

IN THE
Supreme Court of the United States

TOTAL QUALITY LOGISTICS, LLC,
Petitioner,

v.
ROBERT COX,
Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit**

**BRIEF OF THE CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA AND THE
NATIONAL RETAIL FEDERATION AS *AMICI
CURIAE* IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICI CURIAE*¹

The Chamber of Commerce of the United States of America (the “Chamber”) and the National Retail Federation (“NRF”) represent a range of companies that rely on commercial trucks to transport goods across the country. This includes raw products to be manufactured into final products that are then shipped on to retailers and ultimately consumers. The members of these associations often rely on freight brokers to arrange for that transportation. *Amici* are concerned that the deepening split over the imposition of tort liability on those brokers

¹ No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All parties were timely notified of the intent to file this brief.

would increase prices for businesses and consumers but have little to no benefit to the safety of America’s roads. The Sixth Circuit has joined the Ninth Circuit, and split with the Seventh and Eleventh Circuits, complicating the inherently interstate shipment of goods. Brokers may enjoy the certainty of a federal standard of transportation regulation when goods are traveling through the Seventh or Eleventh Circuits but will be subject to a patchwork of state law when goods are traveling through the Sixth or Ninth Circuits.

The Chamber is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members before Congress, the Executive Branch, and the courts.

NRF is the world’s largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and internet retailers from the United States and more than 45 countries. Retail is the largest private-sector employer in the United States, supporting more than one in four U.S. jobs—approximately 55 million American workers—and contributing \$5.3 trillion to the annual GDP.

Both *amici* frequently submit *amicus* briefs in courts across the country to help courts understand issues of importance to their members.

SUMMARY OF ARGUMENT

Although not apparent from its name, the Federal Aviation Administration Authorization Act (“FAAAA”) contains important provisions that regulate shipping by commercial trucks as well as the brokerage services

necessary to facilitate that shipping. To that end, the FAAAA preempts certain state laws, as they apply to brokers, but preserves “the safety regulatory authority of a State with respect to motor vehicles.” 49 U.S.C. § 14501(c)(2)(A). While this Court has affirmed that the FAAAA does not preempt a negligence suit brought against a trucking company, the circuits are evenly divided over whether the FAAAA’s so-called “safety exemption” allows negligence suits against a broker.

Petitioner has explained why negligence actions against brokers do not fit within the safety exemption and outlined the harm to brokers that will flow from the decision below. But the harms go beyond just brokers. By increasing liability risk from inconsistent state common law tort claims against brokers—claims that brokers have almost no ability to manage or guard against—the deepening circuit split threatens a huge swath of the nation’s economy with negligible benefit to public safety.

Shipping goods by truck is essential to manufacturers, retailers, and consumers. Most freight in the U.S. is carried by truck on some or all of its journey, and trucking is particularly important in the states of the Sixth Circuit, from which this decision arises. Brokers play a key role in trucking, by connecting a shipper (the entity that has goods to transport) with a motor carrier that wants to transport those goods. ArcBest, *Freight Brokers: Connecting Shippers and Carriers* (June 1, 2023).² Thus, brokers serve a critical function in the economy by finding the most efficient way to transport goods across the country.

Brokers develop networks of motor carriers ready to transport the goods that shippers need to move. *Ibid.* Those motor carriers—the entities that are directly

² <https://arcb.com/blog/freight-brokers-connecting-shippers-and-carriers>

responsible for safety on the roads—are extensively regulated through a matrix of federal and state laws, which ensures the safety of the nation’s roadways. Adding in tort liability against brokers, contrary to principles of preemption and regulatory structure, would upset the balance that Congress struck in the FAAAA and other laws.

If brokers were meant to be subject to tort liability for negligently selecting a carrier, then one would assume that brokers must have a way to evaluate the relative safety of carriers. But there is no simple, reliable way for brokers to determine whether a particular motor carrier presents safety concerns. Although the Federal Motor Carrier Safety Administration (“FMCSA”) has tried to create a database with safety information about carriers, it is an imperfect law-enforcement tool that does not help brokers accurately assess carriers. Thus, imposing negligence liability on brokers would not make the roads safer.

