No. 12-52

In the Supreme Court of the United States

DAN'S CITY USED CARS, INC.,
DBA DAN'S CITY AUTO BODY, PETITIONER

v.

ROBERT PELKEY

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF NEW HAMPSHIRE

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

The Federal Aviation Administration Authorization Act of 1994, Pub. L. No. 103-305, 108 Stat. 1569, provides, with certain exceptions, that "a State * * * 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 * * * with respect to the transportation of property." 49 U.S.C. 14501(c)(1). The question presented is whether respondent's claims under the New Hampshire Consumer Protection Act and under New Hampshire tort law are preempted by Section 14501(c)(1).

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INTEREST OF THE UNITED STATES

The issue in this case is whether the preemption provision of the Federal Aviation Administration Authorization Act of 1994 (FAAAA or Act), Pub. L. No. 103-305, 108 Stat. 1569, preempts statutory and common-law damages claims brought under New Hampshire law, arising out of the disposition of a towed motor vehicle. While the FAAAA's preemption provision is broad, it is not limitless. The United States has a substantial interest in the availability of state-law remedies insofar as those remedies are not superseded by the Act. Congress has charged the Secretary of Transportation with "ensur[ing] the coordinated and effective administration of the transportation programs of the United States Government" and with "encourag[ing] cooperation of Federal, State, and local governments, carriers, labor, and other in-

terested persons to achieve transportation objectives." 49 U.S.C. 101(b)(1) and (3). The availability of non-preempted state-law remedies furthers the United States' interest in coordination and cooperation regarding federal transportation objectives.

STATEMENT

Section 601(c) of the FAAAA preempts state 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 State of New Hampshire has, by statute, regulated the removal, storage, and disposition of vehicles parked without permission of the property owner. N.H. Rev. Stat. Ann. §§ 262:31 to 262:40-c (Chapter 262). Respondent sued petitioner, alleging that petitioner's disposition of respondent's car, which petitioner had towed at the request of respondent's landlord, violated the state consumer protection act and the state common law of negligence. J.A. 9-10, 12-14. The trial court granted summary judgment to petitioner, holding that respondent's state-law claims are preempted by Section 14501(c)(1). Pet. App. 23-33. The Supreme Court of New Hampshire reversed, concluding that respondent's claims are not preempted because they do not relate to the transportation of property or to the towing services petitioner provides. *Id.* at 1-22.

1. The Airline Deregulation Act of 1978 (ADA), Pub. L. No. 95-504, 92 Stat. 1705, largely deregulated the domestic airline industry, adopting a policy of "maximum reliance on competitive market forces." ADA § 3(a), 92 Stat. 1706. "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 preempted any state

"law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier." 49 U.S.C. 41713(b)(1).

As part of its "continuing effort * * * to reduce unnecessary regulation by the Federal Government," Congress similarly deregulated the motor-carrier industry in 1980. Motor Carrier Act of 1980, Pub. L. No. 96-296, § 2, 94 Stat. 793. Fourteen years later, Congress found that continued "regulation of intrastate transportation of property by the States" had "imposed an unreasonable burden on interstate commerce." FAAAA § 601(a), 108 Stat. 1605. Congress responded by enacting a preemption provision that "borrowed" language from the ADA's preemption provision. *Rowe* v. *New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 368 (2008). The FAAAA provides that "a State * * * 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 * * * with respect to the transportation of property." 49 U.S.C. 14501(c)(1); see 49 U.S.C. 14501(a) (preempting state laws relating to the transportation of passengers).

That "[g]eneral rule" of preemption applies "[e]xcept as provided" elsewhere in the section. 49 U.S.C. 14501(c)(1). Among the "[m]atters not covered" by the preemption rule are a State's "safety regulatory authority * * * with respect to motor vehicles" and its authority to regulate motor carriers concerning the "minimum amounts of financial responsibility relating to insurance requirements." 49 U.S.C. 14501(c)(2)(A); but see 49 U.S.C. 31141(a) (authorizing the Secretary to review state regulation of commercial motor vehicle safety, if state accepts fed-

eral transportation funding, and to determine that such regulation should not be enforced). Section 14501 also excludes from preemption a State's authority to enact provisions "relating to the price" of "vehicle transportation by a tow truck" if the towing is conducted without the prior consent of the vehicle's owner. 49 U.S.C. 14501(c)(2)(C). States may also require the prior consent or the presence of the owner of private property before permitting a vehicle to be towed from private property without the vehicle owner's consent. 49 U.S.C. 14501(c)(5).

2. The State of New Hampshire has, by statute, regulated the removal and storage of vehicles deemed abandoned by their owners or parked on private property without the permission of the property owner. Chapter 262. The statute establishes procedures by which "[a]n authorized official" may remove an abandoned vehicle and have it "stored at some suitable place." N.H. Rev. Stat. Ann. § 262:31; see *id.* §§ 262:32-262:34; see *id.* § 259:4-a (defining "[a]uthorized official"). The statute also authorizes "[t]he owner or person in lawful possession of any private property * * * on which a vehicle is parked without permission or is apparently abandoned" to "[c]ause the removal of the vehicle in a reasonable manner." *Id.* § 262:40-a(I) and (a). "The costs of removing a vehicle" by either an authorized official or owner of private property, "including reasonable towing and storage costs," are "the responsibility of the last registered owner" of the vehicle. *Id.* § 262:40-a(IV); see *id.* § 262:33(I) (removal and storage charges "shall be a lien against the vehicle").

