No. 24-1238

In the

Supreme Court of the United States

SHAWN MONTGOMERY,
Petitioner,

v.

CARIBE TRANSPORT II, LLC, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING RESPONDENTS

Cory L. Andrews
Zac Morgan
Counsel of Record
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave. NW
Washington, DC 20036
(202) 588-0302
zmorgan@wlf.org

January 21, 2026

QUESTION PRESENTED

Whether 49 U.S.C. § 14501(c) preempts a state common-law claim against a broker for negligently selecting a motor carrier or driver.

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INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. It defends free enterprise, individual rights, limited government, and the rule of law. To that end, WLF often appears as amicus curiae in important preemption cases, urging the Court to ensure that federal law operates efficiently and uniformly—as Congress intended. *See Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299 (2019); *Altria Grp., Inc. v. Good*, 555 U.S. 70 (2008).

INTRODUCTION AND SUMMARY OF ARGUMENT

Writing to the people of New York ahead of that State's ratification convention, Alexander Hamilton declared that "the importance of the Union, in a commercial light, is one of those points about which there is least room to entertain a difference of opinion, and which has, in fact, commanded the most general assent of men who have any acquaintance with the subject." The Federalist, No. 11. But that necessary Union's potential for "unrestrained intercourse between the States . . . would be fettered, interrupted, and narrowed by" the "multiplicity of causes" then stressing the pre-constitutional Confederation arrangement. *Id.* The way out? Ratification of the Constitution so that "[a] unity of commercial, as well

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* No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission.

as political, interests," would follow "from a unity of government." *Id*.

The people of New York and the other States heeded Hamilton's words. And now those "Laws of the United States which shall be made," U.S. Const., art. VI, by a Congress vested with the power to "regulate Commerce . . . among the several States," U.S. Const., art. I, § 8, are "the Supreme Law of the Land" with binding force upon every state-court in the Republic. *Id*., art. VI. In passing the Federal Aviation Administration Authorization Act of 1994 (FAAAA) and its 1995 amendments, Congress invoked just those powers for Hamilton's reasons. 49 U.S.C. § 14501(c)(1).

Having witnessed decades of state interference with commercial trucking—and the success of the 1980 round of deregulation—the 103rd and 104th Congresses ousted every state and local law affecting brokers and motor carriers that "imposed an unreasonable burden on interstate commerce" and "impeded the free flow of trade." Pub. L. No. 103-305, § 601(a)(1) (Aug. 23, 1994); Pub. L. 104-88 (Dec. 29, 1995). In enacting the FAAAA, Congress desired "unity of government," The Federalist, No. 11, through federal preemption.

The plain text of the statute forecloses Montgomery's argument to the contrary. *Sackett v. EPA*, 598 U.S. 651, 684 (2023) ("Textualist arguments that ignore the operative text cannot be taken seriously"). Section 14501(c) clears away any 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 . . . or any motor private

carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). If nothing else, a broker's choice of carrier is obviously an action "with respect to the transportation of property." *Id.* And in no way is a broker's selection of a carrier licensed under the Federal Motor Carrier Safety Administration (FMCSA) a concern of "the safety regulatory authority of a State with respect to motor vehicles"—the only relevant non-preempted category of conduct. *Id.* § 14501(c)(2).

That is a sound and salutary policy choice. If Montgomery's understanding of the statute were true, it would invite a state-by-state crazy-quilt of liability jurisprudence. And that liability wouldn't come through democratically accountable legislatures—but via regulation-by-litigation, including the settlement of expensive tort claims that are never tried to verdict. Montgomery's contrary view, properly rejected by the Seventh Circuit, would create a backdoor licensing scheme for motor carriers beyond FMCSA registration. In such a world, brokers who wish to shield themselves from liability will not just need to know the laws of the forty-nine States covered by the Act's preemption provision, 49 U.S.C. § 14501(c)(4) (excluding Hawaii), but also must try to anticipate new and evolving trends from state-to-state. Resp. Br. 17.

That means state common law will "price out" certain carriers and routes in defiance of the Act's preemption provision. Routes will be re-routed where broker liability is less likely. Prices will rise as inefficiencies accumulate. And shipping services will

suffer from the combination of both. Those costs will impose friction on interstate commerce.

Such regulation-by-litigation should be avoided. If there are to be changes in the pool of interstate motor carriers and routes available to brokers and shippers, those changes should come from a democratically accountable body with a national remit. We have one of those—Congress, which happened to have already enacted § 14501(c).

The harms wrought by regulation-by-litigation won't end where our Nation's borders do. Trucking isn't a purely domestic enterprise, but a vital artery of our continent's share of international trade. Carriers and brokers authorized to operate in the United States aren't all U.S. persons—thousands of them are domiciled in Canada and Mexico. So as litigation winnows down which carriers can work where (notwithstanding that FMCSA registration is a license to carry throughout the Union), it will also affect how Canadian brokers pick Canadian carriers, Resp. Br. 22, and relationships between American and Mexican firms.

