UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-1641

Ever Bedoya, et al.,
Plaintiff-Appellees (Supported Party)
v.
American Eagle Express, Inc. d/b/a/ AEX Group,
Defendant-Third Party Plaintiff-Appellant
v.
KV Service, LLC, et al.,
Third Party Defendants

On Appeal from the United States District Court
for the District of New Jersey, No. 2-14-CV-02811
(Hon. Esther Salas, U.S.D.J)

Amicus Brief of the State of New Jersey in Support of Affirmance of the District Court's Denial of Defendant-Third Party Plaintiff-Appellant's Motion for Judgment on the Pleadings

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STATEMENT OF AMICUS CURIAE

The State of New Jersey (State), Department of Labor and Workforce Development (Department), submits this brief as Amicus Curiae pursuant to Fed. R. App. P. 29(a)(2).

The Department enforces and administers New Jersey's various labor and workers' compensation laws on behalf of the State. N.J. Stat. Ann. §§34:1-1 to 34:21-7. This includes enforcement and administration of New Jersey's wage and hour laws, N.J. Stat. Ann. §§34:11-56a to -56a38, and wage payment laws, N.J. Stat. Ann. §§34:11-4.1 to -4.14. See generally N.J. Stat. Ann. §§34:11-1 to -68. Notably, the Department also enforces and administers New Jersey's unemployment compensation laws ("UCLs"), and administers the State's unemployment compensation fund. N.J. Stat. Ann. §§43:21-11 and -9; see generally N.J. Stat. Ann. §§43:21-1 to -24.30.

The State has a real and definite interest in the outcome of this matter. Overuse of the Federal Aviation Administration Authorization Act of 1994 (FAAAA), 103 Pub. L. No. 305, 108 Stat. 1569 (1994), specifically 49 U.S.C. § 14501(c)(1), as a preemptive sword under the circumstances presented here would have far-reaching and considerable effects on other state functions not intended by Congress or contemplated by appellant. In particular, should appellant prevail, or should this Court conclude that N.J. Stat. Ann. § 43:21-19(i)(6) is preempted or otherwise invalidated by the FAAAA, a significant portion of the State's UCLs will be eviscerated and the State will be

prevented from collecting tens of millions of dollars in unemployment compensation taxes each year. Indeed, this issue is at the heart of two cases currently being litigated by the Department in the United States District Court for the District of New Jersey: *PDX North, Inc. v. Asaro-Angelo, in his official capacity as the Commissioner of the Department of Labor and Workforce Development of the State of New Jersey*, Civil Action No. 3:15-cv-07011; as well as *Eagle Intermodal Services, Inc., v. Asaro-Angelo*, Civil Action Number 3:18-cv-11445.

Therefore, the outcome of this matter will not just affect the parties or other similarly situated workers and employers – it will deal a substantial blow to the State of New Jersey, the Department, State taxpayers, and the welfare of a vulnerable segment of the State's population who rely on unemployment compensation and other services provided under the UCL.

Therefore, in accordance with Fed. R. App. P. 29(a)(4)(D), it is respectfully submitted that the State's appearance as Amicus Curiae is appropriate.

SUMMARY OF THE ARGUMENT

Appellant, American Eagle Express, Inc. ("AEX"), brings this appeal in the context of a wage payment dispute between private parties. AEX argues that the class action suit brought by appellees Ever Bedoya, Diego Gonzales, and Manuel DeCastro, must be dismissed because New Jersey's test for employee classification, N.J. Stat. Ann. §§43:21-19(i)(6)(A) to -19(i)(6)(C) (the "ABC test"), is preempted by the FAAAA. AEX is mistaken. The ABC test is not preempted because New Jersey's UCLs are

empowered by federal law, Congress has expressly restricted the FAAAA's preemptive reach to those state laws that impact motor carriers' prices, routes and services, which is not the case here, and preemption would infringe upon the State's exercise of its traditional police powers.