New Hampshire also has regulated the disposition of vehicles that are removed and stored pursuant to

those procedures and remain unclaimed by their owners. N.H. Rev. Stat. Ann. §§ 262:36-a to 262:39. If the owner does not claim the vehicle within a specified period, "the storage company," *id.* § 262:36-a(I), is authorized to sell the vehicle "at the custodian's place of business at public auction," *id.* § 262:37, after giving notice to the vehicle's owner, if his identify can be ascertained through "the exercise of reasonable diligence," *id.* § 262:38. The statutory period in which an owner may claim his car depends on the age, value, and condition of the car. *Id.* § 262:36-a(I), (II) and (III). The storage company may use the proceeds of such a sale to pay "the amount of the liens and the reasonable expenses incident to the sale." *Id.* § 262:39. Any remaining proceeds from the sale "shall be paid to the owner" of the vehicle if claimed within a year of the sale. *Ibid.*

3. a. Petitioner is a New Hampshire towing company that towed respondent's car from his landlord's property, stored the car for a period, and then disposed of it, all without respondent's consent. Pet. App. 2-3. Respondent's landlord required tenants to move their cars from the parking lot during a snowstorm to accommodate snow removal. *Id.* at 2, 24. Petitioner towed respondent's car following a snowstorm in February 2007, after respondent had failed to move it. *Id.* at 24. At the time, respondent was confined to bed with a serious medical condition. *Id.* at 2. Soon thereafter, respondent was admitted to the hospital, where he had his left foot amputated and suffered a heart attack. *Ibid.* While respondent was in the hospital, petitioner sought permission from the State to sell respondent's car at auction without notice. *Id.* at 24. In support of that request, petitioner repre-

sented that the vehicle was worth less than $500 and was not fit for use. *Ibid.*; see N.H. Rev. Stat. Ann. § 262:36-a(III) (authorizing sale without notice under those conditions). The State responded by identifying respondent as the owner of the car. Pet. App. 24. Petitioner then sent respondent a letter explaining that it had towed his car, but the letter was returned as undeliverable. *Ibid.*

After respondent was discharged from the hospital, he learned that his car had been towed. Pet. App. 2; see J.A. 10. Respondent's attorney notified petitioner that respondent's vehicle was not abandoned, and he unsuccessfully sought the vehicle's return. Pet. App. 2-3.[1] Petitioner "later traded the car to a third party, but [respondent] received no remuneration for his loss." *Id.* at 3.

b. Respondent sued petitioner in New Hampshire Superior Court, seeking damages for petitioner's disposition of his car. J.A. 6-18 (complaint). As relevant here, respondent asserted two claims: a violation of New Hampshire's Consumer Protection Act, N.H. Rev. Stat. Ann. § 358-A:2, and a negligence claim. J.A. 12-14. Respondent alleged that petitioner violated the Consumer Protection Act "by making false statements regarding the value" and "the condition"

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[1] The Supreme Court of New Hampshire stated that petitioner "falsely told [respondent's] attorney that the car had been sold at public auction." Pet. App. 3. The New Hampshire Superior Court also stated that respondent's attorney "advised [petitioner] that [respondent] wanted to pay any charges owed and reclaim his vehicle." *Id.* at 25; see *id.* at 20 (similar statement in New Hampshire Supreme Court opinion). Petitioner contests these statements. Pet. Br. 12-13 & n.8, 16 n.13. The accuracy of the courts' statements is not material to the preemption question before this Court.

of the vehicle, about whether the vehicle "had been abandoned," and about whether petitioner had made any attempt to identify the vehicle's owner. J.A. 12. He also alleged that petitioner violated the Consumer Protection Act "by failing to follow the procedures set forth in [Chapter] 262, and by failing to cancel a scheduled public auction" after petitioner learned that respondent was the car's owner. *Ibid.* Respondent separately alleged that petitioner was negligent in violating its "statutory duty under [Chapter] 262" as well as its "common law duty as a bail[ee], to use reasonable care" to identify the owner of the vehicle, "to make reasonable efforts" to return the vehicle to the owner, and in disposing of the vehicle. J.A. 13.

The superior court granted petitioner summary judgment, concluding that respondent's claims are preempted by the FAAAA. Pet. App. 23-33. The court observed that this Court "has concluded that preemption under §14501(c)(1) is broad and far-reaching." *Id.* at 28 (citing *Rowe, supra*). In particular, the court explained, "[s]tate enforcement actions *having a connection with, or reference to* carrier rates, routes or services are preempted." *Id.* at 29 (quoting *Rowe*, 552 U.S. at 370) (brackets in original). "Based on the claims asserted" in the complaint, the court concluded that respondent "seeks enforcement of state law related to [petitioner's] services." *Id.* at 31. Accordingly, the superior court held that respondent's claims "fall within the scope of claims preempted by §14501(c)." *Id.* at 32.

c. The Supreme Court of New Hampshire reversed. Pet. App. 1-22. The court agreed with the superior court's observation that "the 'relating to' language in § 14501(c)(1) is construed broadly" and pre-

empts state law that has "a connection with, or reference to" matters identified in the preemption provision. *Id.* at 6, 7 (quoting *Morales*, 504 U.S. at 384). The court concluded, however, "that § 14501(c)(1) does not preempt state laws pertaining to the manner in which a towing company disposes of vehicles in its custody to collect towing and storage charges secured by a lien." *Id.* at 10.

The FAAAA's preemption provision, the court noted, "applies only when state laws relate to the price, route, or service of a motor carrier *with respect to the transportation of property.*" Pet. App. 10-11 (citing *City of Columbus* v. *Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 429 (2002)). And "transportation" is defined to include, as the court described it, "activities that are normally carried out in the course of transporting property (*e.g.*, storage and handling)." *Id.* at 11; see 49 U.S.C. 13102(23). Here, the court determined that the laws at issue "are not state laws 'with respect to the transportation of property'; they are state laws with respect to the collection of debts" and laws providing for "the rights of property owners to recover their property." Pet. App. 13. In particular, the court noted, the state law on which respondent relied governs "the manner in which a company in possession of a towed vehicle may dispose of the vehicle to collect on a debt created by operation of state law." *Id.* at 15. Because that is "a regulatory subject far removed from Congress's aim of" deregulating the trucking industry, the court held that the state law was not preempted by the FAAAA. *Ibid.*

Alternatively, the New Hampshire Supreme Court held that, even if respondent's claims rely on state law related to the transportation of property, those laws

are "not sufficiently related to a towing company's 'service' to be preempted under § 14501(c)(1)." Pet. App. 16. "The 'service' of a towing company is the moving of vehicles." *Ibid.* To the extent the state laws, which "relate[] to post-service debt collection," place any "constraints" upon towing services, "those constraints do not bear the requisite nexus to the business of towing of vehicles to overcome the presumption that Congress does not intend to displace laws operating in a field of traditional state authority." *Id.* at 17. The court also found that "the absence of any federal remedy for private injuries of the kind allegedly suffered," while not determinative, supported the conclusion that Congress did not intend to preempt the state-law remedies on which respondent relied. *Id.* at 20. The court therefore reversed and remanded for further proceedings. *Id.* at 22.[2]