There's no valid reason to let this happen. Congress wasn't innovating in the FAAAA—"unity of government" on commercial questions has been vital and normal since the Founding. The Constitution is unbridled in its pursuit of frictionless interstate commerce and federal control of international trade. That's not just a Commerce Clause thing. Recall that the Constitution also "contemplates a system of maritime law 'coextensive with, and operating uniformly in, the whole country.'" *Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC*, 601 U.S. 65, 69

(2024) (quoting *Norfolk Southern R. Co. v. James N. Kirby, Pty Ltd.*, 543 U.S. 14, 28 (2004)). Why? To ensure "'the protection of maritime commerce.'" *Exxon Corp. v. Cent. Gulf Lines, Inc.*, 500 U.S. 603, 608 (1991) (quoting *Sisson v. Ruby*, 497 U.S. 358, 367 (1990)).

The Act's preemption mandate is just another link in the Nation's venerable cabining of state laws to preserve federal control of interstate and international trade. It should be vindicated by this Court, as it was below.

ARGUMENT

SECTION 14501(C) PRECLUDES "REGULATION-BY-LITIGATION" AND MAXIMIZES INTERSTATE AND INTERNATIONAL COMMERCE.

In the nineteenth century, the Mississippi River basin was "America's life-sustaining arterial system, the [N]ation's essential transportation spine," and its "indispensable conduit of commerce." Akhil Reed Amar, *Born Equal: America's Constitutional Conversations 1840-1920* 210 (Kindle Ed. 2025). Since the mid-twentieth century, America's interstate highway system has taken on that essential role.

Commercial motor carriers traversing the Nation's highways transport trillions of dollars' worth of goods across state lines and continental borders. To take advantage of the wealth-maximizing capacity of this modern "arterial system," Congress smoothed out the law to ensure such commerce could travel with minimal legal encumbrance. 49 U.S.C. § 14501(c).

Upon signing the Act in 1994, President Clinton celebrated its "design[] to remove conflicting State laws, unrelated to safety, that impede efficient intermodal freight transportation" by "preempt[ing] . . . controls on who can enter the trucking industry within a State, what they can carry[,] and where they can carry it." Statement of President Clinton on Signing the Federal Aviation Administration Authorization Act of 1994 (Aug. 23, 1994), https://perma.cc/7RR3-HS5K. (In 1995, Congress expanded this promise by explicitly extending the Act's preemptive effect to brokers.) Yet adopting Montgomery's interpretation of the FAAAA would strike against Congress's design, allowing the common-law caselaw of the several States to control "who can enter the trucking industry within a State." *Id.*

Thanks to § 14501(c), brokers facilitate intracontinental shipping by matching willing shippers with willing carriers. *Aspen Am. Ins. Co. v. Landstar Ranger, Inc.*, 65 F.4th 1261, 1268 (11th Cir. 2023) ("[T]he broker has but a single job—to select a reputable carrier for the transportation of the shipment") (internal quotation marks and citation omitted). "Federal registration signals to the industry that the registered carrier is 'open' for interstate business." Resp. Br. 19. This system makes a broker's work easier by providing a legal pool of carrying companies for brokers to choose from. And federal preemption ensures that the States can't fiddle with it. But if the Act doesn't preempt the broker's "price, route, or service" choice of a carrier for "the transportation of property," 49 U.S.C. § 14501(c)(1), that certainty crumbles, leaving brokers "subject . . .

to substantive duties of care defined by the whims of judges or juries." Resp. Br. 17.

Consider just one major coast-to-coast trucking route, running along I-80. Without concrete federal preemption to simplify its task, a broker booking a carrier to take a shipper's goods from New Jersey to California will have to consider not just whether a carrier is licensed by FMCSA and has a promising work history or price—but the common law of eleven different States. That "would fundamentally reshape how brokers operate." Resp. Br. 17.

If the shipper wants its goods delivered by a single carrier, brokers will be incentivized to hire long-haul carriers with lengthy track records of safety, dramatically raising the barriers to entry for new trucking concerns seeking to break into the federal motor carrier market on price. *Cf.* Statement of President Clinton ("I fully expect that this legislation will have effects similar to those of the 1980 deregulation law. New carriers will be able to enter the trucking industry, particularly women-and minority-owned carriers who may have been 'frozen out' in the past by strict entry controls"). Or perhaps brokers will encourage carriers to route around certain States to minimize liability risk—assuming that it's even possible to confidently predict how liability might shift from jurisdiction to jurisdiction—lengthening shipping times and driving up costs for consumers.

In short, as brokers become more selective in choosing motor carriers—based not on federal law, prior history, or price, but on fear of lawsuits—state common law will silently pile on additional

requirements about which carriers may operate and where. That strikes against the Act's promise of a wide-open, national standard for motor carriers. Pub. L. No. 103-305, § 601(a)(1).