Imposing such liability would also conflict with statutory commands. Congress entrusted the task of overseeing carrier safety to the Department of Transportation and the FMCSA. Those agencies have directly addressed that subject through safety regulations and insurance requirements to protect against injuries caused by motor carriers and drivers.

Saddled with the risk of tort liability for the actions of carriers and drivers, brokers are likely to stop using smaller carriers or new entrants that may lack a long history of safety. This will restrict an already constrained source of trucks, drive up prices, and slow delivery. Those downstream effects are particularly troublesome given modern supply chains’ reliance on just-in-time delivery with low inventories. Consumers expect rapid shipping, and many retailers rely on “drop-shipping” to supply goods without maintaining inventories of their own.

The Sixth Circuit and Ninth Circuits' position conflicts with a plain reading of the FAAAA's preemption and state safety provisions, as interpreted by this Court in several prior decisions. If not corrected, the deepening circuit split will inflict negative repercussions on the economy and on consumers who rely on goods to be shipped not just to stores, but directly to their homes. The Court should grant the Petition and safeguard brokers' ability to connect shippers and carriers without facing the threat of tort liability.

ARGUMENT

The decision below joins the Ninth Circuit in impermissibly expanding the plain text of the FAAAA by holding that a "deep pocket" tort theory is in fact a safety regulation. This deepening circuit split will have far-reaching effects on the transportation of goods across the country and therefore on the overall economy. The decision will harm manufacturers who rely on truck transportation for raw materials; retailers who rely on it to obtain goods or to drop-ship them directly to their customers; and ultimately, consumers who will pay more for transportation or for the goods themselves.

For all these costs, there is negligible benefit in return. An extensive federal-state partnership already exists to directly regulate carriers. Brokers themselves are not well situated to make the type of safety determinations required by the Sixth Circuit's holding, as evidenced by the findings of regulators, legislators, and even the National Academy of Sciences. Without a reliable way to make safety determinations, or even a standard against which to make them, the Sixth and Ninth Circuits have imposed a mismatched system of liability in which trucking companies may understand and manage their risk, but brokers may not.

This case presents a recurring question of great legal, practical, and economic importance that has not been, but should be, resolved by the Court.

I. FREIGHT BROKERS ARE CRITICAL TO TRUCKING OPERATIONS AND TO THE ECONOMY

A. Brokers like Total Quality Logistics facilitate the transportation of goods by truck over both short and long distances. Trucking is the dominant mode of freight transportation in the U.S. Measured by weight, trucks transport 72.6% of the country's freight. Am. Trucking Ass'n, *Economics and Industry Data*.³ In 2022, trucks moved 11.4 billion tons of freight at a cost of over \$940 billion. Am. Trucking Ass'n, *Truck Freight and Revenues Rise in 2022, According to Report* (July 19, 2023).⁴ This accounted for 80.7% of the nation's freight bill. *Ibid.* Truck shipments include both short-haul deliveries (within a 150-mile radius) and long-haul or over-the-road trucking (usually more than 250 miles). Chron Contributor, *Short Haul vs. Long Haul Trucking*, Chron.⁵

More than 577,000 U.S. motor carriers own or lease at least one tractor. *Economics and Industry Data*, supra n.3. Those carriers range from large fleets to small businesses to single-truck owner-operators. In fact, 95.5% of carriers operate 10 or fewer trucks, and 99.6% operate 100 or fewer trucks. *Ibid.* These carriers play a critical role at every stage of the supply chain. They bring raw materials to manufacturers. They move finished goods to warehouses and retailers. And they deliver goods to consumers. See Stan Mack, *The Importance of the Trucking Industry*,

³ <https://www.trucking.org/economics-and-industry-data>

⁴ <https://www.trucking.org/news-insights/truck-freight-tonnage-and-revenues-rise-2022-according-report>

⁵ <https://work.chron.com/short-haul-vs-long-haul-trucking-22928.html>

Chron.⁶ Even if other modes of transportation move an item—a train, plane, or ship—a truck will likely also be involved on one end or the other. *Ibid.*; see also Am. Trucking Ass’n, *When Trucks Stop, America Stops* 3–4 (2015).⁷

