No. 19-15981

IN THE

United States Court of Appeals for the Ninth Circuit

ALLEN MILLER,

Plaintiff-Appellant,

v.

C.H. ROBINSON WORLDWIDE, INC., ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court for the District of Nevada
Case No. 3:17-cv-00408-MMD-WGC
The Honorable Miranda M. Du, Judge Presiding

BRIEF OF THE AMERICAN ASSOCIATION FOR JUSTICE AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amicus curiae the American Association for Justice certifies that it is a non-profit voluntary national bar association. There is no parent corporation or publicly owned corporation that owns 10% or more of this entity's stock.

Respectfully submitted this 14th day of August, 2019.

/s/ Jeffrey R. White

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AMICUS CURIAE'S IDENTITY, INTEREST, AND AUTHORITY TO FILE

The American Association for Justice ("AAJ") is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ's members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions, including in state tort law claims against freight brokers. Throughout its more than 70-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.[1]

This case is of acute interest to AAJ and its members. As this brief details, Ninth Circuit precedent squarely aligns with Supreme Court precedent regarding the scope of the FAAAA preemption clause, and the lower court in this case strayed from that precedent, adopting an overly expansive view of that clause. AAJ and its members work to protect the ability of plaintiffs to vindicate their rights under state tort laws. Based on its members' experience with tort litigation related to the trucking industry—and its organizational concern for the development of the law in

[1] All parties have consented to the filing of this brief. No party or party's counsel authored this brief in whole or in part. No person, other than amicus curiae, its members, and its counsel, contributed money that was intended to fund the preparation or submission of this brief.

this area—AAJ is well positioned to explain why such an expansion of federal preemption doctrine is both ill-conceived and contrary to the statutory scheme and precedent.

STATEMENT OF ISSUE PRESENTED

Does 49 U.S.C. § 14501(c)(1) of the Federal Aviation Administration Authorization Act ("FAAAA") preempt state law tort claims against a freight broker?

SUMMARY OF ARGUMENT

The Federal Aviation Administration Authorization Act of 1994 ("FAAAA") does not preempt Appellant's negligence claim in this case, despite Appellees' assertions to the contrary.

1. Congress enacted the FAAAA to preempt the economic regulation of motor carriers by the states, providing that states may not enact or enforce laws related to a *price, route, or service* of any motor carrier with respect to the transportation of property. Congress' express purpose in enacting the FAAAA's preemption clause was to prevent states from undermining federal deregulation of interstate transport. This simply does not apply to a common law negligence claim, as is at issue here. Supreme Court and Ninth Circuit precedent alike consider Congress' intent when interpreting this clause, however that precedent was ignored by the lower court in this case.

2. The FAAAA's express preemption clause is limited in scope, as it preempts only those state laws that target and compel motor carrier prices, routes, or services. Congress did not clearly articulate any intent to preempt common law tort claims from preemption, which fall within the states' historical police powers. Moreover, there is a strong assumption, which has been articulated by the Supreme Court, that Congress did not intend to displace state tort law.

When considering the scope of the FAAAA's preemption clause, the relevant statutory phrase "related to" must not be read too broadly. There are many areas that the FAAAA does *not* regulate and where the common law of negligence is applicable. In addition, common law negligence, which predates motor carriers, does not bind a freight broker to compliance with any particular standard of care, making any change in conduct voluntary, and has not and will not create a forbidden state regulatory patchwork. In this case, the negligence claim has no mandatory impact on the broker's prices, routes, or services – a broker can easily decide not to make any changes and to instead absorb the risk of future tort liability. Thus, though the challenged tort law does not directly refer to "rates, routes, or services," it also does not mandate preemption under either Supreme Court or Ninth Circuit precedent.

3. The FAAAA preemption provision expresses no clear congressional intent to eliminate negligence liability for contributing to highway dangers. In fact, Congress expressly excluded state regulation of highway safety from the scope of FAAAA preemption. Congress has demonstrated its ability to preempt state tort law claims, though made no reference to doing so here. And, even if this Court determines that the cause of action in this case falls within the preemption provision at issue here, the provision is nonetheless limited by the statute's savings provision, which states 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). Preempting common law negligence liability would certainly be a restriction on the safety regulatory authority of a State, and therefore expressly excluded under the statute.