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[2] In his brief in opposition, respondent argued that this Court lacks jurisdiction under 28 U.S.C. 1257(a) because the decision of the New Hampshire Supreme Court is not final. Br. in Opp. 6-8. But the state court's judgment, like the one at issue in *Belknap, Inc.* v. *Hale*, 463 U.S. 491 (1983), "is final within the meaning of 28 U.S.C. § 1257: it finally disposed of the federal pre-emption issue; a reversal here would terminate the state-court action; and to permit the proceedings to go forward in the state court without resolving the pre-emption issue would involve a serious risk of eroding the federal statutory policy," *id.* at 497-498 n.5—here, of eliminating "an unreasonable burden on interstate commerce" caused by "regulation of intrastate transportation of property by the States," FAAAA § 601(a)(1) and (A), 108 Stat. 1605; see *Cox Broad. Corp.* v. *Cohn*, 420 U.S. 469, 482-485 (1975). Affirming the New Hampshire Supreme Court's judgment, as urged by the United States, would not call this Court's jurisdiction into question. See *Belknap*, 463 U.S. at 498 n.5 ("That we affirm rather than reverse, thereby holding that federal policy would not be sub-

SUMMARY OF ARGUMENT

The Supreme Court of New Hampshire correctly determined that respondent's state-law claims seeking damages for petitioner's allegedly unlawful disposition of respondent's car are not preempted by the FAAAA.

A. When considering a federal statutory provision preempting state law, a court's task is to determine the "domain expressly pre-empted," because by specifying the scope of the statute's preemption, Congress has indicated an intent not to preempt the States' authority outside that scope. *Lorillard Tobacco Co.* v. *Reilly*, 533 U.S. 525, 541 (2001). The Court has stated that Congress generally must make its preemptive intent "clear and manifest" before it will be found to have preempted state authority in an area of traditional state regulation. *Id.* at 542 (citation omitted). The Court has relied on such a presumption against preemption in construing Section 14501(c)(1). See *City of Columbus* v. *Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 432-434 (2002).

The FAAAA preempts state 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). This Court made clear in *Rowe* v. *New Hampshire Motor Transport Ass'n*, 552 U.S. 364 (2008), that the Act's preemptive scope is broad, superseding any state law having a "connection with, or reference to" the specified subject matters. *Id.* at 370 (citation and emphasis omitted). But while the Act's preemption provision is broad, it is limited by its text to Congress's regulatory objective of eliminating the burden imposed by state regulation on transportation

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verted by the [state] proceedings, is not tantamount to a holding that we are without power to render such a judgment.").

by motor carriers. The statute thus does not preempt state regulation of "price, route, or service" unrelated to motor carriage or to the transportation of property. 49 U.S.C. 14501(c)(1).

B. Respondent's claims under New Hampshire's Consumer Protection Act and common law concern petitioner's allegedly unlawful disposition of respondent's car. Those claims do not relate to the services of a motor carrier or to the transportation of property, and so are not preempted by the FAAAA.

Respondent alleges that petitioner violated the Consumer Protection Act by making deceptive representations when disposing of his car, in violation of the requirements of Chapter 262 of the New Hampshire Revised Statutes. That claim is not based on a state law "related to a price, route, or service of any *motor carrier*," 49 U.S.C. 14501(c)(1) (emphasis added), *i.e.*, "a person providing motor vehicle transportation for compensation," 49 U.S.C. 13102(14) (Supp. V 2011), because petitioner was not acting as a motor carrier when it disposed of respondent's car. Respondent's statutory claim is not preempted for the further reason that petitioner's disposition of respondent's car did not involve "transportation," *i.e.*, "services related to" the "movement of passengers or property." 49 U.S.C. 13102(23). And because the regulation of interests in property is a matter traditionally within the States' regulatory authority, the presumption against preemption also supports the conclusion that the Act does not preempt respondent's state statutory claim.

The FAAAA likewise does not preempt respondent's common-law negligence claim. This Court has held that federal statutes broadly preempting state "requirements" or "standard[s]" encompass state

common law. See *Riegel* v. *Medtronic, Inc.*, 552 U.S. 312, 324 (2008); *CSX Transp., Inc.* v. *Easterwood*, 507 U.S. 658, 664 (1993). By contrast, the Court has determined that a statute more narrowly preempting a state "law or regulation" was "most naturally read as not encompassing common-law claims." *Sprietsma* v. *Mercury Marine*, 537 U.S. 51, 63 (2002) (quoting 46 U.S.C. 4306). The Act preempts "a law, regulation, or other provision having the force and effect of law," 49 U.S.C. 14501(c)(1)—language suggesting that Congress's focus here (as in *Sprietsma*) was on positive enactments and other exercises of government regulatory power, not on state common law. That conclusion is buttressed by Congress's enactment of a general saving clause, which preserves "remedies existing under another law or common law." 49 U.S.C. 13103; see *Sprietsma*, 537 U.S. at 63.

The absence of any federal remedy also suggests that Congress did not intend to preempt state-law claims regarding the disposition of vehicles following towing. If state law did not apply, then no law would govern the resolution of disputes arising from a company's disposition of a vehicle the company previously towed, or afford a remedy for wrongful disposition. Not only would that leave vehicle owners without any recourse for damages, it would eliminate the only source of law giving companies the authority to dispose of vehicles when they are unclaimed. That could not have been Congress's intent.

C. Petitioner's arguments in favor of preemption lack merit. Petitioner contends that the FAAAA permits States to regulate motor carriers only if the state law comes within the specified exceptions to the Act's preemption provision. But while such exceptions

identify matters that a state may regulate when it would otherwise be precluded from doing so, the exceptions do not delineate the scope of the preemption provision itself.

Petitioner also argues that its storage and disposition of respondent's car were services within the meaning of Section 14501(c)(1) because petitioner engaged in those activities after it towed respondent's car. In storing and disposing of respondent's car, however, petitioner did not provide a service of a "motor carrier," 49 U.S.C. 14501(c)(1), just as a garage owner does not provide motor-carrier services when it repairs a car it previously towed into its shop. For similar reasons, petitioner errs in contending that respondent's claims involve conduct coming within the broad statutory definition of "transportation." See 49 U.S.C. 13102(23). That definition focuses on "services related to [the] movement" of property, 49 U.S.C. 13102(23)(B), and petitioner's storage and disposition of respondent's car did not involve the movement of property.