Although many smaller goods are delivered to consumers by dedicated delivery services like FedEx, UPS, DHL, or the United States Postal Service, larger items are frequently delivered by other trucking companies. John D. Schulz, *Transportation Trends and Best Practices: The Battle for the Last Mile*, Logistics Mgmt. (May 2, 2017).⁸ Retailers often use a drop-shipping model, which depends on an efficient freight network. In this model, retailers—either online or in person—do not stock inventory. Rather, customers view the product online or as a display model in a store. When they make a purchase, the retailer transmits the order to a third party—usually a wholesaler or manufacturer. The product is then shipped directly to the customer (sometimes immediately after it is manufactured, other times from inventory). See Am. Transp. Rsch. Inst., *E-Commerce Impacts on the Trucking Industry* 19–20 (Feb. 2019).⁹

B. Given the large number of trucking carriers, many shippers engage freight brokers to help them identify carriers that will be able to transport their goods efficiently and at a reasonable price. Freight brokers essentially function as “matchmakers,” connecting shippers with willing and able carriers in their networks based upon the

⁶ <https://smallbusiness.chron.com/importance-trucking-industry-71922.html>

⁷ <https://www.trucking.org/sites/default/files/2019-12/When%20Trucks%20Stop%20America%20Stops.pdf>

⁸ https://www.logisticsmgmt.com/article/transportation_trends_and_best_practices_the_battle_for_the_last_mile

⁹ Available for download at: <https://truckingresearch.org/2019/02/e-commerce-impacts-on-the-trucking-industry/>

carriers' schedules, routes, qualifications, and prices. *Freight Brokers: Connecting Shippers and Carriers*, supra n. 2.

Once the freight broker identifies an appropriate carrier willing to carry the load for an agreed rate, the broker typically maintains communication with the carrier regarding shipment logistics from pick-up to delivery. However, brokers are not privy to specific details of the motor carriers' operations (*e.g.*, specific drivers assigned or other related employment information). By leveraging freight brokers' expertise and experience with trucking carriers, manufacturers can reduce the overhead costs associated with identifying and contracting with carriers to transport their products. Those reduced overhead expenses are passed on to the American consumer in the form of lower prices.

Given the central role that shipping by truck plays in the U.S. economy and the essential function that brokers perform in that system, any question about brokers' potential tort liability will have a multiplier effect on manufacturers, retailers, and consumers.

II. EXISTING FEDERAL AND STATE REGULATION OF CARRIERS—NOT TORT LIABILITY FOR BROKERS SELECTING CARRIERS—REPRESENTS THE ONLY LEGAL AND FEASIBLE WAY TO PROTECT THE NATION'S ROADWAYS

While brokers are an essential part of the truck shipping industry, they do not physically transport goods. They do not employ the drivers, own the trucks, or pay for the fuel. That is done by the carriers and the operators. Fortunately, there are extensive federal and state regulatory regimes that protect the safety of the roads. Respondent warns that the absence of tort liability for brokers selecting carriers would endanger roadway safety. Br. in Opp. 14-16. But that is not so. The

administrative entities that oversee these federal and state regimes are far better equipped to regulate the safety of motor carrier operations than the private plaintiffs and lay juries that the decision below would task with evaluating a broker's decision to select a particular carrier for a load.

Although brokers have extensive information about prices, routes, and locations of truck resources and loads, they do not have access to specific information about the comparative safety of the carriers and drivers with which they work. Absent unusual circumstances, brokers have little or no ability to meaningfully improve the overall safety of the roads by selecting one trucking company over another. Imposing tort liability on brokers for their selection of a carrier is therefore unnecessary, unproductive, and ultimately unfair.

A. Federal and state law work together to protect the nation's roadways

The FAAAA is sometimes said to have “deregulated” the trucking industry. But although the FAAAA certainly steers clear of governmental rate setting, it did not diminish the extensive federal safety laws that govern trucking. See Pet. 6-7. The FAAAA also preserved state safety regulations. In sum, Congress crafted a balanced regime in which the federal and state governments work in partnership to ensure that unsafe drivers and carriers are identified and removed from the road. Given the robust safety system that already governs trucking, there is little to be gained by imposing tort liability on brokers for trucking accidents.

