No.

IN THE

Supreme Court of the United States

KATIA GAUTHIER, individually and as administrator of the estate of Peter Gauthier, and as parent and natural guardian of minors, D.G. and N.G.,

Petitioner,

v.

TOTAL QUALITY LOGISTICS, LLC,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

Petition for a Writ of Certiorari

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November 2024

QUESTION PRESENTED

The Federal Aviation Administration Authorization Act (FAAAA) preempts state laws related to motor carrier and broker prices, routes, and services, 49 U.S.C. § 14501(c)(1), but contains an exception from preemption—known as the safety exception—for the state's "safety regulatory authority … with respect to motor vehicles," *id.* § 14501(c)(2)(A).

The question presented is:

Whether a wrongful death or personal injury claim against a freight broker that is based on the broker's negligent hiring of an unsafe motor carrier to provide motor vehicle transportation invokes the state's safety regulatory authority "with respect to motor vehicles," and, thus, falls within the safety exception.

RELATED PROCEEDINGS

United States District Court for the Southern District of Georgia:

Gauthier v. Hard to Stop LLC, No. 6:20-cv-93 (judgment entered, Feb. 11, 2022).

United States Court of Appeals for the Eleventh Circuit:

Gauthier v. Total Quality Logistics LLC, No. 22-10774 (judgment entered, July 9, 2024; denial of petition for rehearing en banc, Aug. 29, 2024).

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Federal Motor Carrier Safety Administration, *2023 Pocket Guide to Large Truck and Bus Statistics* (2023), *available at* https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2024-04/FMCSA%20Pocket%20Guide%202023-FINAL%20508%20-%20April%202024.pdf.. 12

XPO Logistics, Inc., Current Report (Form 8-K) (May 3, 2021), Exhibit 99.2: Investor Presentation, *available at* https://investors.xpo.com/static-files/a506ce5a-0a42-40f6-b342-787f4be12a1a 12

INTRODUCTION

Petitioner Katia Gauthier's husband, Peter Gauthier, was killed in a motor vehicle crash that resulted from Respondent Total Quality Logistics, LLC's decision to hire a motor carrier with a history of safety violations. Ms. Gauthier subsequently filed this case, alleging that Total Quality Logistics negligently hired the unsafe motor carrier.

The case presents an important issue of statutory interpretation over which federal courts of appeals are divided: whether personal injury and wrongful death claims (collectively, personal injury claims) against a freight broker based on the broker's negligent hiring of an unsafe motor carrier fall within an exception to preemption in the Federal Aviation Administration Authorization Act (FAAAA) that is commonly known as the "safety exception." More than three years ago, Respondent Total Quality Logistics told this Court that this issue was "ripe for decision by the Supreme Court" and urged this Court to address it. Brief of Amici Curiae on Behalf of Leading Industry Freight Brokers in Support of Petition for Reversal at 5, *C.H. Robinson Worldwide, Inc. v. Miller*, 142 S. Ct. 2866 (2022) (Mem.) (No. 20-1425).

The FAAAA preempts state laws related to a price, route, or service of a motor carrier or broker with respect to the transportation of property. 49 U.S.C. § 14501(c)(1). The safety exception exempts from preemption the "safety regulatory authority of a State with respect to motor vehicles." *Id.* § 14501(c)(2)(A).

Below, the Eleventh Circuit held that Ms. Gauthier's claim against broker Total Quality Logistics based on its negligent hiring of an unsafe

motor carrier did not fall within the safety exception. Although Total Quality Logistics hired the motor carrier to provide motor vehicle transportation, the negligent-hiring claim arose from a motor vehicle crash, and the state-law requirement underlying the claim protects the public from the dangers posed by motor vehicles, the court held that the claim did not have a sufficient connection to motor vehicles to fall within the safety exception. Pet. App. 4a. Indeed, it held that claims against brokers are never sufficiently related to motor vehicles to fall within the exception. *Id.* at 3a–4a.