Finally, petitioner argues that respondent's claims are preempted because they relate to a dispute over payment for towing, an activity that clearly is a service of a motor carrier. Section 14501(c)(1), however, cannot plausibly be interpreted to preempt state-law remedies related to payment for motor-carrier services. In the typical case, payment disputes would be governed by the state common law of contracts. See *American Airlines, Inc.* v. *Wolens*, 513 U.S. 219, 228-233 (1995). There is no basis for concluding that Congress intended to eliminate all remedies in the case of non-consensual towing, where payment is not governed by contract, given the absence of a contractual

relationship with the vehicle owner. That is especially so because Congress expressly permitted the States to regulate the "price" of non-consensual towing.

ARGUMENT

RESPONDENT'S STATE-LAW CLAIMS CONCERNING PETITIONER'S DISPOSITION OF RESPONDENT'S VEHICLE ARE NOT PREEMPTED BY SECTION 14501(c)(1)

A. The FAAAA's Preemption Of State Law Is Broad But Does Not Extend Beyond The Terms And Regulatory Purposes Of The Statute

Where Congress has enacted a statutory preemption provision, the Court's "task is to identify the domain expressly pre-empted because 'an express definition of the pre-emptive reach of a statute supports a reasonable inference that Congress did not intend to pre-empt other matters.'" *Lorillard Tobacco Co.* v. *Reilly*, 533 U.S. 525, 541 (2001) (internal citation and ellipses omitted) (quoting *Freightliner Corp.* v. *Myrick*, 514 U.S. 280, 288 (1995)); see *ibid.* ("Congressional purpose is the 'ultimate touchstone' of our inquiry.") (quoting *Cipollone* v. *Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992)). Where "federal law is said to bar state action in [a] fiel[d] of traditional state regulation," the Court works "on the assumption that the historic police powers of the States [a]re not to be superseded by the Federal Act unless that [is] the clear and manifest purpose of Congress." *Id.* at 541-542 (brackets in original) (quoting *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 325 (1997)); see *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 485 (1996) ("[W]e have long presumed that Congress does not cavalierly pre-empt state-law causes of action."). Contrary to petitioner's

contention (Br. 32), that "presumption against the pre-emption of state police power regulations" applies not only to the threshold question of "whether Congress intended any pre-emption at all," but also "to questions concerning the *scope* of its intended invalidation of state law." *Id.* at 485 (quoting *Cipollone*, 505 U.S. at 518); see, *e.g.*, *City of Columbus* v. *Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 432-434 (2002).[3]

The FAAAA preempts state 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). In *Rowe* v. *New Hampshire Motor Transport Ass'n*, 552 U.S. 364 (2008), this Court addressed the scope of preemption under the Act. Based on its prior construction of the ADA's preemption provision, on which the FAAAA's similar provision was based, the Court explained that state laws "'*having a connection with, or reference to*,' carrier 'rates, routes, or services are pre-empted'"; that such state laws are preempted regardless of whether their effect is only indirect, or whether they are consistent with federal regulation; and "that pre-emption occurs at least where state laws have a 'significant impact' related to Congress' deregulatory and pre-emption-related objectives." *Id.* at 370-371 (quoting *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 384, 390 (1992)) (citations omitted). By contrast, the Court explained that Section 14501(c)(1) "does not pre-empt state laws that affect" the object of Congress's regula-

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[3] "[A]n 'assumption' of nonpre-emption is not triggered when the State regulates in an area where there has been a history of significant federal presence." *United States* v. *Locke*, 529 U.S. 89, 108 (2000).

tory focus "in 'too tenuous, remote, or peripheral a manner.'" *Id.* at 375 (quoting *Morales*, 504 U.S. at 390).

The FAAAA thus broadly preempts a state law "related to the price, route, or service" of "motor carriers of property." 49 U.S.C. 14501(c) and (1) (capitalization altered). But the statute is also limited by those terms. The Act does not preempt state laws regulating prices, routes, or services of a company that is not "providing motor vehicle transportation for compensation." 49 U.S.C. 13102(14) (Supp. V 2011) (defining "motor carrier"). For example, it is common for local garages to offer both vehicle-towing and car-repair services. The Act generally precludes a State's regulation of garages insofar as they provide towing services. But the statute does not restrict a State's authority to regulate garages' provision of car-repair services simply because the garages also offer towing services. In addition, Section 14501(c)(1)'s preemption of state laws is limited to laws "with respect to the transportation of property." 49 U.S.C. 14501(c)(1); cf. 49 U.S.C. 14501(a) (preempting state laws relating to transportation of passengers). That clause reinforces the conclusion that Section 14501(c) does not supersede state laws regulating conduct unrelated to the movement of property.

Interpreting Section 14501(c)(1) to preempt state laws regulating a company's conduct unrelated to motor carriage and the transportation of property would be inconsistent with Congress's purpose in enacting the FAAAA: to relieve the burden state regulation had imposed on "transportation by motor carrier[s]." FAAAA § 601(c), 108 Stat. 1606 (capitalization altered); see *id.* § 601(a), 108 Stat. 1605. Such a con-

struction also would be inconsistent with the "assumption that the historic police powers of the States [are] not to be superseded by [a] Federal Act unless that was the clear and manifest purpose of Congress." *Ours Garage*, 536 U.S. at 432 (quoting *Wisconsin Pub. Intervenor* v. *Mortier*, 501 U.S. 597, 605 (1991)).