ARGUMENT

I. CONGRESS ENACTED THE FAAAA TO PREEMPT THE ECONOMIC REGULATION OF MOTOR CARRIERS BY THE STATES.

In 1978, Congress began to eliminate the federal economic regulation of the transportation industry. Economic deregulation began with the Airline Deregulation Act of 1978 ("ADA"), Pub. L. No. 95-504, 92 Stat. 1705, which largely deregulated the domestic airline industry. The ADA's aim was to achieve "maximum reliance on competitive market forces." *Id.* at 1706. The ADA included a preemption

provision prohibiting States from enacting or enforcing laws "related to a price, route, or service of an air carrier," 49 U.S.C. § 41713(b)(1), "[t]o 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).

In 1980, Congress extended its economic deregulation legislation to the trucking industry with the Motor Carrier Act of 1980. That legislation did not include a preemption clause. Over the following fourteen years, however, many states regulated "prices, routes and services" of motor carriers. H.R. Conf. Rep. No. 103-677, at 86-87 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1715-1760. By 1994, Congress found the State's intrastate regulation of motor carriers during those fourteen years to have "unreasonably burdened free trade, interstate commerce, and American consumers." *City of Columbus v. Ours Garage & Wrecker Service, Inc.*, 536 U.S. 424, 440 (2002) (citing FAAAA § 601(a)(1), 108 Stat. 1605).

The FAAAA, Pub. L. No. 103-305, § 601(c), 108 Stat. 1606, was enacted to address those findings. The FAAAA included a preemption provision borrowed "from the ADA's preemption clause, but adding a new qualification." *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 256 (2013). The provision, initially entitled "Preemption of State Economic Regulation of Motor Carriers," provides that states may not enact or enforce laws "related to a price, route, or service of any motor carrier … with respect to the transportation of property." 49 U.S.C. § 14501(c)(1).

The United States Supreme Court has interpreted the preemption language in the ADA and the FAAAA in a number of contexts. *See Morales*, 504 U.S. at 384 (holding state airline fare advertising guidelines to be expressly preempted by the ADA); *Ours Garage & Wrecker Service, Inc.*, 536 U.S. at 440 (holding FAAAA preemption clause not a bar to municipality establishment of local safety regulations governing motor carriers, including tow trucks); *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364, 371 (2008) (holding Maine's Tobacco Delivery Law to be preempted by the FAAAA); *Pelkey*, 569 U.S. at 261 (holding a car owner's state-law claims against a towing company for damages stemming from the storage and disposal of a towed vehicle was not preempted by the FAAA).

This Court has also addressed ADA and FAAAA preemption in a variety of contexts. Those decisions incorporate evolving Supreme Court precedent and provide guidance for addressing the issue here. Each time the scope of ADA or FAAAA preemption has been addressed, this Court has adhered to a uniform process of 1) examining the pertinent portion of the statutory language and 2) looking to controlling Supreme Court and Ninth Circuit precedent for guidance. In doing so, each decision is informed by Congress' express purpose in enacting the preemption clause in the first place: "preventing States from undermining federal deregulation of interstate transport." *California Trucking Ass'n v. Su*, 903 F.3d 953, 958 (9th Cir. 2018).

II. THE FAAAA'S EXPRESS PREEMPTION CLAUSE PREEMPTS ONLY THOSE STATE LAWS THAT TARGET AND COMPEL MOTOR CARRIER PRICES, ROUTES, OR SERVICES; STATE TORT LAW DOES NEITHER.

Preemption analysis begins with the presumption that Congress does not intend to supplant state law causes of action. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). Although Congress, by incorporating an express preemption clause, intended the FAAAA to preempt some state regulation of motor carriers, the scope of that preemption is tempered by "the assumption that the historic police powers of the States [are] not to be superseded … unless that was the clear and manifest purpose of Congress." *Id.* (internal quotation marks omitted) (citing *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). Common law torts law giving rise to negligence claims for personal injury, such as that present in this case, fall within the States' historical police powers. While this fact, standing alone, does not immunize common law tort claims from preemption, Congress' intent to preempt them must be clearly articulated.

Recognizing that "the regulation of health and safety matters is primarily, and historically, a matter of local concern," *Hillsborough Cty., Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985), the Supreme Court of the United States has instructed that there is a strong "basic assumption that Congress did not intend to displace state tort law." *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981); *City of*

Milwaukee v. Illinois and Michigan, 451 U.S. 304, 316 (1981). The Court has consistently adhered to this principle:

> [When Congress legislates] in [a] field which the States have traditionally occupied . . . we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act *unless that was the clear and manifest purpose* of Congress.