The ABC test, which is used to determine whether a worker is classified as an employee or independent contractor, resides within the larger framework of New Jersey's unemployment compensation scheme, N.J. Stat. Ann. §§43:21-1 to -24.30. The State's UCLs are federally empowered. In particular, they derive their authority, protection and significant funding from the Federal Unemployment Tax Act, 26 U.S.C. § 3301 to § 3311, the Social Security Act, 42 U.S.C. § 501 to § 506, and the Wagner-Peyser Act, 29 U.S.C. § 49 to § 49m. See N.J. Stat. Ann. § 43:21-11(k). Saliently, 26 U.S.C. § 3305(a) expressly forbids employers from being relieved of compliance with unemployment tax contributions on the ground that an employer is engaged in interstate commerce. Moreover, when enacting the FAAAA, Congress expressed its intent to limit its preemptive reach – particularly in circumstances where a state's ability to enforce general labor laws would be inhibited. And because New Jersey's UCLs are federally empowered, the FAAAA cannot preempt them.

Additionally, New Jersey's UCLs are laws of general application. They regulate motor carriers of property – the types of commercial vendors protected by the FAAAA – only in their general capacity as employers, along with every other employer in the State. Congress never intended to create a preemptive bulldozer via the FAAAA. New

Jersey's UCLs are too tenuously connected to carrier prices, routes and services to invoke preemption.

Finally, the State's enactment of the UCLs represents an exercise of its traditional police powers. States are free to regulate labor and workers' compensation laws, and the ABC test is an example of New Jersey's reasonable use of that power. The State's enactment of the ABC test is not so far reaching so as to require invocation of FAAAA preemption.

Ultimately, a finding by this Court that the ABC test is preempted or otherwise invalidated would be contrary to Congress's intent to protect the State's unemployment compensation scheme. It would also have the deleterious impact of preventing the Department from collecting tens of millions of dollars in yearly unemployment taxes. The District Court's decision should be affirmed. Holding otherwise would allow a generally applied state statutory scheme to be obliterated.

ARGUMENT

THE FAAAA DOES NOT PREEMPT NEW JERSEY'S ABC TEST.

At issue in this matter is whether the defendant employer improperly classified plaintiff-appellees as independent contractors, depriving plaintiff-appellees of earned wages under certain of New Jersey's wage payment laws, N.J. Stat. Ann. §§34:11-4.2 and -4.4, as well as its wage and hour laws, N.J. Stat. Ann. § 34:11-56a4. Appellant asks this Court to invalidate the ABC test because under that standard plaintiff-appellees

qualify as employees. To avoid the tax implications of that classification, appellant argues that the ABC test is preempted by the FAAAA. A finding by this Court in appellant's favor would not only be contrary to law, but would devastate New Jersey's UCLs by preventing the State from collecting countless millions in unemployment compensation taxes intended to provide relief to those in need.

Preemption is fundamentally a question of congressional intent. *English v. Gen Elec. Co.*, 496 U.S. 72, 78-79 (1990). "Congress may indicate pre-emptive intent through a statute's express language or through its structure and purpose." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008). However, preemption should not be lightly inferred "particularly . . . in the employment law context which falls 'squarely within the traditional police powers of the states[.]'" *Gary v. Air Grp. Inc.*, 397 F.3d 183, 190 (3d Cir. 2005) (quoting *Int'l Paper Co. v. Ouellette,* 479 U.S. 481, 491 (1987)).

A. New Jersey's UCLs Are Federally Empowered and Are Otherwise Protected by the Federal Unemployment Tax Act and the Social Security Act.

The UCLs are deeply rooted in federal empowerment, and the State has historically relied on that empowerment to devise a statutory scheme that would comply with the requirements set forth in the Social Security Act, 42 U.S.C. § 501 to § 506, and the Federal Unemployment Tax Act ("FUTA"), 26 U.S.C. § 3301 to § 3311, while serving the purpose of providing vital welfare to its citizens. Therefore, New Jersey has an interest in maintaining its ability to administer a vital function while remaining in compliance with FUTA and the Social Security Act.