At the federal level, the Federal Motor Carrier Safety Administration (“FMCSA”), a component of the U.S. Department of Transportation, possesses primary authority to promulgate regulations governing the operation of motor carriers. See 49 C.F.R. § 1.87. The Federal Motor

Carrier Safety Regulations (“FMCSR”) span over 700 pages in the Code of Federal Regulations. 49 C.F.R. parts 300–399. These rules govern everything from hours of service for drivers, 49 C.F.R. part 395, to requirements for headlights, *id.* § 393.24, to brake performance, *id.* § 393.52, to window construction, *id.* § 393.60.

While these rules apply to interstate operations, each state must adopt the FMCSRs into its own laws for intra-state operations, meaning a violation of the federal standard is also a violation of a state standard. *Id.* §§ 350.105, 350.303; see also 49 U.S.C. § 31102; 49 C.F.R. § 350.201. Thus, a truck and its driver traveling from Kentucky to Ohio will be governed by a uniform set of standards. Either a federal FMCSA inspector or a state law-enforcement official (or regulatory official, depending on the state) can enforce those rules and ensure trucking safety.

The system created by the Commercial Vehicle Safety Alliance further ensures uniform enforcement. The Alliance is a nonprofit association made up of local, state, territorial, and federal commercial motor vehicle safety officials and industry representatives. Com. Vehicle Safety All., *About the Alliance*.¹⁰ The Alliance’s “Out-of-Service Criteria” dictate when a vehicle or driver must be removed from service because they present an “imminent hazard” to safety. Com. Vehicle Safety All., *CVSA’s 2025 Out-of-Service Criteria Now in Effect* (Apr. 1, 2025).¹¹ The Out-of-Service Criteria allow inspectors in different states to assess when a vehicle or driver presents an imminent hazard under a uniform set of guidelines.

Ohio, where this lawsuit was filed, exemplifies the comprehensive regulatory regime for trucking safety. The state’s Public Utilities Commission has promulgated a

¹⁰ <https://www.cvsa.org/about-cvsa/about-the-alliance/>

¹¹ <https://cvsa.org/news/2025-oosc/>

regulation incorporating by reference numerous FMCSR safety provisions, including rules governing:

- Drug and alcohol testing programs (49 C.F.R. parts 40 and 382);
- Commercial drivers’ license standards (49 C.F.R. part 383);
- Safety and fitness determinations and procedures (49 C.F.R. part 385);
- Minimum insurance coverage (49 C.F.R. part 387);
- Equipment safety (including standards related to brakes, lights, windows, fuel systems, and tires) (49 C.F.R. part 393);
- Driving safety (including standards related to speed, use of alcohol, railroad crossings, and use of handheld devices and texting) (49 C.F.R. part 392);
- Hours-of-service limitations (49 C.F.R. part 395);
- Vehicle inspections (49 C.F.R. part 396); and
- Transportation of hazardous materials (49 C.F.R. part 397).

Ohio Admin. Code 4901:2-5-03.

By incorporating these federal standards into state regulations, Ohio law enforcement and regulators can enforce the federal law, conduct inspections for compliance with federal law, and ensure that trucks meet a uniform national standard for safe operation. David Randall Peterman, *Commercial Truck Safety: Overview*, U.S. Congressional Research Service 1 (2017).¹²

In Ohio, “two state agencies are responsible for enforcement of the” FMCSRs: the Public Utilities

¹² <https://sgp.fas.org/crs/misc/R44792.pdf>

Commission, through its Transportation Department; and the Department of Public Safety, through its Bureau of Motor Vehicles division and the Ohio State Highway Patrol. Pub. Utils. Comm. of Ohio, *Commercial Vehicle Safety Plan for Fiscal Year 2023* 5 (2023).¹³ As part of the state’s commercial vehicle safety plan, these agencies wield a variety of tools to enforce the FMCSRs, including “[c]ompliance reviews at carrier and shipper facilities,” “[r]egistration and regulatory oversight of motor carrier companies,” and “[d]river/vehicle inspections” during “traffic stops” or otherwise. *Ibid.*

The Ohio State Highway Patrol also has authority to pull over trucks for driving violations. Ohio Rev. Code § 5503.02. For example, troopers can stop truckers for speeding or using a handheld phone while driving, which is illegal under both state law, Ohio Rev. Code § 4511.204, and the FMCSRs incorporated into Ohio law. 49 C.F.R. § 392.82.