B. State-Law Remedies For Unlawful Disposition Of A Stored Vehicle Do Not Relate To The Services Of A Motor Carrier Or To The Transportation Of Property, And So Are Not Preempted By SECTION 14501(c)(1)

As relevant here, respondent asserts two claims against petitioner, one under the New Hampshire Consumer Protection Act and the other under New Hampshire tort law. J.A. 12-14. Both claims concern petitioner's disposition of respondent's car. J.A. 13 ("As a result of the deceptive acts of [petitioner], [respondent] was deprived of his automobile."); *ibid.* (petitioner failed "to use reasonable care in disposing of the automobile"). Neither claim is preempted by Section 14501(c)(1).[4]

1. The New Hampshire Consumer Protection Act makes unlawful certain "unfair method[s] of competition" and "deceptive act[s] or practice[s] in the conduct of any trade or commerce," and it creates a private right of action for a person injured by a violation. N.H. Rev. Stat. Ann. § 358-A:2; see *id.* § 358-A:10. Respondent alleges that petitioner violated the Consumer Protection Act by failing to abide by the procedures in Chapter 262 of the New Hampshire Revised Statutes governing the disposition of stored vehicles, and by making false representations to the State to

[4] The United States takes no position on the merits of respondent's claims under state law, an issue not before this Court.

obtain permission to auction the car without notice to the owner pursuant to a provision of that chapter. J.A. 12.[5] Respondent seeks to recover the value of the car and the personal property it contained, as well as treble damages because, respondent alleges, petitioner's deception was willful. J.A. 12-13; see N.H. Rev. Stat. Ann. § 358-A:10(I) (providing for such damages).

a. Respondent's Consumer Protection Act claims are not preempted because they do not depend on a state law "related to a price, route, or service of any *motor carrier*," 49 U.S.C. 14501(c)(1) (emphasis added). Section 14501(c)(1) precludes the use of a State's consumer protection act to regulate the price, route, or service of a company insofar as it operates as a motor carrier, *i.e.*, "a person providing motor vehicle transportation for compensation." 49 U.S.C. 13102(14) (Supp. V 2011); see *Morales*, 504 U.S. at 383-391 (state consumer protection laws preempted by ADA insofar as they restrict airline fare advertising). But the FAAAA does not prohibit reliance on a State's

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[5] Because respondent's Consumer Protection Act claim and his negligence claim both rely on Chapter 262 to provide the standard of conduct petitioner allegedly breached, petitioner is incorrect in stating that "any discussion of whether the FAAAA preempts Ch. 262 is unnecessary." Pet. Br. 29 n.19; see pp. 22-26, *infra* (discussing respondent's negligence claim); but see Pet. Br. 28-29 (acknowledging that respondent relies on Chapter 262 as the basis for his negligence per se claim). Petitioner contends that "no party challenges the enforcement of the New Hampshire statutory scheme in this case." *Id.* at 23. However, the question petitioner presented, and on which this Court granted certiorari, asks "[w]hether state statutory, common law negligence, and consumer protection act enforcement actions against a tow-motor carrier *based on state law regulating the sale and disposal of a towed vehicle*" are preempted. Pet. i (emphasis added).

consumer protection statute to challenge the validity of the company's other, unrelated services. When the company provides those services it is not "*providing* motor vehicle transportation for compensation," 49 U.S.C. 13102(14) (Supp. V 2011) (emphasis added), and so is not acting as a "motor carrier."

Petitioner tows vehicles from private property, at the property owner's request, when vehicles are parked without the property owner's consent. That is a service of a "motor carrier" within the meaning of the Act, and the State generally may not regulate that service through application of its consumer protection act (or any other law), 49 U.S.C. 15401(c)(1), although it may regulate the price of towing conducted without the prior consent of the car's owner, 49 U.S.C. 14501(c)(2)(C). See also 49 U.S.C. 14501(c)(5) (authorizing States to require prior authorization or presence of private property owner before permitting towing without prior consent of vehicle's owner). Although petitioner provided a motor-carrier service, that service ended after petitioner "deliver[ed]," 49 U.S.C. 13102(23)(B), respondent's car to petitioner's premises. When petitioner subsequently stored respondent's car and then disposed of it in trade, petitioner was no longer engaging in the services of a "motor carrier." See N.H. Rev. Stat. Ann. § 262:36-a (identifying procedures a "storage company" must follow in disposing of a "removed or stored" vehicle); see also Pet. App. 19-20 (concluding that, in disposing of respondent's car, petitioner acted in "its role as a custodian of another person's property after the towing has been completed").

Petitioner's disposal of respondent's car also is not "related to" petitioner's motor-carrier services within

the meaning of the preemption provision. 49 U.S.C. 14501(c)(1). In a literal sense, petitioner's disposal of the car has a "connection with," *Rowe*, 552 U.S. at 370 (emphasis and citation omitted), its prior towing of the vehicle, because petitioner would not have been in possession of respondent's car but for its prior towing of the car, and because a single entity, petitioner, engaged in both activities. But that is the sort of relation that is too "tenuous, remote, or peripheral," *id.* at 375, to significantly implicate Congress's regulatory concerns. Characterizing petitioner's disposal of respondent's car after towing was completed as "related to" its towing would expand federal preemption well beyond Congress's regulatory focus. See *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645, 655 (1995) (declining to interpret "relate to" in preemption provision of the Employee Retirement Income Security Act of 1974 "to extend to the furthest stretch of its indeterminacy"); see Pet. App. 21 (declining to construe Section 14501(c)(1) "so expansively as to encompass everything a towing company might do in the course of its business").

For these reasons, the Consumer Protection Act and Chapter 262 of the New Hampshire Revised Statutes, which, as applied here, regulate the storage and disposal of vehicles after towing is completed, are not preempted by Section 14501(c)(1).

b. Respondent's state statutory claim is not preempted for the similar reason that it is not based on a state law "with respect to the transportation of property." 49 U.S.C. 14501(c)(1). The term "transportation" is broadly defined as "includ[ing]"

> (A) a motor vehicle * * * or equipment of any kind related to the movement of passengers or property, or both, * * * and
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> (B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

49 U.S.C. 13102(23). As the New Hampshire Supreme Court observed, the elements of that definition all describe forms of transportation and activities that "are incidental to the movement of property" (or passengers). Pet. App. 11. Respondent's claim under the Consumer Protection Act does not concern conduct that is incidental to the movement of property. Instead, it concerns petitioner's conduct after the movement of property—petitioner's towing of respondent's car—was completed. See *id.* at 13. Because respondent's statutory claims involve conduct unrelated to the movement of respondent's vehicle, they are not preempted by Section 14501(c)(1).

c. The presumption against preemption provides further support for that conclusion. See *Ours Garage*, 536 U.S. at 432-434, 438 (applying presumption in interpreting Section 14501(c)(1)). The Consumer Protection Act and Chapter 262, as they apply in this case, regulate "the rights of property owners to recover their property, and the parallel obligations of the custodians of that property to accommodate the vehicle owners' rights" while the custodians seek "to recover the costs incurred from towing and storing a vehicle." Pet. App. 13. The regulation of state-created property interests is a "fiel[d] of traditional state regulation." *Lorillard*, 533 U.S. at 541 (quoting

Dillingham Constr., 519 U.S. at 325); see *Barnhill* v. *Johnson*, 503 U.S. 393, 398 (1992) ("In the absence of any controlling federal law, 'property' and 'interests in property' are creatures of state law."). Accordingly, this Court should not deem inoperative state statutes regulating interests in property unless Congress's "clear and manifest purpose" to preempt them can be discerned in the federal statute. *Lorillard*, 533 U.S. at 542 (quoting *Dillingham Constr.*, 519 U.S. at 325); see also *Altria Grp., Inc.* v. *Good*, 555 U.S. 70, 77 (2008). By defining "transportation" to include vehicles "related to the movement of * * * property" and "services related to that movement," 49 U.S.C. 13102(23), Congress did not manifest a clear purpose to preempt state statutes regulating "the rights of property owners to recover their property," Pet. App. 13, after the movement of that property has been completed.