The Eleventh Circuit's decision is in direct conflict with the Ninth Circuit's decision in *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016 (9th Cir. 2020), and dozens of district court decisions. It deepens a preexisting circuit split on the question presented. *Compare Miller*, 976 F.3d 1016, with *Ye v. GlobalTranz Enters., Inc.*, 74 F.4th 453 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 564 (2024).

The Eleventh Circuit's decision is wrong. As the United States explained when this Court invited the Solicitor General to file a brief regarding the petition for certiorari in *Miller*, "where a State requires a broker to exercise ordinary care in selecting a motor carrier to safely operate the motor vehicle, the State's exercise of its safety regulatory authority occurs 'with respect to motor vehicles.'" Brief for the United States as Amicus Curiae at 16, *C.H. Robinson Worldwide, Inc. v. Miller*, 142 S. Ct. 2866 (2022) (Mem.) (No. 20-1425) [hereinafter U.S. Br., *Miller*] (quoting 49 U.S.C. § 14501(c)(2)(A)). "The safe operation of a vehicle is necessarily connected to the vehicle's operator, *i.e.*, the motor carrier providing the motor vehicle

transportation." *Id.* at 17. "The selection of a safe motor carrier therefore is logically a meaningful component of commercial motor-vehicle safety." *Id.*

The resolution of the question presented will affect safety on America's roads. If freight brokers cannot be held accountable for negligently hiring unsafe motor carriers, they will have reduced incentives to ensure that they are not hiring carriers that place unsafe motor vehicles on the road. This reduction in safety will come at the expense of other drivers and their passengers, who are placed at risk of being injured or killed by motor vehicles when brokers negligently hire unsafe motor carriers to provide motor vehicle transportation.

The Court should grant the petition for a writ of certiorari and reverse the judgment below.

OPINIONS BELOW

The Eleventh Circuit's decision is unreported, but is available at 2024 WL 3338944, and is reproduced in the appendix at 1a. The district court's opinion is unreported, but is available at 2022 WL 344557, and is reproduced in the appendix at 7a.

JURISDICTION

The Eleventh Circuit entered judgment on July 9, 2024, and denied a timely petition for rehearing en banc on August 29, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

49 U.S.C. § 14501(c)(1) provides:

> (1) General rule.—Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not

> enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier … or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

49 U.S.C. § 14501(c)(2) provides:

> (2) Matters not covered.—Paragraph (1)—
> (A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles[.]

STATEMENT OF THE CASE

A. Statutory Background

The Airline Deregulation Act of 1978 (ADA), Pub. L. No. 95-504, 92 Stat. 1705, eliminated federal economic regulation of the airline industry. "To ensure that the States would not undo federal deregulation with regulation of their own," *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992), the ADA included a preemption provision "designed to promote maximum reliance on competitive market forces," *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 230 (1995) (internal quotation marks and citation omitted). That provision prohibits states from enacting or enforcing laws "related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1).

In 1980, Congress similarly deregulated the trucking industry, *see* Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793, but did not preempt state trucking regulation. In 1994, concerned that state economic regulation of motor carriers was anti-competitive and advantaged air carriers over motor carriers, Congress enacted a provision regarding the

"preemption of state economic regulation of motor carriers." FAAAA, Pub. L. No. 103-305, § 601(c), 108 Stat. 1569, 1606 (1994). As later amended, that provision preempts state laws "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).

At the same time that it enacted the preemption provision, Congress sought to "ensure that its preemption of States' economic authority over motor carriers of property" would "'not restrict' the preexisting and traditional state police power over safety." *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 439 (2002) (quoting 49 U.S.C. § 14501(c)(2)(A)). Accordingly, Congress specified that the preemption provision "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). This exception from preemption is often called the "safety exception."

