in effect on the date of enactment of the Airport Improvement Program Temporary Extension Act of 1994). Also, amounts are authorized to be paid out of the Trust Fund for obligations incurred under the Federal Aviation Act of 1958, as amended, which are attributable to planning, research and development, construction, or operations and maintenance of air traffic control, air navigation, communications, or supporting services for the Federal airway system. In addition, administrative expenses of the Department of Transportation attributable to Trust Fund-related activities described above are authorized from the Trust Fund.

Amounts in the Trust Fund are available (as provided by Appropriations Acts) for making expenditures before October 1, 1995.

House bill

The House bill extends the Trust Fund expenditure authority through September 30, 1996, and allows expenditures from the Trust Fund for obligations incurred under the House bill's airport and airway authorizing Act.

*82 **1754 Senate amendment

The Senate amendment allows expenditures from the Trust Fund for obligations incurred under the Senate amendment's airport and airway authorizing Act.

Conference agreement

***63 The conference agreement extends the Trust Fund expenditure authority through September 30, 1996, and allows expenditures from the Trust Fund for obligations incurred under the conference agreement's airport and airway authorizing Act. The conference agreement also makes technical, conforming changes to reflect the codification of the airport and airway Acts referred to in section 9502(d) of the Internal Revenue Code.

SECTION 601–Preemption of Intrastate Transportation of Property

House bill

No provision.

Senate amendment

The Senate provision preempted State and local law regarding trucking rates, routes and services of "intermodal all-cargo air carriers". Intermodal all-cargo air carriers included: air carriers, indirect air cargo air carriers, motor carriers that are affiliated with an air carrier through common controlling ownership and motor carriers which, as principal or agent, utilize or are affiliated through common controlling ownership with, companies that utilize air carriers at least 15,000 times annually.

Conference substitute

The provision preempts State regulation of prices, routes and services by air carriers and carriers affiliated with a direct air carrier through common controlling ownership in subsection (b) and all other motor carriers in subsection (c). The purpose of this demarkation is (1) to as completely as possible level the playing field between air carriers on the one hand and motor carriers on the other with respect to intrastate economic trucking regulation, and (2) to recognize that air carrier express package delivery companies may differ in corporate form, but operate in the same manner. Thus, this provision includes carriers affiliated with a direct air carrier through common controlling ownership in a new paragraph added to Section 41713(b) of Title 49, United States Code, the former section 105 of the Federal Aviation Act. Motor carriers are deregulated with a new subsection (h) added to section 11501 of Title 49 (the Interstate Commerce Act).

Subsection (a) enumerates Congress' findings and purposes in enacting Section 601.

Subsection (b) preempts State regulation of air carriers and carriers affiliated with direct air carriers through common controlling ownership by the addition of a new paragraph (4)(A) to Section 41713(b) of Title 49, United States Code, which is the recodified former Section 105(a) of the Federal Aviation Act. Paragraph (4)(A) preempts State regulation for this entire class of carriers in an **83* ***1755* identical manner to the preemption provision passed in 1978 contained in the former Section 105.

The central purpose of this legislation is to extend to all affected carriers, air carriers and carriers affiliated with direct air carriers through common controlling ownership on the one hand and motor carriers on the other, the identical intrastate preemption of prices, routes and services as that originally contained in Section 105(a), 49 U.S.C. App. 1305(a)(1), of the Federal Aviation Act.

****64* However, Congress has recently enacted a recodification of certain subtitles of Title 49. This recodification has changed the language used in the original section 105. For clarity and consistency, we will follow the recodification language in amendments to both the Interstate Commerce Act and Federal Aviation Act. In substituting the word "related" for the prior word "relating" and the word "price" for the word "rates" we are intending no substantive change to the previously enacted preemption provision in Section 105 of the Federal Aviation Act and do not intend to impair the applicability of prior judicial case law interpreting these provisions. In particular, the conferees do not intend to alter the broad preemption interpretation adopted by the United States Supreme Court in Morales v. TransWorld Airlines, Inc., 504 U.S. , 199 L.Ed. 157, 112 S.Ct 2031 (1992).