Rice, 331 U.S. at 230 (emphasis added). This principle also applies to the interpretation of express preemption provisions. *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992) (quoting *Rice*). This presumption is not merely a rule of construction; it is an essential tenet of our system of federalism that prevents "unintended encroachment[s] on the authority of the States." *CSX Transp. Inc. v. Easterwood*, 507 U.S. 658, 664 (1993). For that reason, as the Court emphatically declared, "the ordinary rule of statutory construction [is] that if Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'" *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989) (quoting *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985)).

The best evidence of the scope of a preemption clause, and thus Congress' intent, is the pertinent statutory language. *Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 643 (9th Cir. 2014). The relevant language here is "related to": "States may not enact or enforce a law … related to a price, route, or service of any motor carrier …

with respect to the transportation of property." 49 U.S.C. § 14501(c)(1) (emphasis added).

The phrase "related to" is expansive. *See Morales*, 504 U.S. at 383-384. It "embraces state laws 'having a connection with or reference to' carrier 'rates, routes, or services,' whether directly or indirectly." *Pelkey*, 569 U.S. at 260 (quoting *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008)).

Still, "while 'related to' preemption is broad, this 'does not mean the sky is the limit.'" *Su*, 903 F.3d at 360 (quoting *Pelkey*, 569 U.S. at 260). As the Supreme Court recognized in another statutory scheme, the phrase "related to" cannot be read "taken to extend to the furthest stretch of its indeterminacy" because "for all practical purposes pre-emption would never run its course." *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995) (addressing scope of preemption in ERISA statute, 29 U.S.C. § 1144(a)). So understood, the Supreme Court has stated FAAAA's preemption clause in 49 U.S.C. § 14501(c)(1) does not preempt state laws affecting carrier prices, routes, and services in only a "tenuous, remote, or peripheral manner." *Rowe*, 553 U.S. at 371 (internal quotation marks omitted) (citing *Morales*, 504 U.S. at 390).

This Court had occasion to examine these principles again recently in *California Trucking Ass'n v. Su*, 903 F.3d 963 (9th Cir. 2018). The case involved a challenge brought by the California Trucking Association ("CTA") against the

California Labor Commissioner. The CTA sought a declaration that the FAAAA preempts the Commissioner's use of the common-law *Borello* standard[2] to assess the claims brought by owner-operators who hauled freight for motor carriers claiming they had been misclassified as independent contractors rather than carrier employees. Employees are entitled to certain benefits from their employers under the California Labor Code. Independent contractors are not. *Id.*

The *Borello* standard used by the Commissioner to resolve those claims refers to the California Supreme Court case *S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations*, 769 P.2d 399, 403-07 (Cal. 1989), which outlines at length the common law test for determining whether a worker is an employee or an independent contractor. *See Su*, 903 F.3d at 958. Application of the *Borello* standard involves weighting multiple factors; it is "neither mechanical nor inflexible; different cases can and do demand focus on different factors." *Id.* at 959. When assessing misclassification claims in the motor carrier industry, application of the *Borello* standard can result in the determination that certain owner-operators are employees of a motor carrier despite contrary classifications, thereby triggering obligations under the California Labor Code that are inconsistent with the parties' contractual arrangements. *Id.*

[2] *See generally S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations*, 769 P.2d 399, 403-07 (Cal. 1989).

Su articulated that a court is required "to discern on which side of the line the *Borello* standard falls: a forbidden law that significantly impacts a carrier's prices, routes, or services; or a permissible one that has only a tenuous, remote, or peripheral connection." *Id.* at 960. The *Su* court ultimately determined that the Commissioner's use of the *Borello* standard was the latter—a permissible law that has only tenuous, remote, or peripheral connection to a carrier's prices, routes, or services. Its reasoning was strongly influenced by the statute's legislative history. *Id.* at 960-61. That analysis took into account Supreme Court precedent, as applied by Ninth Circuit precedent, and should inform the results here.

A. The Common Law of Negligence is Generally Applicable to All Businesses and Does Not Target or Otherwise Regulate the Prices, Routes, or Services of Motor Carriers.