The same is true in Oklahoma, where the accident that gave rise to this lawsuit occurred. Oklahoma has largely adopted the FMCSRs, Okla. Admin. Code § 595:35-1-4, with the limited exception of minor modifications to certain insurance requirements, *id.* § 165:30-3-11. The Oklahoma Highway Patrol, a division of the Oklahoma Department of Public Safety, is tasked with enforcing the FMCSRs. *Oklahoma Commercial Vehicle Safety Plan for Fiscal Year 2023* 4 (2023).¹⁴ The Oklahoma Highway Patrol also enforces the state’s traffic laws. Okla. Stat. tit. 47, § 2-117.

¹³ <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2023-09/Ohio%20FY23%20CVSP%20Final.pdf>

¹⁴ https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2023-09/Oklahoma%20FY23%20CVSP%20Final_0.pdf

B. Brokers have no reliable tools to screen carriers

While the extensive federal-state regulatory system protects the roadways, governmental attempts at creating a trucker-safety database have not proven nearly as successful. As a result, brokers cannot effectively evaluate the comparative safety of different carriers or truckers. This informational deficit renders it perverse to impose a tort standard of care on brokers.

In allowing a tort claim to proceed, the court of appeals relied upon information generated by the FMCSA’s “Compliance, Safety, Accountability” (CSA) program. Respondent relies on the same information. Br. in Opp. 3. But CSA is a law-enforcement tool used to determine when the worst carriers should be placed out of service altogether—and therefore entirely unavailable to brokers—or subjected to increased scrutiny, not a tool for reliably comparing the safety of different operators in most cases. Moreover, there is good reason to doubt the accuracy of the data in that system. The Government Accountability Office, third parties, and Congress have all raised serious concerns. As such, the CSA system cannot be used to establish the duty of care in negligence actions against brokers.

1. The CSA system is designed for law enforcement, not for brokers to evaluate carriers

The FMCSA has developed a system to aid law enforcement in identifying problematic carriers. That system includes the CSA program, which has three core components. First, the Safety Measurement System (SMS) allows the FMCSA to collect data about carriers. Second, the FMCSA uses that data to inform decisions about how to address dangerous carriers. Third, the FMCSA can assign a rating to a carrier pursuant to its Safety Fitness Determination rating system, but it assigns a rating only after conducting a compliance review or a comprehensive onsite investigation.

The SMS uses information from roadside inspections, crash reports, and other investigative data to identify high-risk motor carriers for intervention by the FMCSA and State partners. The SMS data is organized into seven Behavior Analysis and Safety Improvement Categories (BASICS) that each pertain to a different attribute of safety. FMCSA, *The Safety Measurement System (SMS)*.¹⁵ SMS uses the performance data to rank carriers by percentile within each BASIC. A higher percentile indicates a higher safety risk. *Ibid.*

These percentile scores are used “to prioritize [carriers] for interventions.” *Ibid.* The FMCSA has a variety of intervention tools at its disposal, including warning letters, roadside inspections, investigations, fines and penalties, and even the termination of a carrier’s right to operate.

The FMCSA can also assign a carrier one of three safety ratings: “satisfactory,” “conditional,” or “unsatisfactory.” A carrier is identified as “unsatisfactory” when the FMCSA determines that the carrier is unfit to continue operating. 49 C.F.R. § 385.11. If the carrier does not make improvements, it can be placed out of service and its operating authority revoked. *Id.* § 385.13.

Only a tiny fraction of carriers has a rating, however. That is because the FMCSA assigns a rating only after a compliance review or a comprehensive onsite investigation. FMCSA, *2023 Pocket Guide to Large Truck and Bus Statistics* 27 (Dec. 2023).¹⁶ And such reviews or investigations typically follow a troubling BASIC SMS score or major event like a fatal truck crash. These are infrequent enough that 94.4% of interstate freight carriers have no

¹⁵ <https://csa.fmcsa.dot.gov/about/Measure>

¹⁶ <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2024-04/FMCSA%20Pocket%20Guide%202023-FINAL%20508%20-%20April%202024.pdf>

rating whatsoever. *Ibid.* The CSA system therefore has limited value for comparing the relative safety of carriers.