Often referred to as "mini-FUTAs," New Jersey's UCLs are federally empowered – they were enacted in accordance with FUTA, the Social Security Act, and the Wagner-Peyser Act. *See* N.J. Stat. Ann. § 43:21-11(k). FUTA originally appeared within the Social Security Act in 1935 in an effort to respond to widespread unemployment that accompanied the great depression. *St. Martin Evangelical Lutheran Church v. S.D.*, 451 U.S. 772, 775 (1981). A cooperative between the federal government and the states was established to address those concerns. *Id.*[1] As a part of that nationwide initiative, New Jersey's UCLs were established in 1936 to protect the "welfare of the people by affording protection against the shocks and rigors of unemployment." *Provident Inst. For Sav. v. Div. of Empl. Sec.*, 32 N.J. 585, 590 (1960); *Goodman v. Bd. of Review*, 245 N.J. Super. 551, 554-55 (App. Div. 1991). They are remedial in nature – intended to address the serious ills that arise from unemployment. N.J. Stat. Ann. § 43:21-2; *Teichler v. Curtiss-Wright Corp.*, 24 N.J. 585, 592-93 (1957); *Special Care of N.J., Inc. v. Bd. of Review*, 327 N.J. Super. 197, 209 (App. Div.), *certif. denied*, 164 N.J. 190 (2000); *Goodman*, 245 N.J. Super. at 554-55.

Specific federal statutes require states to obtain a FUTA certification in order to receive vital funding and to enforce their UCLs. In particular, absent FUTA certification and proper enforcement, states can be subjected to penalties including the

[1] The current "Unemployment Compensation Federal-State Partnership" between the United States Department of Labor and the States is explained more fully at https://ows.doleta.gov/unemploy/pdf/partnership.pdf (last accessed August 13, 2018).

loss of funding for the cost of administering UCLs, and the loss of funding the administration of public employment offices that assist with job-finding, recruiting and similar services. *See e.g.*, 42 U.S.C. § 501 to § 503; 29 U.S.C. § 49 to 49k; 26 U.S.C. § 3304(a). Employers could also lose FUTA tax credits. 42 U.S.C. § 501 to § 503.

Indeed, our Supreme Court promptly recognized that the Social Security Act is constitutionally protected. *See generally Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495 (1937); *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937). More importantly, the Court also recognized the deference that must be afforded to the states in their enactment and enforcement of "laws of general applicability that protect interests 'deeply rooted in local feeling and responsibility[,]' as well as Congress's intent to provide the states with broad freedom to construct their respective UCLs as they see fit. *N.Y. Tel. Co. v. N.Y. State DOL*, 440 U.S. 519, 536-40 (1979).

Congress acknowledged the importance of the states' ability to collect unemployment tax contributions – and issued a clear mandate that undermines appellant's reliance on the FAAAA: "No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce." 26 U.S.C. § 3305(a); *see also, Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 315 (1945) (relying on original version of the statute to conclude that Congress may authorize states to "regulate interstate commerce or impose burdens on it); *Standard Dredging Corp. v. Murphy*, 319 U.S. 306, 307-09 (1943) (also relying on original version of statute to reject argument that New

York unemployment insurance tax "affect[ed] interstate or foreign commerce" because the statute "expressly provided that a state shall not be prohibited from levying the tax because the employer is engaged in interstate . . . commerce."). The statute is not open to interpretation. For these reasons, state laws requiring payment into an unemployment compensation fund cannot be avoided on the basis that payment of the tax would interfere with interstate commerce. *Id.*

B. New Jersey's UCLs Are Laws of General Application and Their Relation, If Any, to Carrier Prices, Routes and Services Is Too Tenuous, Remote and Peripheral to Invoke Preemption.