The FAAAA does *not* regulate a state's authority to enact safety regulations with respect to motor vehicles; control trucking routes based on vehicle size, weight, and cargo; impose certain insurance, liability or standard transportation rules; regulate the intrastate transport of house hold goods and certain aspects of tow-truck operations or other state regulatory laws articulated in 49 U.S.C. § 14501(c)(2)-(3). *Dilts*, 769 F.3d at 644. As this Court has noted, the list in the statute is not intended to be all-inclusive. *Id.*

This Court has held Congress did not intend to preempt generally applicable state transportation, safety, welfare, or business rules that do not otherwise regulate

prices, routes, or services. *Id.* State tort law falls within this exception. Negligence claims alleging a personal injury cause in part by the failure of a business to use reasonable or ordinary care are generally applicable to all businesses. Such claims do not target the motor carrier industry. They do not focus on prices, routes, or services provided by motor carriers or by freight brokers. Any impact a negligence claim has on the prices, routes, or services of a broker or a motor carrier are tangential. Certainly, they are no more impactful on motor carrier prices, routes, or the services provided than the California Prevailing Wage Law at issue in *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184 (9th Cir. 1998); the meal and rest break requirements at issue in *Dilts*, 769 F.3d 637 (9th Cir. 2014); or the California Labor Commissioner's use of a discretionary common-law employment status standard for misclassification claims in *Su*, 903 F.3d 953 (9th Cir. 2018).

B. The Common Law of Negligence Does Not Bind a Freight Broker to Compliance with Any Particular Standard of Care, Making Any Change in Conduct Voluntary.

This Circuit has held that where a challenged law does not directly refer to rates, routes, or services, and tort law does not, the relevant question is "whether the provision, directly or indirectly, *binds* the carrier to a particular price, route or service and thereby interferes with the competitive market forces within the industry." *Dilts*, 769 F.3d at 646 (emphasis in original) (internal quotation marks

omitted). "Thus, laws mandating motor carriers' use (or non-use) of particular prices, routes, or services in order to comply with the law are preempted." *Id.* Laws that do not so mandate are not preempted.

In finding Appellant's negligence claim to be preempted by the FAAAA, the district court in this case was persuaded by Appellee that the imposition of liability for negligence in the selection of a motor carrier would "reshape the level of service a broker must provide in selecting a motor carrier to transport property," *Miller v. C.H. Robinson Worldwide, Inc.*, No. 3:17-cv-00408-MMD-WGC, 2018 WL 5981840, at *4 (D. Nev. Nov. 14, 2018), placing the law of negligence in the same category as the tobacco law at issue in *Rowe*, 552 U.S. 364 (2008). This reasoning misapprehends both the nature of the law of negligence and the nature of the law at issue in *Rowe*.

The Maine statute in *Rowe* was preempted because carriers hauling tobacco products risked liability under the statute unless they provided certain receipt and delivery verification services. The record reflected that a substantial portion of all "delivery services" in which the written receipts and verifications mandated by the tobacco statutes would be required were performed by motor carriers. The impact of the implementation of the statue would require carriers to "offer a system of services that the market does not provide (and which the carriers would prefer not to offer)" producing "the very effect that the federal law sought to avoid, namely a state's

direct substitution of its own governmental commands for 'competitive market forces' in determining (to a significant degree) the services that motor carriers will provide." *Rowe*, 552 U.S. at 372. The determinative factor was the state's "governmental command" as a substitution for market forces into the future. *Id.*

The common law of negligence—here the Appellant's claim against the Appellee freight broker for negligent hiring—has no direct or substantial impact on that broker's prices, routes, or services. The only "governmental command" involved in a negligence claim comes from a court's judgment, after a jury trial, of liability for damages. Negligence liability claims focus on a prior negligent act or acts. Damages are paid if liability is proved for acts in the past. They do not regulate future conduct.

Negligence law creates no forward-looking "governmental command" or governmental requirement for a freight broker or motor carrier to change anything, be that a price, a route, or a service. The risk of future tort liability if unreasonable professional conduct is not changed certainly provides a broker or motor carrier with a financial incentive to avoid similar outcomes in the future by altering its behavior. But tort liability does not mandate the broker to change rates, routes, or services. A broker can decide not to change and to instead absorb the risk of future tort liability as a cost of doing business.

C. Common Law Negligence, Which Predates Motor Carriers, Has Not and Will Not Create a Forbidden State Regulatory Patchwork.

The district court expressed concern that failure to preempt tort claims against freight brokers for the negligent selection of carriers will give rise to "the forbidden state regulatory patchwork noted in *Dilts*" because of some perceived difference in the reasonableness standard from state to state. *Miller*, 2018 WL 5981840, at *4. This argument fails for the reasons stated above, but also because of an apparent misconception about the nature of the reasonable care standard.