Recently, the FMCSA signaled its intention to make modest changes to the SMS system. But these changes are unlikely to convert the system from a law-enforcement tool for weeding out the worst offenders into a mechanism that brokers could confidently use to compare carriers. The proposed revisions include changing the term “BASICS” to “Compliance Categories” and reorganizing the categories. See Enhanced Carrier Safety Measurement System (SMS), 89 Fed. Reg. 91874, 91874-76 (Nov. 20, 2024). The FMCSA may also convert the percentile scale to a bimodal “1 or 2” system for assessing the severity of safety issues and prioritize recent violations when calculating scores for the Compliance Categories. *Id.* at 91877.

None of these proposed amendments will transform the CSA system into a reliable guide for brokers. Indeed, a comment submitted by twelve different trade groups emphasized that the new changes would generate neither “a significant increase in the annual number of carriers receiving safety ratings” nor “a more effective targeting of carriers needing safety interventions by FMCSA.” *Comments from Air & Expedited Motor Carriers Association, Airforwarders Association, et al.* (May 16, 2023).¹⁷ If anything, the FMCSA’s move to a bimodal severity rating system will only further obscure the comparative safety of carriers.

2. Data limitations plague the CSA system, making it unsuitable for comparing carriers

Various authorities have voiced concerns about the nature, scope, and accuracy of the data produced by the Safety Measurement System, further militating against

¹⁷ <https://www.regulations.gov/comment/FMCSA-2022-0066-0176>

using it as a yardstick for a negligence claim. Specifically, the Government Accountability Office (GAO), the National Academy of Sciences, the Department of Transportation Inspector General, and Congress have all recognized that the FMCSA's data tools have severe limitations that reduce their usefulness in making predictive comparisons. As a result, while a broker would never hire a carrier with an "unsatisfactory" rating, the system's data cannot be used to reliably compare the vast majority of carriers without "unsatisfactory" ratings.

The GAO has explained that "for [the Safety Measurement System] to be effective in identifying carriers more likely to crash, the violations that FMCSA uses to calculate SMS scores should have a strong predictive relationship with crashes." U.S. Gov't Accountability Off., GAO-14-114, *Federal Motor Carrier Safety: Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers* (2014).¹⁸ Unfortunately, the GAO has found that "most regulations used to calculate SMS scores are not violated often enough to strongly associate them with crash risk for individual carriers." *Ibid.* Consequently, the GAO has observed that "[t]he relationship between violation of most regulations FMCSA included in the SMS methodology and crash risk is unclear, potentially limiting the effectiveness of SMS in identifying carriers that are likely to crash." *Id.* at 15.

Two years after recommending "that FMCSA revise the SMS methodology to better account for limitations in drawing comparisons of safety performance information across carriers," the GAO pointedly stated that the "FMCSA has not implemented our recommendation." U.S. Gov't Accountability Off., GAO-17-132, *Motor Carriers: Establishing System for Self-Reporting*

¹⁸ <https://www.gao.gov/assets/gao-14-114.pdf>

Equipment Problems Appears Feasible, But Safety Benefits Questionable and Costs Unknown 9 (2016).¹⁹

Along the same lines, the National Academy of Sciences has declared that “much of what is now done” with SMS “is ad hoc and based on subject-matter expertise that has not been sufficiently empirically validated.” Nat’l Acad. of Scis., *Improving Motor Carrier Safety Measurement* 3 (2017).²⁰ The Academy urged the FMCSA to adopt “a more statistically principled approach.” *Ibid.*

In 2019, the Department of Transportation Inspector General criticized the FMCSA’s failure to implement the data improvements recommended by the Academy. In one report, the Inspector General observed that the FMCSA’s “corrective action plan” failed to set out “implementation details for improving” SMS “transparency and its assessment of carrier safety rankings” by collecting “more accurate and diverse types of data,” as recommended by the Academy. Office of Inspector Gen., U.S. Dep’t of Transp., Report No. ST2019084, *FMCSA’s Plan Addresses Recommendations on Prioritizing Safety Interventions But Lacks Implementation Details* (2019) (initial capitalization omitted).²¹