2. In addition to alleging a violation of the Consumer Protection Act, respondent alleges that petitioner was negligent in its disposal of his car, and seeks to recover damages under the State's common law of tort. J.A. 13-14. Respondent's negligence claim is premised on two theories. First, respondent alleges that, by disposing of his car in violation of its statutory obligations under Chapter 262, petitioner's conduct constituted negligence *per se*. J.A. 13; see *Mahan* v. *New Hampshire Dep't of Admin. Servs.*, 693 A.2d 79, 85 (N.H. 1997) ("When an action exists at common law, the negligence *per se* doctrine may define the standard of conduct to which a defendant will be held as that conduct required by a particular statute, either instead of or as an alternative to the reasonable person standard."). Second, respondent claims that peti-

tioner violated its common-law duty as a bailee by failing "to use reasonable care in disposing of the automobile." J.A. 13. These claims also are not preempted by Section 14501(c)(1).

Whether federal law expressly preempts a state common-law damages claim depends on the scope of the preemption provision. See *Chamber of Commerce of the U.S.* v. *Whiting*, 131 S. Ct. 1968, 1977 (2011) ("When a federal law contains an express preemption clause, we 'focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' preemptive intent.'") (quoting *CSX Transp., Inc.* v. *Easterwood*, 507 U.S. 658, 664 (1993)). In *Sprietsma* v. *Mercury Marine*, 537 U.S. 51 (2002), this Court held that a provision of a federal law preempting "a [state or local] law or regulation" was "most naturally read as not encompassing common-law claims." *Id.* at 63 (quoting 46 U.S.C. 4306) (brackets in original). That was because the provision used "the article 'a' before 'law or regulation' impl[ying] a discreteness—which is embodied in statutes and regulations—that is not present in the common law." *Ibid.* The Court also concluded that "the terms 'law' and 'regulation' used together in the pre-emption clause indicate that Congress pre-empted only positive enactments." *Ibid.*; see *ibid.* ("[A] word is known by the company it keeps.") (quoting *Gustafson* v. *Alloyd Co.*, 513 U.S. 561, 575 (1995)). By contrast, the Court has construed preemption provisions referring more broadly and generically to "requirements" or "standards" to preempt substantive restrictions imposed by state common law as well as by positive enactments. See *Riegel* v. *Medtronic, Inc.*, 552 U.S. 312, 324 (2008) ("Absent other indication, reference to a State's 're-

quirements' includes its common-law duties."); *CSX Transp.*, 507 U.S. at 664 (concluding that "[l]egal duties imposed * * * by the common law" are encompassed by provision authorizing federal regulations that preempt any state "law, rule, regulation, order, or standard") (quoting 45 U.S.C. 434 (1988)).

The preemption provision in the FAAAA, like the one at issue in *Sprietsma*, is limited to positive enactments and other exercises of government regulatory power. That provision applies to "a [state] law, regulation, or other provision having the force and effect of law." 49 U.S.C. 14501(c)(1). By using the article "a," Congress has indicated that it intended the "discreteness" the Court found lacking in the common law. *Sprietsma*, 537 U.S. at 63. Section 14501(c)(1) also eschews the use of broad and generic terms like "requirements" or "standards," instead referring to a "law," "regulation," and "provision," which likewise indicates that Congress was focusing on duties imposed by positive enactments and regulatory powers, not on common-law remedies. 49 U.S.C. 14501(c)(1); see *Sprietsma*, 537 U.S. at 63 ("If 'law' were read broadly so as to include the common law, it might also be interpreted to include regulations, which would render the express reference to 'regulation' in the preemption clause superfluous."); *Black's Law Dictionary* 1345 (9th ed. 2009) (defining "provision" as "[a] clause in a statute, contract, or other legal instrument").

The Court's conclusion in *Sprietsma* that the federal statute did not preempt a state common-law cause of action for damages was "buttresse[d]" by the inclusion of a "saving clause" in the statute providing that compliance with federal law "does not relieve a

person from liability at common law or under State law." 537 U.S. at 63 (quoting 46 U.S.C. 4311(g)). The same consideration applies here. In 1995, Congress abolished the Interstate Commerce Commission, transferring its functions to the Department of Transportation. See ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803. Congress also transferred a general saving clause, see 49 U.S.C. 10103 (1994), making it applicable to federal statutory provisions governing motor carriers, including those enacted the year before in the FAAAA. § 103, 109 Stat. 856 (enacting 49 U.S.C. 13103).[6] The saving clause states that "[e]xcept as otherwise provided in this part, the remedies provided under this part are in addition to remedies existing under another law or common law." 49 U.S.C. 13103. To be sure, "[a] general 'remedies' saving clause cannot be allowed to supersede [a] specific substantive pre-emption provision." *Morales*, 504 U.S. at 385. But Congress's decision to enact such a saving clause can properly guide a court in determining the intended scope of a preemption provision. As in *Sprietsma*, the "saving clause assumes that there are some significant number of common-law liability cases to save [and t]he language of the pre-emption provision permits a narrow reading that excludes common-law actions." 537 U.S. at 63 (brackets in original) (quoting *Geier* v. *American Honda Motor Co.*, 529 U.S. 861, 868 (2000)). In light of the saving clause, a "broad reading" of Section

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[6] Petitioner thus is mistaken in asserting that there is "no general 'savings clause' preserving any general state remedies or regulatory authority" that is applicable to this case. Pet. Br. 26; see *id.* at 40-41, 49-50.

