

No. 11-798

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In The  
**Supreme Court of the United States**

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AMERICAN TRUCKING ASSOCIATIONS, INC.,

*Petitioner,*

v.

CITY OF LOS ANGELES, CALIFORNIA, et al.,

*Respondents.*

—◆—  
**On Writ Of Certiorari To The  
United States Court Of Appeals  
For The Ninth Circuit**

—◆—  
**BRIEF OF THE LOS ANGELES AREA  
CHAMBER OF COMMERCE AS *AMICUS  
CURIAE* IN SUPPORT OF RESPONDENTS**

—◆—  
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**INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

*Amicus curiae* Los Angeles Area Chamber of Commerce (“LA Chamber”) is Southern California’s largest not-for-profit business federation, representing more than 1,600 member businesses from Los Angeles, Orange, Riverside, San Bernardino and Ventura Counties. The LA Chamber’s membership includes individual entrepreneurs, small- and medium-size businesses and multinational conglomerates from all sectors of the business community, from aerospace to shipping to manufacturing to entertainment. The LA Chamber actively promotes a strong economy and an attractive business environment throughout the greater Los Angeles area through legislative advocacy, community support and information outreach programs.

The LA Chamber submits this brief based on the considerable impact that the Port of Los Angeles (“Port”) has on the business environment in Southern California. The LA Chamber’s recognition of this impact predates the Port’s very existence, which came

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<sup>1</sup> Pursuant to Supreme Court Rule 37.2(a), all parties have consented to the filing of this brief. Letters evidencing such consent have been filed with the Clerk of the Court. Pursuant to Rule 37.6, counsel for *amicus curiae* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than *amicus curiae*, its members, or its counsel has made a monetary contribution to the preparation or submission of this brief.

about, in part, due to the early and extensive efforts of the LA Chamber in lobbying Congress to place a deepwater port in Los Angeles. As a result of efforts by the LA Chamber and others, work on the San Pedro breakwater began in April 1899. Since that time, the Port has grown to become the leading container port in the United States in terms of cargo volume. As stated in the district court's findings of fact below, the Port is connected, directly and indirectly, with over 900,000 jobs and more than \$39 billion in annual wages and tax revenues. Petitioner's Appendix ("Pet. App.") 70a.

While other parties will address the legal question of whether the Ninth Circuit was correct in holding that the off-street parking and placard provisions in the concession agreement adopted as part of the Port's Clean Truck Program ("CTP") are not preempted by the Federal Aviation Administration Authorization Act ("FAAA Act"), the LA Chamber submits this short brief on behalf of its member businesses to emphasize the importance of the CTP and the Port's Clean Air Action Plan ("CAAP") to the future growth of the Port, the surrounding communities and the regional economy. Following a fifteen-month long process and considerable stakeholder input, the Port developed the CTP and the concession agreement to address community concerns about safety, emissions and congestion related to the Port. It did this with the intention, *inter alia*, of breaking a stalemate in which the Port, community organizations and the courts had found themselves, and which

had stymied the Port's expansion projects and prevented the adoption of technical improvements to mitigate impacts on the community.

Had the Port not taken these steps, the status quo that had existed for many years might have persisted, the Port's projects would have been further delayed, and the air quality and other impacts that nearby residents faced would be unchanged. As a result of the CTP and the concession agreement, however, these impacts have decreased dramatically and the Port has been able to take actions that are both pro-growth and responsive to the health and safety of the nearby communities. For this reason, the LA Chamber urges the Supreme Court to affirm the Ninth Circuit's opinion.



## **SUMMARY OF ARGUMENT**

The Port of Los Angeles is one of the busiest container ports in the world and handles more cargo volume than any other port in the country. It is a critical regional asset, which converts the container traffic that passes through it into jobs, wages, tax revenue and a broader revenue base for the surrounding community and the greater Los Angeles region. Integral to the Port's operation are the drayage trucks that move containers to and from the Port; however, the impact of drayage traffic has led to community concerns about air quality, congestion and safety, and resulted in opposition to the Port's plans

to improve and expand its facility. After years of litigation and stalled projects, the Boards of Harbor Commissioners for Los Angeles and Long Beach (the location of an adjacent port facility) produced a Clean Air Action Plan in 2006 to address the concerns of the community. In order to effectuate the goals in the CAAP, the Port, working with various stakeholders, developed the Clean Truck Program and adopted a concession agreement for motor carriers providing drayage services.