The FMCSA’s current proposed revisions to the SMS system again expressly reject the statistical changes recommended by the Academy. Revised Carrier Safety Measurement System, 88 Fed. Reg. 9954-01, 9956 (Feb. 15, 2023) (“FMCSA will not replace SMS with [the] IRT model” recommended by the Academy). Numerous commentators have criticized the FMCSA’s decision not to implement the Academy’s recommended statistical methods. See *Comments from Air & Expedited Motor Carriers*

¹⁹ <https://www.gao.gov/assets/gao-17-132.pdf>

²⁰ <https://nap.nationalacademies.org/read/24818/chapter/2#3>

²¹ <https://www.oig.dot.gov/sites/default/files/FMCSA%20Corrective%20Action%20Plan%20Final%20Report%5E09-25-19.pdf>

Association, Airforwarders Association, et al., supra n.17 (expressing disappointment that the proposed changes offer “no significant correction of systemic flaws noted by Congress, the National Academ[y] of Sciences and U.S. DOT, including such problems as * * * data sufficiency [and] data accuracy issues”); *Comments from Truck Safety Coalition* (May 16, 2023)²² (explaining that, “[a]t a minimum, there is a role for [the] IRT modeling” recommended by the Academy “that can run parallel to SMS”).

Congress has also flagged the inadequacy of the data feeding the SMS system. In the Fixing America’s Surface Transportation (FAST) Act, Congress required the FMCSA website to provide the following warning:

Readers should not draw conclusions about a carrier’s overall safety condition simply based on the data displayed in this system. Unless a motor carrier has received an UNSATISFACTORY safety rating under part 385 of title 49, Code of Federal Regulations, or has otherwise been ordered to discontinue operations by the Federal Motor Carrier Safety Administration, it is authorized to operate on the Nation’s roadways.

FAST Act, Pub. L. 114-94, 129 Stat. 1312 (2015). This language highlights the limited value that brokers could glean from any ratings other than the rare “unsatisfactory” rating.

In sum, the Safety Measurement System does not provide a reliable method for brokers to evaluate the safety performance of carriers. The system therefore cannot support imposing tort liability on brokers for selecting particular carriers. Federal and state law already hold

²² <https://www.regulations.gov/comment/FMCSA-2022-0066-0173>

drivers and carriers responsible for their own actions in ensuring safety. That approach allows unsafe carriers to be removed from service, and thus made unavailable to brokers. The Court should ensure that lower courts enforce the path chosen by Congress, rather than supplementing it with ad hoc tort litigation.

III. ALLOWING THE SPLIT TO GO UNRESOLVED WOULD SLOW THE TRANSPORT OF GOODS, DRIVE UP PRICES, AND HARM MANUFACTURERS, RETAILERS, AND CONSUMERS

The centrality of trucking to the U.S. economy underscores the need for certiorari.

What is more, the importance of the Sixth Circuit, and Ohio in particular, to national freight flows means that the deepening split over FAAAA broker liability will have a significant influence on American shipping. Positioned critically at the junction of the Eastern seaboard, the Great Lakes, and the Midwestern heartland, Ohio is a lynchpin of American truck freight. The state originates the third-highest number of interstate truck trips. Bureau of Transp. Statistics, *Interstate Truck Trips by Origin and Destination*.²³ It ranks fourth in the number of interstate truck trips that end in the state. *Ibid*. It boasts the second-highest number of truck/rail facilities in the country. Bureau of Transp. Statistics, *Freight Intermodal Connectors on the National Highway System by State*.²⁴ And, although only the 34th largest state, Ohio has the sixth-highest interstate highway mileage in the country.