14501(c)(1) as encompassing common-law tort actions "cannot be correct." *Geier*, 529 U.S. at 868.[7]

3. As the New Hampshire Supreme Court concluded (Pet. App. 20-22), the absence of any federal remedy for a towing company's unlawful disposition of a vehicle towed without the owner's consent is an additional reason to conclude that Congress did not intend to preempt state-law remedies for that conduct.[8]

In *American Airlines, Inc.* v. *Wolens*, 513 U.S. 219, (1995), this Court held that the ADA did not preempt state common-law damages remedies for breach-of-contract claims brought by participants in an airline's frequent-flier program. *Id.* at 228-233. The Court reached that conclusion, in part, because Congress

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[7] Congress's decision to exempt from preemption a State's authority to regulate the "minimum amounts of financial responsibility relating to insurance requirements," 49 U.S.C. 14501(c)(2)(A), is a further indication that Congress did not intend to preempt state common-law tort claims, since the exclusion permits a State to require motor carriers to obtain liability insurance to cover damages resulting from their torts. See, *e.g.*, *Driskell* v. *Empire Fire & Marine Ins. Co.*, 547 S.E. 2d 360, 364 (Ga. Ct. App. 2001) (holding that FAAAA did not preempt state statute and regulations requiring liability insurance); see also 49 U.S.C. 13906(a)(1) (requiring, as a precondition to registration of interstate motor carriers, security sufficient to pay "for each final judgment against the registrant for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles"); 49 U.S.C. 41112(a) (similar requirement for air carriers).

[8] Petitioner suggests that the New Hampshire Supreme Court created an "equitable exception" (Br. 46) to Section 14501(c)(1). See *id.* at 45-52. That misunderstands the court's discussion, which interpreted the scope of the preemption provision in light of the absence of any available remedy if state law were preempted. See Pet. App. 20-22.

had "indicated no intention to establish * * * a new administrative process for [Department of Transportation] adjudication of private contract disputes." *Id.* at 232. Nor did anything in the statute suggest that Congress "meant to channel into federal courts the business of resolving, pursuant to judicially fashioned federal common law, the range of contract claims relating to airline rates, routes, or services." *Ibid.* Similarly, in *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U.S. 656 (1954), the Court concluded that the National Labor Relations Act had not preempted state tort actions relating to labor intimidation because "Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct." *Id.* at 663-664; see *Silkwood* v. *Kerr-McGee Corp.*, 464 U.S. 238, 251 (1984) ("It is difficult to believe that Congress would, without comment, remove all means of judicial recourse for those injured by illegal conduct.").

The absence of a federal remedy is not necessarily determinative of the preemption analysis because sometimes "a federal decision to forgo regulation in a given area may imply an authoritative federal determination that the area is best left *un*regulated," *Arkansas Elec. Coop. Corp.* v. *Arkansas Pub. Serv. Comm'n*, 461 U.S. 375, 384 (1983), with the consequence that no damages can be recovered. But here there is no reason to believe that Congress intended to leave entirely unregulated a towing company's disposition of cars after the towing has ended, and to foreclose any damages remedy.[9] As in *Wolens*, "the

[9] Congress has created a civil cause of action for loss or damage to property transported by motor carriers engaged in interstate

[Department of Transportation] has neither the authority nor the apparatus required to superintend" disputes about such conduct. 513 U.S. at 232. Construing Section 14501(c)(1) to preempt state-law claims would, "in effect," grant towing companies "immunity from liability" for their unlawful conduct. *United Constr. Workers*, 347 U.S. at 664.

Moreover, because there is no applicable federal law, interpreting the Act to preempt state regulation in this context would also eliminate the only legal authorization for a towing company's disposition of unclaimed cars—authorization on which petitioner relied in seeking to auction and in subsequently trading respondent's car. See Pet. Br. 14-17, 18 n.14, 21-22, 41. As the New Hampshire Supreme Court observed, petitioner "has sought the benefit of state law allowing it to claim a lien on a vehicle in its possession but now seeks to avoid the inconvenience of providing adequate notice and conducting an auction as required by state law." Pet. App. 17 (internal citation omitted).

C. Petitioner's Contrary Arguments Lack Merit

Petitioner variously argues that the FAAAA permits a State to regulate motor carriers only if the state law comes within the specified exceptions to the Act's preemption provision; that petitioner's storage and disposition of respondent's car were "service[s]" covered by that provision and came within the statutory definition of "transportation"; that permitting respondent's state-law claims to proceed would have a

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transportation. 49 U.S.C. 14706(a) and (d); see 49 U.S.C. 13501. But no such remedy exists against motor carriers engaged in intrastate transportation, and the federal remedy Congress created does not cover conduct unrelated to motor carrier services.

significant impact on towing services; and that respondents' claims are preempted because they relate to a dispute over payment for the towing. None of these arguments is persuasive.

1. Petitioner contends that Congress's enactment of specific exceptions to the FAAAA's general preemption provision "is a clear indicator of [Congress's] intent to allow states to regulate motor carriers of property *only* in the areas delineated in these express exceptions." Pet. Br. 24-25 (emphasis added); see *id.* at 24-27. But that argument goes too far: Exceptions to a general rule, while perhaps a helpful interpretive guide, do not in themselves delineate the scope of the rule. The exceptions to the Act's preemption provision do not, for example, affirmatively grant States authority to enact zoning regulations. See 49 U.S.C. 14501(c)(2)(A)-(C), (3) and (5). Under petitioner's interpretation, then, the Act would preclude local governments from regulating the physical location of motor-carrier operations. In fact, the FAAAA does not preempt local zoning authority because zoning ordinances generally are not "related to a price, route, or service of any motor carrier." 49 U.S.C. 14501(c)(1); see also *Warth* v. *Seldin*, 422 U.S. 490, 508, n.18 (1975) ("[Z]oning laws * * * are peculiarly within the province of state and local legislative authorities."). While exceptions to a preemption provision identify state laws that would otherwise be superseded by federal law, they do not themselves define the scope of federal preemption.