B. Factual and Procedural Background

Total Quality Logistics is a freight broker—a company hired by shippers to arrange for the transportation of property by a motor carrier. It selected Hard to Stop LLC, a motor carrier, and/or Ronald Bernard Shingles, one of Hard to Stop's employees/agents, to transport a product from a poultry plant on Georgia State Route 73 to a customer. Pet. App 8a–9a; Dist. Ct. Doc. 27 ¶¶ 14–17. Mr. Shingles drove to pick up the product in a truck owned by Hard to Stop. Pet. App. 9a. Distracted, and driving a truck with improperly maintained brakes, Mr. Shingles missed his turn into the plant. *Id.*; Dist. Ct. Doc. 27 ¶ 19. He subsequently attempted to make an

illegal U-turn on the highway but was unable to do so and ended up blocking multiple lanes of the road. Pet. App. 9a; Dist. Ct. Doc. 27 ¶¶ 20–22.

Peter Gauthier was driving on Georgia State Route 73 while Mr. Shingles was attempting the U-turn. He was unable to avoid hitting the truck and died as a result of the injuries he suffered during the collision. Pet. App. 9a.

Peter Gauthier's widow, Katia Gauthier, brought this case on behalf of herself, Peter's estate, and their minor daughters. *Id.* Among other things, Ms. Gauthier alleges that Total Quality Logistics was negligent in hiring and retaining Mr. Shingles and/or Hard to Stop because it knew or should have known of prior wrecks, dangerous behavior, and traffic violations by Mr. Shingles, including multiple speeding tickets, driving with a suspended license on multiple occasions, battery, and constructive possession of controlled substances, and knew or should have known that Hard to Stop had a history of lack of proper licensing, improper maintenance of its vehicles, and a lack of the federally-mandated minimum insurance for motor carriers. Dist. Ct. Doc. 27 ¶¶ 51–53. The district court granted Total Quality Logistics' motion to dismiss the negligent-hiring claim, holding that the FAAAA preempts the claim. Pet. App. 41a.

Relying on circuit precedent that involved neither a personal injury claim nor a motor vehicle crash, the Eleventh Circuit affirmed. With respect to the safety exception, the court of appeals held that the exception "requires that the relevant state law 'have a *direct* relationship to motor vehicles.'" *Id.* at 5a (quoting *Aspen Am. Ins. Co. v. Landstar Ranger, Inc.*, 65 F.4th

1261, 1271 (11th Cir. 2023)). Although the purpose of the state-law requirement that brokers exercise care not to hire unsafe motor carriers is to protect the public from the dangers posed by motor vehicles, the court held that "negligent-selection-of-broker claims *necessarily* lack a direct relationship [to motor vehicles] because 'the services [a broker] provides have no direct connection to motor vehicles.'" *Id.* (quoting *Aspen*, 65 F.4th at 1272).

Ms. Gauthier filed a timely petition for rehearing en banc, which the Eleventh Circuit denied. *Id.* at 45a.

REASONS FOR GRANTING THE PETITION

This case presents a question of great importance to the safety of America's roads: whether personal injury claims against freight brokers based on the negligent hiring of an unsafe motor carrier fall within the FAAAA's safety exception. The question has engendered a growing conflict among the circuit courts, with the Eleventh Circuit wrongly concluding that such claims are not sufficiently related to motor vehicles to fall within the exception. This Court should grant the petition, resolve the conflict, and reverse the Eleventh Circuit's judgment.

I. The courts of appeals are divided over whether personal injury claims against freight brokers based on the negligent hiring of an unsafe motor carrier fall within the safety exception.

The decision below deepens a conflict among the circuits on the question presented—a conflict that can be resolved only by this Court. The Eleventh Circuit held that personal injury claims against freight brokers based on the negligent hiring of an unsafe motor carrier do not fall within the scope of the safety

exception and are preempted by the FAAAA. Pet. App. 1a–6a. The Seventh Circuit has held likewise. *See Ye*, 74 F.4th 453. The Ninth Circuit, however, has held the opposite. *See Miller*, 976 F.3d 1016.