²³ <https://www.bts.gov/browse-statistical-products-and-data/state-transportation-statistics/interstate-truck-trips-origin>

²⁴ <https://www.bts.gov/browse-statistical-products-and-data/freight-facts-and-figures/freight-intermodal-connectors>

Federal Highway Administration, *National Highway System: FHWA Route Log and Finder List*.²⁵

If embraced nationwide, the Sixth and Ninth Circuits' approach would subject brokers to a patchwork of different standards of care that would develop state by state, and court by court, through jury verdicts and judicial decisions. But the circuit split set forth in the Petition already subjects brokers to a different sort of patchwork: When goods travel through the Seventh or Eleventh Circuits, an accident in those circuits could not impose state tort liability on brokers in those jurisdictions. By contrast, when goods travel through the Sixth or Ninth Circuits, brokers will be exposed to tort liability for suits filed within those circuits.

Without this Court's review now, the Sixth Circuit's decision would have spillover effects on the movement of freight throughout the country. Not only brokers, but also manufacturers, carriers, retailers, and consumers, would all suffer under the deepening circuit split.

Carriers. The trucking industry is made up of more than half a million carriers, including Fortune 100 companies, privately held businesses, small businesses, and owner-operators that are one-person, one-truck operations. *Economics and Industry Data*, *supra* n. 3. Indeed, 95.5 percent of active motor carriers operate 10 or fewer trucks. *Ibid.* Many of these smaller carriers succumbed to the economic pressures of the pandemic. See Karl Plume, *Truckers Hit by Coronavirus Pandemic Face Rocky Road to Recovery*, Reuters (May 14, 2020).²⁶ The deepening circuit split on broker liability would hurt these smaller

²⁵ https://www.fhwa.dot.gov/planning/national_highway_system/interstate_highway_system/routefinder/table03.cfm/

²⁶ <https://www.reuters.com/article/business/truckers-hit-by-coronavirus-pandemic-face-rocky-road-to-recovery-idUSKBN22Q1J4/>

carriers the most. If brokers must start ranking carriers on perceived safety, they are likely to favor larger companies, leading to more small business failures, less competition, and higher prices.

Manufacturers & Retailers. Manufacturers rely on brokers to facilitate truck transportation of raw materials and component parts. Retailers rely on brokers to deliver goods to warehouses, move those goods into stores, and ship goods to consumers. In addition, with the advent of drop-shipping, retailers sell goods before they are manufactured and have them delivered directly to the consumer. Since 2020, global supply chains have come under increasing stress from a range of factors, including the COVID-19 pandemic, trade tensions, and production delays. Knut Aliche & Tacy Foster, *Supply Chains: Still Vulnerable* (Oct. 14, 2024), McKinsey & Co.²⁷ The deepening circuit split threatens to add yet another. If brokers have fewer trucking companies to choose from, and if they take the logical step of building in a price premium for potential tort liability, then the price of shipping will be still higher. Manufacturers and retailers will reap smaller profits, unless they pass those costs on to consumers.

Consumers. American customers are already reeling from years of record-high inflation. Hiranmayi Srinivasan, *Historical U.S. Inflation Rate by Year: 1929 to 2025* (Aug. 12, 2025), Investopedia.²⁸ The deepening circuit split threatens to increase retail prices even more. As the costs of brokerage and shipping go up, prices for raw materials, finished goods, and delivery will all increase. At the end of the day, consumers will likely bear the brunt of these increases in the form of higher costs and longer delivery times.

²⁷ <https://www.mckinsey.com/capabilities/operations/our-insights/supply-chain-risk-survey>

²⁸ <https://www.investopedia.com/inflation-rate-by-year-7253832>

Truck freight plays an extraordinarily important role in the U.S. economy. Although freight brokers are relatively unknown to the general public, their role in matching cargo with carriers is essential. The uncertainty caused by the deepening circuit split will only increase the pressure on brokers to factor tort liability into the prices they charge for their services. This will affect manufacturers, motor carriers, retailers, and consumers. These harms will ensue even though strong federal-state safety systems already exist to protect the public on the roads—systems that will not be strengthened or enhanced by broker liability. If the Court were to ignore this split now, the costs of that decision would unfairly fall upon manufacturers, retailers, and consumers across the economy because brokers do not have reliable mechanisms to determine the relative safety of different carriers.

CONCLUSION

The Court should grant the Petition and reverse.

Respectfully submitted.

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