The conferees understand that in recodifying Title 49, Congress made no substantive change to the Statute. Section 1(a) of P.L. 103–272 states "[c]ertain general and permanent laws **** are revised, recodified and enacted **** without substantive change ****" Furthermore, page 5 of the Report accompanying P.L. 103–272 states the following:

"As in other codification bills enacting titles of the United States Code into positive law, this bill makes no substantive change in the law. It is sometimes feared that mere changes in terminology and style will result in changes in substance or impair the precedent value of earlier judicial decisions and other interpretations. This fear might have some weight if this were the usual kind of amendatory legislation when it can be inferred that a change of language is intended to change substance. In a codification law, however, the courts uphold the contrary presumption: the law is intended to remain substantively unchanged." The following authorities affirm this principle: (For a complete list of citations, see Report to Accompany H.R. 1758, P.L. 103–272 [Report number 103–180] at 5.)

Thus, the Conferees have used the term "price, route and service" rather than "rate, route and service" in both the Aviation subtitle and the Motor Carrier subtitle. The intention in using the identical term "price" in both areas is to create uniformity in

the preemptive language and to create consistency with the earlier preemption provision. The use of this term is not intended to alter any meaning or affect any judicial interpretation.

To ensure that no meaning is altered or changed by the recodification, the definition of "price" in subtitle VII that was created as part of the recodification of Title 49 has been amended to strike that definition's reference to air transportation. The conferees believe that the recodification's creation of a definition of "price" created a circumstance which would have defined the word in a man4>>nermanner inconsistent with its intended use and meaning in this section and therefore have made this conforming change. In doing so, the conferees intend no substantive change to existing law, just as the recodification itself is deemed to have made no substantive change in existing law. The substantive meaning and the continuity of case law continue uninterrupted and unaltered from the old section 105 of the Federal Aviation Act, through the recodified version, to the modifications made by this section.

***65** Paragraph (4)(B) emphasizes that State authority to regulate safety, financial responsibility relating to insurance, transportation of household goods, vehicle size and weight and hazardous materials routing of air carriers and carriers affiliated with a direct air carrier through common controlling ownership is unchanged, since State regulation in those areas is not a price, route or service and thus is unaffected. (This provision is identical to the new subsection 11501(h)(2)(A) discussed below.) This list is not intended to be all inclusive, but merely to specify some of the matters which are not "prices, rates or services" and which are therefore not preempted.

The conferees do not intend the regulatory authority which the States may continue to exercise (partially identified in section 41713(b) and under section 11501(h)) to be used as a guise for continued economic regulation as it relates to prices, routes or services. There has been concern raised that States, which by this provision are prohibited from regulating intrastate prices, routes and services, may instead attempt to regulate intrastate trucking markets through its unaffected authority to regulate matters such as safety, vehicle size and weight, insurance and self-insurance requirements, or hazardous materials routing matters. The conferees do not intend for States to attempt to de facto regulate prices, routes or services of intrastate trucking through the guise of some form of unaffected regulatory authority.

There has been further concern raised that new sections 41713(b)(4)(B) and 11501(h)(2)(A) may be construed as granting States additional authority to regulate in those enumerated areas rather than simply stressing that the preemption provisions do not apply to those areas. The conferees emphasize that nothing in these new subsections contains a new grant of Federal authority to a State to regulate commerce and nothing in these sections amends other Federal statutes that govern the ability of States to impose safety requirements, hazardous materials routing matters, truck size and weight restrictions or financial responsibility requirements relating to insurance or any other unenumerated authority not preempted by these sections.

For example, if a State exercises authority over the routing of hazardous materials shipments by motor carriers, it must exercise that authority consistent with Federal standards issued on routing pursuant to Federal law governing transportation of hazardous materials (49 U.S.C. Sections 5101–5127). The intention of the conferees is solely to identify certain areas that are not preempted by the preemption provision.

New paragraph (4)(C) of Section 41713(b) states that the preemption provision added to Section 41713(b) does not modify any earlier provisions of the current Section 41713(b) or the former Sec5>>tionSection 105 of the Federal Aviation Act, including that applicable to the State of Alaska.

Subsection (c) of Section 601 preempts State regulation of prices, routes and services of motor carriers by adding a new subsection (h) to section 11501 of Title 49, United States Code. The preemption provision, new subsection (h)(1), is identical to the preemption provision deregulating air carriers and carriers affiliated with a direct air carrier through common controlling ownership and is intended to function in the exact same manner with respect to its preemptive effects. The intention is to create a completely level playing field between air carriers and carriers affiliated with a direct air carrier through common controlling ownership on the one hand and motor carriers on the other.