In *Miller,* a man who was seriously injured when his car was struck by a truck sued the freight broker that arranged for the truck to transport goods, alleging that the broker negligently selected an unsafe motor carrier. *Id*. at 1020. The Ninth Circuit held that the claim fell within the scope of the FAAAA's preemption provision, but that it was "saved from preemption by the safety exception." *Id*. at 1025. "In enacting that exception," the Ninth Circuit explained, "Congress intended to preserve the States' broad power over safety, a power that includes the ability to regulate conduct … [through] common-law damages awards." *Id*. at 1020. Moreover, the court held, "negligence claims against brokers, to the extent that they arise out of motor vehicle accidents, have the requisite 'connection with' motor vehicles." *Id*. at 1031. Such claims, the court explained, "promote safety on the road." *Id*. at 1030.

Because of the stark conflict between *Miller*, on the one hand, and the decision below and *Ye*, on the other hand, whether a freight broker can be held liable when its negligent hiring of an unsafe motor carrier results in a motor vehicle crash that causes an injury or death depends on where the broker can be sued. If the broker can be sued in a court in the Ninth Circuit, a personal injury claim against the broker will be able to proceed. If the broker can be sued only in a court in the Eleventh or Seventh Circuits, however, the claim will be dismissed. Moreover, because the preemption provision in 49 U.S.C. § 14501(c)(1) applies to

interstate services, the circuits' opposing interpretations of the safety exception could lead to particularly arbitrary results: Whether a claim against a broker for negligently selecting an unsafe motor carrier to provide motor vehicle transportation between California and Florida is held to be preempted, for example, could depend on whether the resulting motor vehicle crash occurred at the beginning or the end of the relevant trip.

Absent this Court's intervention, this division in the circuits will persist. This Court's review is necessary to restore uniformity.

II. The Eleventh Circuit's decision is wrong.

The Eleventh Circuit erred in holding that personal injury claims against freight brokers based on the negligent hiring of an unsafe motor carrier are insufficiently connected to motor vehicles to fall within the safety exception.

The exception applies to the state's safety regulatory authority "with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). A state law is "with respect to" a topic when it "concern[s]" that topic. *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261 (2013). As the United States explained when invited by this Court to file a brief concerning the petition for certiorari in *Miller*, "[a] state requirement that a broker exercise ordinary care in selecting a motor carrier to safely operate a motor vehicle when providing motor vehicle transportation on public roads is a requirement that 'concerns' motor vehicles." U.S. Br., *Miller*, at 16. The purpose of imposing such a requirement on brokers is to protect third parties from the dangers posed by unsafe motor vehicles. And because the "safe operation of a vehicle is necessarily

connected to the vehicle's operator, *i.e.*, the motor carrier providing the motor vehicle transportation," the selection of a safe motor carrier "is logically a meaningful component of commercial motor-vehicle safety." *Id*. at 17.

In holding that Ms. Gauthier's claim does not fall within the safety exception, the Eleventh Circuit incorrectly focused on the relationship between brokers and motor vehicles. The court stated that "negligent-selection-of-broker claims *necessarily* lack" a sufficient relationship to motor vehicles "because 'the services [a broker] provides have no direct connection to motor vehicles.'" Pet. App. 5a (quoting *Aspen*, 65 F.4th at 1272). Under the plain text of the safety exception, however, the relevant inquiry is not into the relationship between the *defendant* and motor vehicles, but between the *state law* and motor vehicles. *See* 49 U.S.C. § 14501(c)(2)(A) (preserving the state's "safety regulatory authority … with respect to motor vehicles"). And state safety laws that do not directly regulate motor vehicle drivers or owners can nonetheless concern motor vehicles. Here, where the state-law requirement is aimed at protecting the public from the dangers posed by motor vehicles, it is part of the state's safety regulatory authority "with respect to motor vehicles," and the Eleventh Circuit erred in holding that claims enforcing that requirement do not fall within the safety exception.