The Port is a vital economic engine for Southern California, and, in the LA Chamber's view, the CAAP, the CTP and the concession agreement, as modified by the Ninth Circuit's opinion, represent pro-development and pro-growth initiatives, which are vital both to maintain and expand the Port's business and economic impact while reducing adverse impacts to the surrounding communities related to congestion, safety and air quality. Based on the LA Chamber's unique understanding of the local economy and the Port's critical place in it, the LA Chamber supports affirmance of the Ninth Circuit's opinion in its entirety.

Specifically, the LA Chamber supports the off-street parking and placard provisions in the concession agreement (as well as the financial capability and maintenance provisions, which are not at issue here) as reasonable and meaningful steps to mitigate impacts to the communities near the Port. If the Port is prohibited from taking such modest steps, the joint efforts of the Port and the nearby communities to

expand and modernize the Port in a way that addresses the concerns of the nearby communities might stall, and the Port and its neighbors face the possibility of returning to the stalemate that persisted for years during which time the Port was unable to complete expansion projects *and* unable to make improvements to reduce impacts caused by drayage traffic.

For this reason, the LA Chamber respectfully urges the Supreme Court to affirm the Ninth Circuit's decision that the off-street parking and placard provisions are not preempted by the FAAA Act. While not at issue, the LA Chamber notes that it also agrees with the Ninth Circuit's decision that the employee-owner provision would interfere with the ability of concessionaires at the Port to contract with independent operators, without playing any role in mitigating the adverse impact from drayage traffic on the surrounding communities.



## **ARGUMENT**

### **THE LA CHAMBER SUPPORTS AFFIRMANCE OF THE NINTH CIRCUIT'S OPINION**

#### **A. The Ninth Circuit's Opinion**

As the Ninth Circuit explained in its opinion, for ten years beginning in 1997, the efforts by the Port of Los Angeles to expand its cargo terminal facilities to accommodate an increased demand in shipping and larger ships faced substantial opposition and litigation



from community and environmental groups. *American Trucking Ass'ns, Inc. v. City of Los Angeles*, 660 F.3d 384, 391 (9th Cir. 2011). Beginning in 2008, as part of an effort to respond to community concerns relating to the expansion, the Port adopted a concession agreement directed toward motor carriers operating drayage trucks on Port property as part of the Port's Clean Truck Program. *Id.* at 390. Petitioner American Trucking Associations, Inc. challenged the concession agreement in district court. Out of the fourteen separate requirements in the agreement, Petitioner challenged five specific provisions at trial arguing that they were preempted by the FAAA Act, which generally forbids states and local municipalities from enacting or enforcing a law, regulation or other provision "having the force and effect of law" related to "a price, route, or service of any motor carrier . . . with respect to the transportation of property." *Id.*; 49 U.S.C. § 14501(c)(1). Following trial, the district court ruled that none of the challenged provisions were preempted by the FAAA Act because they did not relate to the motor carriers' rates, routes and services, and because the State acted as a market participant when it adopted the concession agreement. *American Trucking*, 660 F.3d at 395.

On appeal, the Ninth Circuit held that the concession agreement, as a whole, did not affect rates, routes or services, and thus was not preempted *per se*. *Id.* at 398. Instead, the panel held that each of the five provisions must be analyzed under the FAAA Act. *Id.* The Ninth Circuit affirmed the district court's

holding as to four of the challenged provisions, holding that (1) the financial capability provision was not sufficiently related to rates, routes or services to trigger preemption under the FAAA Act, *id.* at 404; (2) the maintenance provision was saved by the FAAA Act's safety exception, *id.*; and (3) the off-street parking and placard provisions came within the market participation exception, *id.* at 407, 409.

The Ninth Circuit reversed the district court's holding only as to the employee-driver provision, which requires concessionaires to phase out the use of independent owner-operators for drayage services and replace them with employees of licensed motor carriers. *Id.* at 407-08 (holding, contrary to the district court, that the employee-driver provision did not fall within the market participant doctrine). The panel concluded that this provision was designed to impact third party behavior by imposing conditions on the contractual relationships between motor carriers and drivers and thus was "tantamount to regulation," *id.* at 408 (*quoting Wisconsin Dep't of Indus., Labor & Human Relations v. Gould Inc.*, 475 U.S. 282, 289 (1986)), and preempted by the FAAA Act.