***66** New subsection (h)(1) contains a parenthetical limitation which states that this section applies to motor carriers other than those carriers affiliated with a direct air carrier through common controlling ownership. This parenthetical is merely intended to ensure that no carrier affiliated with a direct air carrier through common controlling ownership would be covered by both preemption provisions.

Furthermore, neither preemption provision would preempt the ability of a State to issue a certificate or other documentation (in written or electronic form) demonstrating that the carrier complies with State requirements which are not preempted by these sections and nothing in this amendment is intended to change the application of State tax laws to motor carriers.

The conferees further clarify that the motor carrier preemption provision does not preempt State regulation of garbage and refuse collectors. The managers have been informed by the Department of Transportation that under ICC case law, garbage and refuse are not considered "property". Thus garbage collectors are not considered "motor carriers of property" and are thus unaffected by this provision.

The term motor carrier as used in new subsection (h) of section 11501 has a broad connotation. The term covers the transportation of property by motor carriers of passengers. Thus, when a motor carrier of passengers is transporting property in intrastate commerce, there is no jurisdiction by the State regulatory body over price, route or service for any of the property being transported. The latter is true even if the property is being transported in the same vehicle that moves passengers.

The term motor carrier covers contract carriers and common carriers of property. Also included in the term is a motor carrier that handles express shipments. The law also applies to private motor carriers, that is, carriers that are pursuing their own business interests or interests of any corporate affiliate.

New subsection (h)(2) emphasizes that State authority to regulate safety, financial fitness and insurance, transportation of household goods, vehicle size and weight and hazardous materials routing of motor carriers is unchanged since State regulation in those areas is not a price, route or service and thus is unaffected. This subsection is identical to section 41713(b)(4)(B), described above.

New subsection (h)(3) permits continued State regulation over four enumerated standard transportation practices in an optional **86* ***1758* manner. This section does not confer any new authority to a State, but merely confirms that these four areas are not preempted. These four areas are uniform cargo liability rules, uniform bills of lading or receipts, uniform cargo credit rules and antitrust immunity for interlining, classifications and mileage guides. This permitted State regulatory authority is limited in two respects. First, a State may only regulate in these four areas in a manner that is no more burdensome than a Federal regulation on the same subject matter. Second, none of these regulations shall apply to any carrier that does not wish to be subject to such regulations.

****67* The purpose of new subsection (h)(3) is to permit carriers that want to follow State standard transportation practices to be subject to State-wide regulatory schemes in these four areas only. Any carrier which so chooses does not have to elect to be subject to such regulation.

New subsection (h)(3) also contains a provision that permits carriers affiliated with a direct air carrier through common controlling ownership, which by the explicit terms of new subsection (h)(1) are not subject to the terms of that provision, to elect to be subject to State regulation in any of the four areas enumerated in new subsection (h)(3). This sentence was included to allow a carrier affiliated with a direct air carrier through common controlling ownership to be subject to State regulation in these four areas if it so chose.

Subsection (d) provides that all subsections of Section 601 will take effect on January 1, 1995, except that any regulation of motor carriers operating in the State of Hawaii preempted by subsection (c) of Section 601 shall not be affected for three years from the date of enactment. The conferees directed the difference in the effective date for the State of Hawaii at the request of the State. The State had requested the conferees to totally except Hawaii from the preemption provision based on Hawaii's unique geographic circumstance, as the only State that is non-contiguous to the mainland since the State is totally surrounded by water. Therefore, all regulation of motor carrier transportation in the State of Hawaii is regulated by the State of Hawaii. Though the conferees were not willing to except Hawaii from the preemption provisions, they were convinced that due to these special circumstances the State should have additional time before preemption goes into effect.

Background and statement of purpose

Currently, 41 jurisdictions regulate, in varying degrees, intrastate prices, routes and services of motor carriers. The jurisdictions which do not regulate are: Alaska, Arizona, Delaware, District of Columbia, Florida, Maine, Maryland, New Jersey, Vermont and Wisconsin.

Typical forms of regulation include entry controls, tariff filing and price regulation, and types of commodities carried. Not all 41 States regulate each of these aspects nor do they all regulate them in the same manner or to the same degree.

Entry controls at the State level vary from liberal to strict. Strict entry controls often serve to protect carriers, while restricting new applicants from directly competing for any given route and type of trucking business. About 26 States strictly regulate truck 87>>ingtrucking prices. Such regulation is usually designed to ensure not that prices are kept low, but that they are kept high enough to cover all costs and are not so low as to be "predatory". Price regulation also involves filing of tariffs and long

intervals for approval to change prices. A company which wants to change its prices often must go through a costly and lengthy hearing proceeding in each State in which it operates.