Such backdoor regulation-by-litigation of brokers and carriers has clear downsides. There are issues of democratic accountability. Congress has set the standard for motor carrier fitness—and Americans can always petition that body for change or vote in a new Congress that will reform the rules. If Montgomery is right, much of that power will now be concentrated in the plaintiffs' bar as tort litigation slowly but surely shapes which carriers get to operate in which states. Worse yet, many of those trend-setting cases will settle without even the modest popular input of a jury verdict. Nor will those settlements come with published opinions making it plain and pellucid what the law is going forward.

As former Labor Secretary Robert Reich once noted, this "novel means of legislating—within settlement negotiations of large civil lawsuits" is an "end run[] around the democratic process." Robert Reich, *Don't Democrats Believe in Democracy?*, Wall St. J. (Jan. 12, 2000). And Reich was complaining about suits "initiated by the executive branch"—which at least is controlled by a nationally elected President. *Id*. His critique carries far more weight in the future that Montgomery seeks, one where law-shaping suits are brought by unelected attorneys zealously representing a client.

Worse yet, these lawsuits would resound extraterritorially—trucking isn't just an interstate enterprise, it's an international one. Resp. Br. 21–22.

Canada and Mexico are two of the United States's top-three trading partners. Office of the U.S. Trade Rep., "Canada," https://perma.cc/N6BJ-L7VV ("U.S. total goods trade with Canada" totaled "an estimated $761.8 billion in 2024"); Office of the U.S. Trade Rep., "Mexico," https://perma.cc/5KGX-APBL ("U.S. total goods trade with Mexico" totaled "an estimated $839.6 billion in 2024"). And so, unsurprisingly, Canadian and Mexican firms have acquired FMCSA operating authority to act as brokers and carriers in the United States. A patchwork quilt of broker liability will affect them, too.

Take the hundreds of Ontarian brokers with operating authority to facilitate the transport of property. FMCSA, *Analysis & Information, Custom Reports: Operating Authority Data* (accessed Jan. 20, 2026), https://ai.fmcsa.dot.gov/RegistrationStatistics/CustomReports. If Montgomery is right, they must not just be savvy to Canadian law and the federal motor carrier rules, but they too must stay abreast—and anticipate—the tort law of forty-nine different States, lest they risk getting haled into an American court for a common-law claim. 49 U.S.C. § 14501(c)(4) (exempting Hawaii). And, of course, the same downstream effects will silently modify which international motor carriers can operate in the United States. A U.S.-based broker—faced with rising liability concerns—will end up silently imposing the tort law of, say, Arizona or Colorado (or both!), on its choice of a Mexican-domiciled carrier.

The streamlined, one-stop-shop FMCSA registration regime for interstate brokers and carriers—backstopped by § 14501(c)—avoids those pitfalls and provides a sturdy foundation of business

certainty. Brokers and carriers, like all profit-seeking firms, "crave certainty as much as almost anything: certainty is what allows them to make long-term plans and long-term investments." Alan Greenspan & Adrian Wooldridge, *Capitalism in America: A History* 258 (2018). This case offers no legitimate legal reason to mess with it.

We should recall that the Framers designed the Constitution to "enable[] investors and commercial enterprises to cross state lines with confidence that their legal disputes would be fairly adjudicated in new markets." Charles J. Cooper and Howard C. Nielson, Jr., *Complete Diversity and the Closing of the Federal Courts*, 37 Harv. J.L. & Pub. Pol'y 295, 304 (2014). The Constitution's text nearly always bends toward uniformity of commercial jurisprudence, not its fragmentation. *Cf. Japan Line, Ltd. v. Los Angeles Cnty.*, 441 U.S. 434, 448 (1979) ("In international relations and with respect to foreign intercourse and trade the people of the United States act through a single government") (internal quotation marks and citation omitted); *Gibbons v. Ogden*, 9 Wheat. 1, 75 (1824) (Commerce Clause vests Congress with "the power to regulate; that is, to prescribe the rule by which commerce is to be governed").

As just one example, consider the Constitution's deprivation of any state-court right "to create and apply maritime law." *Great Lakes Ins.*, 601 U.S. at 69. Why adopt "unity of government" on this point? The Federalist, No. 11. To "promote[e] 'the great interests of navigation and commerce,'" *Great Lakes Ins.*, 601 U.S. at 69 (quoting 3 J. Story, *Commentaries on the Constitution of the United States* 533 (1st ed. 1833)), because the Framers knew a state-

by-state crazy-quilt of maritime shipping laws would "fetter[], interrupt[], and narrow[]," The Federalist, No. 11, the Nation's capacity to build bustling markets and generate wealth.

The Commerce and Supremacy Clauses allow Congress to take that insight into other commercial avenues as our democratically elected representatives see fit. In § 14501(c), Congress explicitly did so to shield brokers from liability for state common-law claims, very much including the negligent choice of a motor carrier or driver.

CONCLUSION

Adopting Montgomery's view of § 14501(c) would needlessly invite litigation-by-regulation—not just of Americans, but foreign concerns as well. There's no need to court such chaos. The Court should affirm.

Respectfully submitted,

Cory L. Andrews
Zac Morgan
Counsel of Record
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave. NW
Washington, DC 20036
(202) 588-0302
zmorgan@wlf.org

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