The FAAAA, enacted decades later, sought to deregulate the intrastate trucking industry and to safeguard interstate commerce. *See* H.R. Rep. No. 103-677, Section 601, at 39 (1994); *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 256, 263 (2013). Specifically, it sought to eliminate the "patchwork" of economic regulation across 41 jurisdictions and allow market forces to control motor carriers rather than "artificial regulatory structure[s]." H.R. Rep. No. 103-677, at 87-89. This was meant to be achieved through its preemption clause. 49 U.S.C. § 14501(c)(1). Such preemption occurs where a state law is "related to a price, route, or service of any motor vehicle carrier . . . with respect to the transportation of property."[2] *Id.* Preemption is only appropriate where a state law has a <u>significant</u> impact on carrier prices, routes, or

[2] The clause mirrors the preemption clause of the previously enacted Airline Deregulation Act of 1978 ("ADA"), except that it is limited to "the transportation of property." *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 368 (2008).

services even if the connection is indirect. *Rowe,* 522 U.S. at 370-71, 375. The "related to" provision is "deliberately expansive" and "conspicuous for its breadth." *Morales v. Trans World Airlines, Inc.,* 504 U.S. 374, 383–84 (1992) (internal quotation marks omitted). Still, FAAAA preemption is not unlimited.

Indeed, Congress did not intend for motor carriers to be shielded from all state laws. It expressly stated that the FAAAA does not "change the application of state tax laws to motor carriers." H.R. Rep. No. 103-677, at 84-85. Furthermore, the FAAAA does not "alter, determine, or affect in any way . . . whether any carrier is or should be covered by one labor statute or another." *Id.* at 88. The FAAAA also does not "restrict the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A).

The legislative history of the FAAAA, its predecessor statutes, and cognate jurisprudence is void of any indication that Congress intended by its enactment to undermine the authority of the Social Security Act and FUTA, or the States' ability to enforce and administer their UCLs. Congress did not intend for wholesale interference with states' abilities to implement tax laws of general application when the FAAAA was enacted. *See* H.R. Rep. No. 103-677, Section 601, at 83 (1994); *Dan's City*, 569 U.S. at 260-61. Again, the preemptive provision was <u>not</u> intended "to change the application of State <u>tax laws</u> to motor carriers." *Id.* at 84-85 (emphasis added). Moreover, the House of Representatives' Conference Report, which preceded the enacted Bill (in agreement with the Senate's amendments), recognized that there was significant

litigation regarding whether certain carriers should have been classified as an air or motor carrier. Consequently, the House clarified the purpose of the FAAAA:

> The purpose of this section is to preempt economic regulation by the States, not to alter, determine or affect in any way whether any carrier is or should be considered either an air carrier or motor carrier for any purpose other than this section, whether any carrier is or should be covered by one labor statute or another, or the status of any collective bargaining agreement.
>
> [*Id.* at *88 (emphasis added).][3]

Thus, Congress intended for states to retain their authority to implement general unemployment taxes and the State has relied on this authority to enact and administer the current UCL scheme. Of note, the Senate is currently considering legislation that would amend the FAAAA to expressly and retroactively prohibit state labor laws regarding meal and rest-breaks. *See FAA Reauthorization Act of 2018*, H.R. 4, 115 Cong., Section 599G (2018).[4] If Congress intended for the FAAAA to have the preemptive reach proffered by appellant, there would be no need for further legislative amendment on this issue. Moreover, conspicuously absent in the bill is the inclusion of any language

[3] Moreover, the FAAAA does not control States' regulatory authority over motor carrier safety; trucking routes based on vehicle size, weight or cargo; insurance, liability or standard transportation rules; or certain uniform cargo or antitrust immunity rules. H.R. Rep. No. 103-677, at 84; see also 49 U.S.C. § 14501(c)(2) and (c)(3). Notably, this list was "not intended to be all inclusive[.]" *Id.*

[4] "Denham Amendment" available at https://www.congress.gov/bill/115th-congress/house-bill/4/text?q=%7B%22search%22%3A%5B%22FAA+Reauthorization+Act+of+2018%22%5D%7D&r=1 (last accessed August 13, 2018).

clarifying the preemptive reach of 49 U.S.C. § 14501(c)(1), which has been the subject of litigation throughout the country.