***68 The need for section 601 has arisen from this patchwork of regulation and in a June 25, 1991 9th Circuit Court of Appeals decision (Federal Express Corporation v. California Public Utilities Commission, 936 F.2d 1075 (9th Cir., 1991), cert. denied, 112 S.Ct. 2956 (1992)) in which Federal Express challenged California's authority to regulate the company's motor carrier operations. The court found that intrastate economic regulations for motor carriers did not apply to Federal Express because it was preempted by the Airline Deregulation Act of 1978, by virtue of the fact that it is an air carrier. Although several of its competitors conduct similar operations, they are not organized as air carriers. For example, United Parcel Service remained regulated, because it is organized as a "motor carrier", putting it at a competitive disadvantage in a number of States.

In light of the inequity created by the 9th Circuit Court Decision, California enacted legislation in October of 1993, which extended the exemption enjoyed by Federal Express as a result of its court victory to its competitors that are motor carriers affiliated with direct air carriers. The California legislation denied this exemption, however, to those using a large proportion of owner-operators instead of company employees, thereby denying the exemption to Roadway Package System, even though the Roadway holding company includes an air operation. Likewise, the Texas Attorney General has applied the 9th Circuit decision to Texas and broadened it to include other intermodal air ground carriers with similar operations. The Texas Railroad Commission has accepted the Attorney General decision. However, competitors whose operations are not integrated are still regulated. Likewise, Kentucky enacted legislation in May 1994 exempting from its regulation the carriage of packages weighing less than 150 pounds, by motor carriers affiliated with either direct or indirect air carriers.

Despite the movement toward deregulation by some individual states, the conferees believe preemption legislation is in the public interest as well as necessary to facilitate interstate commerce. State economic regulation of motor carrier operations causes significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology and curtails the expansion of markets. According to Department of Transportation estimates, preemption of State economic regulation could eventually yield $3–8 billion per year in savings. Other estimates put the savings as high as $5–12 billion. The sheer diversity of these regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business. In hearings held on this issue, numerous examples have been cited in which rates for shipments within a state exceed rates for comparable distances across state lines. In the small package express business, companies frequently ship goods across state lines and back into *88 **1760 the state of origin to avoid the higher rates for purely intrastate shipments. Lifting of these antiquated controls will permit our transportation companies to freely compete more efficiently and provide quality service to their customers. Service options will be dictated by the marketplace; and not by an artificial regulatory structure.

***69 The provision is supported by the Clinton Administration. Its statement of administration policy during floor consideration of S. 1491 reads: "The Administration particularly supports the Amendment's provision which addresses the problem of inconsistent regulation of intermodal all-cargo air carriers. Enactment of this provision would be an important step in resolving conflicting laws that interfere with efficient intermodal cargo movements."

After years of official policy against intrastate motor carrier deregulation, the American Trucking Associations issued a position on June 24, 1994 which stated that "ATA will no longer oppose Federal preemption of state regulation of motor carrier rates and entry based on economic factors," with some conditions that would allow regulatory protection to continue for non-economic factors, such as liability rules, antitrust immunity to publish documents, insurance, safety, leasing and cargo credit rules. The conferees have attempted to address these conditions in Section 11501 of title 49 as amended by this provision.

It is important to note that the Senate provision created some ambiguity as to which carriers would be able to avail themselves of the preemption. In the version agreed to by the conferees, it is clear that all air carriers and carriers affiliated with a direct air carrier through common controlling ownership, motor carriers and motor private carriers involved in the transportation of property are covered by the preemption. The conferees believed it was patently unfair to create a level playing field for most of the industry, while leaving an unfortunate few still bound by economic regulatory controls.

The conferees are well aware that in recent years there has been considerable litigation with respect to the status of certain carriers, specifically as to whether they are air carriers or are motor carriers, and whether they are covered by the Railway Labor Act or the National Labor Relations Act. The purpose of this section is to preempt economic regulation by the States, not to alter, determine or affect in any way whether any carrier is or should be considered either an air carrier or a motor carrier for any purpose other than this section, whether any carrier is or should be covered by one labor statute or another, or the status of any collective bargaining agreement.