Along with the Ninth Circuit, dozens of district courts across the country have recognized that personal injury claims against freight brokers based

on the negligent selection of an unsafe motor carrier fall within the safety exception.[1]

This Court should grant the petition and join those courts in holding that such claims invoke the state's

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[1] *See Hawkins v. Milan Express, Inc.*, __ F. Supp. 3d __, 2024 WL 2559728, at *5 (E.D. Tenn. May 24, 2024); *Meek v. Toor*, No. 2:21-CV-0324-RSP, 2024 WL 943931, at *3 (E.D. Tex. Mar. 5, 2024); *Crawford v. Move Freight Trucking, LLC*, No. 7:23-CV-433, 2024 WL 762377, at *8 (W.D. Va. Feb. 20, 2024); *Milne v. Move Freight Trucking, LLC*, No. 7:23-CV-432, 2024 WL 762373, at *8 (W.D. Va. Feb. 20, 2024); *Johnson v. Herbert*, 699 F. Supp. 3d 523, 534 (E.D. Tex. 2023); *Ruff v. Reliant Transp., Inc.*, 674 F. Supp. 3d 631, 635 (D. Neb. 2023); *Wardingley v. Ecovyst Catalyst Techs., LLC*, 639 F. Supp. 3d 803, 810 (N.D. Ind. 2022); *Carter v. Khayrullaev*, No. 4:20-CV-00670-AGF, 2022 WL 9922419, at *4 (E.D. Mo. Oct. 17, 2022); *Ortiz v. Ben Strong Trucking, Inc.*, 624 F. Supp. 3d 567, 584 (D. Md. 2022); *Mata v. Allupick, Inc.*, No. 4:21-CV-00865-ACA, 2022 WL 1541294, at *6 (N.D. Ala. May 16, 2022); *Dixon v. Stone Truck Line, Inc.*, No. 2:19-CV-000945-JCH-GJF, 2021 WL 5493076, at *14 (D.N.M. Nov. 23, 2021); *Taylor v. Sethmar Transp., Inc.*, No. 2:19-CV-00770, 2021 WL 4751419, at *16 (S.D. W. Va. Oct. 12, 2021); *Crouch v. Taylor Logistics Co.*, 563 F. Supp. 3d 868, 876 (S.D. Ill. 2021); *Gerred v. FedEx Ground Packaging Sys., Inc.*, No. 4:21-CV-1026-P, 2021 WL 4398033, at *3 (N.D. Tex. Sept. 23, 2021); *Montgomery v. Caribe Transp. II, LLC*, No. 19-CV-1300-SMY, 2021 WL 4129327, at *2 (S.D. Ill. Sept. 9, 2021); *Bertram v. Progressive Se. Ins. Co.*, No. 2:19-CV-01478, 2021 WL 2955740, at *6 (W.D. La. July 14, 2021); *Reyes v. Martinez*, No. EP-21-CV-00069-DCG, 2021 WL 2177252, at *6 (W.D. Tex. May 28, 2021); *Popal v. Reliable Cargo Delivery, Inc.*, No. P:20-CV-00039-DC, 2021 WL 1100097, at *4 (W.D. Tex. Mar. 10, 2021); *Grant v. Lowe's Home Ctrs., LLC*, No. CV 5:20-02278-MGL, 2021 WL 288372, at *4 (D.S.C. Jan. 28, 2021); *Mendoza v. BSB Transp., Inc.*, No. 4:20 CV 270 CDP, 2020 WL 6270743, at *4 (E.D. Mo. Oct. 26, 2020); *Skowron v. C.H. Robinson Co.*, 480 F. Supp. 3d 316, 321 (D. Mass. 2020); *Uhrhan v. B&B Cargo, Inc.*, No. 4:17-CV-02720-JAR, 2020 WL 4501104, at *5 (E.D. Mo. Aug. 5, 2020); *Lopez v. Amazon Logistics, Inc.*, 458 F. Supp. 3d 505, 516 (N.D. Tex. 2020); *Huffman v. Evans Transp. Servs., Inc.*, No.

(footnote continued)

"safety regulatory authority … with respect to motor vehicles," 49 U.S.C. § 14501(c)(2)(A), and that the safety exception thus applies.