Negligence is "the dominant cause of action for accidental injury in this nation today." W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 28, at 161 (5th ed. 1984). The tort is recognized in all 50 states, and the concept of reasonable care, though perhaps in slightly different language, means "the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation." Negligence, Black's Law Dictionary 1245 (11th ed. 2019). Though the wording from state to state may be slightly different, this is the standard applicable to negligence claims across the country. A jury determines whether the conduct at issue meets the standard based on the evidence presented. While context, conduct, and evidence will differ, the standard remains the same. Negligence claims against freight brokers using the reasonable care standard are analogous to the misclassification claims brought by owner-operators to the California Commissioner of Labor for determination using the *Borello* standard in *Su*.

III. THE FAAAA PREEMPTION CLAUSE REFLECTS CONGRESS' UNDERSTANDING THAT STATE TORT LAWSUITS PROVIDE A LAYER OF PROTECTION FOR MEMBERS OF THE PUBLIC INJURED OR KILLED BY MOTOR CARRIERS ON THE NATION'S HIGHWAYS.

A. The FAAAA Preemption Provision Expresses No Clear Congressional Intent To Eliminate Negligence Liability For Contributing to Highway Dangers.

This country's Founding Fathers were unquestionably familiar with this bedrock principle of the common- aw: "Every right, when withheld, must have a remedy, and every injury its proper redress." 3 William Blackstone, Commentaries on the Laws of England 23, 109 (1765). Chief Justice John Marshall restated the principle for Americans:

> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1903). Following the adoption of the Fourteenth Amendment, the Supreme Court pronounced it "the duty of every state to provide, in the administration of justice, for the redress of private wrongs" under the Due Process Clause of the Fourteenth Amendment. *Missouri Pac. Ry. Co. v. Humes*, 115 U.S. 512, 521 (1885).

Negligence claims are based on one of this country's bedrock principles: reasonable compensation should be paid for injury caused by an actor's wrongful conduct, whether that wrongful conduct was inadvertent, careless, or more.

Appellant's claims in this case are a classic example of this principle. Given the importance of Americans' right to seek legal redress for wrongful injury, the Supreme Court has observed it would be "difficult to believe that Congress would, without comment, remove all means of judicial recourse for those injured by illegal conduct." *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 251 (1984).

The FAAAA makes no reference to preemption of state tort law claims, though Congress certainly knows how to do so. "Congress has long demonstrated an aptitude for expressly barring common law actions when it so desires." *Taylor v. General Motors Corp.*, 875 F.2d 816, 824 (11th Cir. 1989) (citing examples). Significantly, the Carmack Amendment, 49 U.S.C. § 14706, governs liability for all losses, damages, or injuries to goods transported in interstate commerce. The Amendment, by its plain language, subjects common carriers and freight forwarders transporting cargo in interstate commerce to absolute liability for actual loss or injury to property. *Id.* The shipper has a remedy for the value of any goods that suffered damage in the crash in which Appellant was injured. With no comparable federal remedy provided by Congress for personal injuries suffered by individuals due to accidents involving motor carriers transporting goods in interstate commerce, it is difficult to believe Congress intended the FAAAA, which makes no mention of the preemption of common-law tort claims, to preempt an injured individual's right to bring a negligence action.

B. Congress Expressly Excluded State Regulation of Highway Safety From the Scope of FAAAA Preemption.

Finally, even if this Court determines that Appellant's cause of action comes within the express provision preempting any state regulation "related to a price, route, or service of any motor carrier [or] broker," 49 U.S.C. § 14501(c)(1), that subsection is clearly limited by the statute's savings provision, which states 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). Common law negligence liability not only compensates those injured by careless conduct; it deters such misconduct in the first place. *See, e.g.*, Andrew F. Popper, In Defense of Deterrence, 75 Alb. L. Rev. 181, 190 (2012) ("[O]ne is hard pressed to find a credible argument asserting that tort law does not promote public safety."). Thus, to the extent that the Court views negligence liability as a state regulation, it is a state safety regulation that is explicitly preserved by the statute.

CONCLUSION

For the foregoing reasons, the district court order and judgment dismissing Appellant's case should be reversed.

Date: August 14, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because this brief contains 4,224 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). I further certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman type style.

Date: August 14, 2019

/s/ Jeffrey R. White
JEFFREY R. WHITE

CERTIFICATE OF SERVICE

I, Jeffrey R. White, counsel for amicus curiae and a member of the Bar of this Court, certify that on August 14, 2019, I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I also certify that the foregoing document is being served on this day on all counsel of record via transmission of the Notice of Electronic Filing generated by CM/ECF. All participants in this case are registered CM/ECF users.

/s/ Jeffrey R. White
JEFFREY R. WHITE