2. Petitioner argues (Br. 27-36) that respondent's state-law claims are preempted because they relate to a motor carrier's "service" within the meaning of Section 14501(c)(1). See *id.* at 31 (respondent's "claims

were all directed at the normal daily activities of a tow truck operator that comes into possession of a vehicle"). Petitioner fails to consider, however, whether the conduct that forms the basis for respondent's suit—petitioner's disposition of respondent's car—constitutes a "service *of any motor carrier*," 49 U.S.C. 14501(c)(1) (emphasis added), within the meaning of the FAAAA. A company acts as a "motor carrier" when it is "providing motor vehicle transportation for compensation." 49 U.S.C. 13102(14) (Supp. V 2011). When a company stores a car after towing it and later disposes of the car, it does not act as a motor carrier, just as a garage that provides car-repair services does not act as a motor carrier when it repairs a car after towing it.

For similar reasons, the state law on which respondent relies does not relate to a service "with respect to the transportation of property." 49 U.S.C. 14501(c)(1). Petitioner suggests (Br. 43-45) that respondent's claims involve conduct coming within the broad statutory definition of "transportation." See 49 U.S.C. 13102(23). Petitioner asserts (without elaboration) that respondent's claims "seek to establish liability" under state law for petitioner's "alleged breaches of duty with respect to the 'arrangements [*sic*] for,' 'receipt,' 'delivery,' 'storage,' 'handling,' and 'interchange of' the vehicle it towed and stored." Pet. Br. 44 (quoting 49 U.S.C. 13102(23)(B)). But petitioner fails to quote the critical qualification appearing before the terms he identifies. The statute defines "transportation" as "services related to [the] movement [of passengers or property], including" the examples noted by petitioner. 49 U.S.C. 13102(23)(B). As the New Hampshire Supreme Court explained, the

activities identified in Section 13102(23)(B) "are incidental to the movement of property." Pet. App. 11. Thus, for example, not just any storage of property qualifies as "transportation," even though "storage" is one of the terms used as an example in the statutory definition. Temporary storage of property while in transit is a service that relates to the movement of property. But property that is stored after delivery is no longer in transit, and such storage does not itself constitute "transportation" within the meaning of the statute. See, *e.g.*, 49 C.F.R. 375.609 (distinguishing between "storage-in-transit" and "permanent storage") (regulation of Federal Motor Carrier Safety Administration).[10]

3. Petitioner contends (Br. 36-38) that respondent's state-law claims are preempted because permitting such claims to proceed would have a significant impact on the services of towing companies. See *Rowe*, 552 U.S. at 370-371 ("[P]re-emption occurs at least where state laws have a 'significant impact' related to Congress' deregulatory and pre-emption-related objectives.") (quoting *Morales*, 504 U.S. at 390). But again, petitioner fails to distinguish between the towing service a company provides as a motor carrier with respect to the transportation of property and the storage service the company provides in a different capacity. Petitioner implies (Br. 37) that towing companies might not offer non-consensual towing services if they could be held liable for failing to

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[10] For that reason, petitioner's reliance (Br. 44) on *PNH Corp.* v. *Hullquist Corp.*, 843 F.2d 586 (1st Cir. 1988), is misplaced. See *id.* at 590-591 ("A motor carrier cannot, under this definition, be absolved from liability merely because a loss occurred while the property was temporarily not in transit.").

abide by state requirements regulating the disposal of unclaimed cars. But that contention is hardly obvious. See *Rowe*, 552 U.S. at 375 (noting that state laws affecting federal regulation "in 'too tenuous, remote, or peripheral a manner'" are not preempted) (quoting *Morales*, 504 U.S. at 390). Indeed, as noted above, petitioner *relied* on state law as furnishing a legal justification for its disposition of respondent's car. Nothing in the FAAAA bars a State from including damages remedies as part of that same body of state law, and there is no reason to believe that doing so has the effect petitioner posits. But should a towing company prefer to avoid any possible risk of liability from storage and disposition of towed cars, it can choose to limit its services to towing cars and leave it to other companies to provide storage services.

4. Finally, petitioner suggests (Br. 30) that its disposition of respondent's car "relates to" its towing because that is how petitioner sought to obtain payment for the motor-carrier services it rendered. See *id.* at 22, 45. This argument necessarily is limited to the proposition that respondent's claims are preempted to the extent those claims involve disputes about petitioner's charges for the towing itself, not the later storage and disposition. But even when petitioner's argument is so limited, Section 14501(c)(1) cannot plausibly be interpreted to preempt state-law remedies for disputes related to payment for motor-carrier services. Typically, motor carriers provide their services through express or implied contracts, and payment disputes therefore would usually be resolved through state-law contract claims. *Wolens*, 513 U.S. at 228-233. Non-consensual towing services are unusual (at least under New Hampshire law) in that the

person responsible for payment for the services is someone who did not contract for those services. N.H. Rev. Stat. Ann. § 262:40-a(IV) ("The costs of removing a vehicle under this section, including reasonable towing and storage costs, shall * * * be the responsibility of the last registered owner."). There is no federal law governing payment disputes arising from non-consensual towing. If the Act preempted state-law remedies concerning payments for those services, then *no* law would govern such disputes or provide a cause of action to recover losses sustained, whether the claim was asserted by the car owner or the towing company. There is no basis for concluding that Congress intended to create such a legal no-man's land. See pp. 26-28, *supra*.[11]

Moreover, Section 14501(c)(2)(C) expressly allows a state or local government to regulate the price charged for non-consensual towing. It is especially unlikely that Congress nonetheless intended to preclude a State from affording *any* remedies—to either the towing company *or* the owner of the vehicle—if non-preempted state laws regulating the price and the means of paying or recovering it were violated. And, of course, the fact that petitioner invoked state law to recover the unpaid towing and storage charges

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[11] Petitioner argues that respondent could have relied on various criminal provisions in Chapter 262, which, petitioner contends, provide respondent with "significant protection." Pet. Br. 50-51 (citing N.H. Rev. Stat. Ann. §§ 262:1(I)(d), 262:2, 262:41). But petitioner gives no explanation as to how those provisions could be of use when a towing company committed no criminal violation in unlawfully disposing of a vehicle it previously towed. Moreover, criminal sanctions would not furnish a damages remedy. Nor is it evident under petitioner's theory how even criminal provisions would escape preemption.

demonstrates that petitioner does not actually take the position that Section 14501(c)(1) necessarily preempts state law covering payment for towing services.

CONCLUSION

The decision of the Supreme Court of New Hampshire should be affirmed.

Respectfully submitted.

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