During the hearing on preemption of State regulation held by the House Committee on Public Works and Transportation on July 20, 1994, concerns were raised regarding the devaluation of operating rights and its effect on motor carriers, as a result of preemption of State authority to regulate the price, route, or service for intrastate transportation. Some motor carriers have purchased or paid to acquire the authority to operate trucks in many States. These operating rights for many motor carriers, especially small carriers, are an important part of their net business assets. The conferees **89* ***1761* recognize that this will eliminate the asset value of the operating authority of those affected motor carriers.

****70* From the Committee on Public Works and Transportation, for consideration of titles I and II of the House bill, and the Senate amendment (except secs. 121, 206, 304, 415, 418 and title VI), and modifications committed to conference:
Norman Y. Mineta,
Nick Rahall,
James L. Oberstar,
Robert A. Borski,
Bob Clement,
Bud Shuster,
Bill Clinger,
Thomas E. Petri,

From the Committee on Banking, Finance and Urban Affairs, for consideration of title VI of the Senate amendment, and modifications committed to conference:
Henry Gonzalez,
Steve Neal,

From the Committee on Education and Labor, for consideration of sec. 418 of the Senate amendment, and modifications committed to conference:
William D. Ford,
Major R. Owens,
Howard "Buck" McKeon,

From the Committee on Education and Labor, for consideration of sec. 208 of the House bill, and modifications committed to conference:
William D. Ford,
Bill Clay,
Pat Williams,

From the Committee on Foreign Affairs, for consideration of sec. 415 of the Senate amendment, and modifications committed to conference:
Lee H. Hamilton,
Tom Lantos,
Gary L. Ackerman,
Howard L. Berman,
Eni Faleomavaega,
Benjamin A. Gilman,
Bill Goodling,
Jim Leach,

From the Committee on Science, Space, and Technology, for consideration of title III of the House bill, and secs. 206 and 304 of the Senate amendment, and modifications committed to conference:
George E. Brown, Jr.,
Tim Valentine,
Dan Glickman,
Pete Geren,
Jane Harman,
Robert S. Walker,
Tom Lewis,

Constance Morella,

**90 **1762* From the Committee on Ways and Means, for consideration of title IV of the House bill, and secs. 121 and 122 of the Senate amendment, and modifications committed to conference:

Sam Gibbons,
Dan Rostenkowski,
J. J. Pickle,
Pete Stark,
Bill Archer,
Phil Crane,
Managers on the Part of the House.
Ernest Hollings,
Wendell Ford,
James Exon,
John C. Danforth,
Larry Pressler,
Managers on the Part of the Senate.

End of Document

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Pac Anchor Transportation, Inc.**
Court of Appeal Case No.: **B220966**

I declare:

I am employed at the law firm Sands Lerner, the office of a member of the California State Bar at whose direction this service is made. I am over the age of 18 and not a party to this action.

On **June 27, 2011**, I served the attached **PETITION FOR REVIEW** by delivering copies thereof enclosed in sealed envelopes and addressed as follows to the common carrier Overnite Express, which promises overnight delivery by 11:00 a.m. on June 28, 2011, to the following recipients:

Kamala D. Harris, Esq.
Mark J. Breckler, Esq.
Jon M. Ichinaga, Esq.
Maurice R. Jourdane, Esq.
Satoshi Yanai, Esq.
Office of the Attorney General
300 S. Spring St., Ste. 1702
Los Angeles, CA 90013
Attorneys for Plaintiff-Appellant, People of the State of California

Clerk of the Court
Los Angeles County Superior Court
Central District
Stanley Mosk Courthouse
111 N. Hill Street
Los Angeles, CA 90012

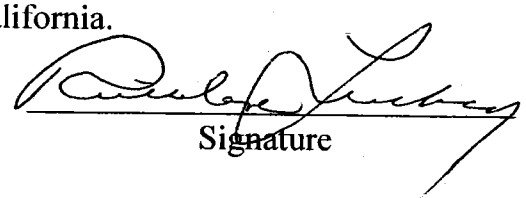
Clerk of the Court
Second District Court of Appeal,
Division Five
300 S. Spring Street
Second Floor, North Tower
Los Angeles, CA 90013

Appellate Coordinator
Office of the Attorney General
Consumer Law Section
300 S. Spring Street
Los Angeles, CA 90013-1230
[Bus. & Prof. Code § 17209]

Office of the District Attorney
County of Los Angeles
210 West Temple Street
Los Angeles, CA 90012
[Bus. & Prof. Code § 17209]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **June 27, 2011**, at Los Angeles, California.

Ruthelene Luckey
Declarant


Signature