The LA Chamber agrees with the Ninth Circuit's opinion in all respects. The four surviving provisions are all aimed at addressing community concerns regarding the impact of increased drayage traffic on the surrounding areas, particularly with regard to safety, congestion, and increased emissions. By contrast, the employee-driver provision would go beyond

such impacts and would interfere with economic opportunities that otherwise would exist between concessionaires and independent contractors, which include local small businesses. In analyzing the provisions under the FAAA Act, the LA Chamber believes the Ninth Circuit struck the appropriate balance with respect to the effects the provisions would have on the local and regional economy.

## **B. The Port's Role in the Regional Economy**

The enormous scale of the Port's contribution to the regional economy was well-documented at trial. The Port is the leading container port in the United States in terms both of shipping container volume and cargo volume. Pet. App. 69a. In 2007, it was the thirteenth busiest port in the world, and the fifth busiest in the world when combined with the cargo volume at the adjacent Port of Long Beach. *Id.* In both 2007 and 2008, the Port handled more than \$240 billion in cargo.<sup>2</sup> *Id.* The district court found that this activity is connected with over 900,000 jobs in the greater Los Angeles region and contributes more than

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<sup>2</sup> Although the global economic downturn that began in 2008 impacted the volume of cargo moving through the Port, this volume has rebounded in recent years. Shipping volume is often measured in twenty-foot equivalent units ("TEUs"). In 2011, the Port moved 7.9 million TEUs, which was up from 6.7 million TEUs in 2009, and close to the national container record of 8.5 million TEUs that the Port set in 2006. See <http://www.portoflosangeles.org/maritime/growth.asp>.

\$39 billion in annual wages and tax revenues. Pet. App. 70a. When the Port's expansion projects are completed, the Port's economic impacts on the region will grow substantially: the Port projects that increasing global trade and larger ships will double the demand for its cargo handling capacity over the next decade. Pet. App. 72a-73a. The LA Chamber is committed to strong and sustainable growth of the local economy, and believes that the Ninth Circuit decision enables the Port to meet this demand and continue to serve as a key economic engine in the greater Los Angeles region.

**C. Without the Ability to Address Community Concerns, the Port's Ability to Modernize and Expand Will Be Seriously Compromised**

The economic activity generated by the Port depends on the operation of drayage trucks to move containers between the ships that arrive at the Port and points inland. These trucks have been at the center of community concerns about the effects of the Port's expansion efforts. As noted above, the Port's expansion projects were stalled for years by opposition from community groups, which claimed that the projects would create adverse impacts on the surrounding communities. *American Trucking*, 660 F.3d at 391. This stalemate also obstructed the Port's ability to make technical improvements to reduce such impacts. After multiple lawsuits challenging expansion projects, and in response to the general

concerns raised by the nearby communities, the Boards of Harbor Commissioners for Los Angeles and Long Beach developed the CAAP in November 2006 to address concerns regarding emissions impacts. *Id.* at 391-92. In response to the CAAP, the Port undertook a fifteen-month development period that included outreach to various stakeholders, which resulted in its adoption of the CTP and the concession agreement. *Id.* at 392-93.

The link between the concession agreement, the region's economy and the mitigation of impacts relating to the Port's activity should not be underestimated. The concession agreement is a key part of the Port's efforts to respond to local concerns related to the Port's development. If the Port is not permitted to take such modest and reasonable steps as those represented by the off-street and placard provisions, its ability to adopt limited measures tailored to specific, local issues arising from Port activity will be compromised, which may result in additional litigation and delays. This not only costs the additional jobs and economic activity that otherwise would be the result of a modernized and expanded Port, but also puts at risk the Port's existing business, some of which may shift to other facilities. In addition, the Port's efforts to make improvements to address air quality, safety and congestion impacts would be frustrated. Having championed the original development of the Port, the LA Chamber believes that the Port, the local communities and other stakeholders with knowledge of the specific economic and social

factors at play, are best suited to put in place a pro-development, green growth program that enables the Port and the region to take advantage of the growing demand for shipping while mitigating the impacts related to the Port's economic activity.



## CONCLUSION

For the reasons stated above, the LA Chamber supports the Ninth Circuit's judgment and requests that it be affirmed.

Respectfully submitted,

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