III. The question presented is important and recurring.

The question presented is one of exceptional importance to people who drive and ride on America's roads. The freight broker industry has grown dramatically over the past few decades. As of 2022, over 30,000 brokers were registered with the Federal Motor Carrier Safety Administration.[2] According to industry research, more than twenty percent of truckload shipments are run through brokers.[3]

Under the Eleventh Circuit's decision, these brokers have no duty to exercise care to hire safe motor carriers. Plaintiffs will not be able to hold a

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CV H-19-0705, 2019 WL 4143896, at *4 (S.D. Tex. Aug. 12, 2019), *report and recommendation adopted*, 2019 WL 4142685 (S.D. Tex. Aug. 28, 2019); *Gilley v. C.H. Robinson Worldwide, Inc.*, No. CV 1:18-00536, 2019 WL 1410902, at *5 (S.D. W. Va. Mar. 28, 2019); *Finley v. Dyer*, No. 3:18-CV-78-DMB-JMV, 2018 WL 5284616, at *6 (N.D. Miss. Oct. 24, 2018); *Mann v. C.H. Robinson Worldwide, Inc.*, No. 7:16-CV-00102, 2017 WL 3191516, at *8 (W.D. Va. July 27, 2017); *Morales v. Redco Transp. Ltd.*, No. 5:14-CV-129, 2015 WL 9274068, at *3 (S.D. Tex. Dec. 21, 2015); *Owens v. Anthony*, No. 2-11-0033, 2011 WL 6056409, at *4 (M.D. Tenn. Dec. 6, 2011).

[2] *See* Federal Motor Carrier Safety Administration, *2023 Pocket Guide to Large Truck and Bus Statistics* 10 (2023), *available at* https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2024-04/FMCSA%20Pocket%20Guide%202023-FINAL%20508%20-%20April%202024.pdf.

[3] *See* XPO Logistics, Inc., Current Report (Form 8-K) (May 3, 2021), Exhibit 99.2: Investor Presentation 34, *available at* https://investors.xpo.com/static-files/a506ce5a-0a42-40f6-b342-787f4be12a1a.

broker liable for its negligent hiring of an unsafe motor carrier even when the broker *knew* that the motor carrier would place dangerous motor vehicles on the road.

Immunizing brokers from liability for negligently hiring unsafe motor carriers, as the Eleventh Circuit's decision does, will reduce safety on the nation's roads. Brokers profit from the difference between the amount the broker charges its customer and the amount the broker pays a carrier to move the customer's load. If brokers cannot be held liable for negligently hiring unsafe motor carriers, they will be incentivized to hire the cheapest motor carriers possible, rather than to prioritize safety. Carriers, in turn, will be incentivized to compromise safety to reduce operating costs to remain competitive. This pressure to reduce safety will place responsible trucking companies at a competitive disadvantage. And the reduction in safety will come at the expense of other drivers and passengers—people like Peter Gauthier, who are not part of the market for broker or motor carrier services, but who pay a heavy price when brokers fail to exercise ordinary care.

Moreover, by interfering with states' abilities to protect their citizens from the safety risks posed by dangerous motor vehicles on the road, the decision below contravenes Congress's intent in enacting the safety exception. As this Court has explained, "Congress' clear purpose" in enacting the safety exception was "to ensure that its preemption of States' economic authority over motor carriers of property, § 14501(c)(1), 'not restrict' the preexisting and traditional state police power over safety." *Ours Garage*, 536 U.S. at 439 (quoting 49 U.S.C. § 14501(c)(2)(A)).

The decision below restricts that state power over safety, disrupting the careful balance Congress struck in the FAAAA between preempting state "*economic* regulation" and preserving "state *safety* regulation." *Id.* at 440–41.

As the many district court cases on the issue demonstrate, *see supra* note 1, the question presented arises frequently. The Eleventh Circuit's decision is deeply flawed. And the issue is of great importance to people who drive and ride on America's roads, as well as to maintaining the balance between federal and state authority embodied in the FAAAA. For these reasons, as well as the circuit-court conflict, this Court should grant review.

CONCLUSION

The petition for a writ of certiorari should be granted.

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November 2024