Our Supreme Court has acknowledged and affirmed this limitation on the FAAAA preemption. It has held that if a state law's effect on a carrier is too "tenuous, remote or peripheral in manner," preemption is foreclosed. *See Rowe*, 522 U.S. at 375, (citing *Morales*, 504 U.S. at 390). Additionally, laws of general application which only incidentally effect motor carriers in their capacity as members of the general public are not preempted. *Id.*

In *Dan's City*, 569 U.S. at 254-55, a towing company alleged the FAAAA preempted state law claims for damages arising out of the storage and disposal of towed cars. The Court held that the FAAAA did not preempt state laws regulating how a towing company could store and dispose of cars. *Id.* at 261-63. While the towing company's business engaged in the "transportation of property[,]" preemption failed because the state law did not regulate "transportation" as defined under the statute. *Id.*

The Supreme Court of California agreed. In *Harris v. Pac. Anchor Transp., Inc.*, 329 P.3d 180, 182-83 (Cal. 2014), the Court held that the FAAAA did not preempt a lawsuit alleging that a motor carrier misclassified its drivers in violation of state law. The court found the state laws at issue, which included labor and unemployment insurance codes, did not "encourage employers to use employee drivers rather than independent contractors." *Id.* at 189-90. Thus, carriers remained "free to use independent contractors as long as they are properly classified" under state law. *Id.*

Similarly, New Jersey's UCLs do not direct employers to utilize a specific business model. N.J. Stat. Ann. §§43:21-1 to -24.30. Employers therefore remain free to utilize competitive market forces in determining whether to use independent contractors. Accordingly, the District Court properly concluded the FAAAA does not preempt New Jersey's UCLs.

In contrast, *Rowe*, 552 U.S. at 368-69, 373, involved a Maine law forbidding licensed tobacco retailers from utilizing a delivery service unless the service used specific "recipient-verification" delivery procedures. The law was intended to prevent minors from purchasing tobacco products. *Id.* at 373-74. The Court held the State directly targeted motor vehicle carriers and compelled carriers "to offer tobacco delivery services that differ significantly from those that, in the absence of regulation, the market might dictate." *Id.* at 372, 375-76. Thus, the state law was preempted. *Id.* Importantly, however, the Court cautioned that the FAAAA did not preempt laws of general application that only incidentally effect motor carriers, reinforcing that there must be a "significant impact" on carrier rates, routes, or services. *Id.* at 375 (emphasis in original) (citing *Morales*, 504 U.S. at 388).

Similarly, in *Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1054 (7th Cir. 2016), *cert. denied*, 137 S. Ct. 2289 (2017), the Seventh Circuit Court of Appeals aptly noted the need to distinguish between "generally applicable state laws that affect the carrier's relationship with its customers and those that affect the carrier's relationship with its workforce." The court echoed that "[l]aws that affect the way a carrier interacts with its customers

fall squarely within the scope of FAAAA preemption. Laws that merely govern a carrier's relationship with its workforce, however, are often too tenuously connected to the carrier's relationship with its consumers to warrant preemption." *Id.* (emphasis in original) (citing *Morales*, 504 U.S. at 388; *Rowe*, 552 U.S. at 372).

Against this backdrop, the District Court properly concluded that the FAAAA does not preempt New Jersey's UCLs. The ABC test establishes the circumstances under which an employer may properly classify its workers as independent contractors:

> (A) Such an individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and
>
> (B) Such service is either outside the usual course of business for which service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and
>
> (C) Such individual is customarily engaged in an independently established trade, occupation, profession, or business.
>
> [N.J. Stat. Ann. § 43:21-19(i)(6).]

The language of the statute makes no reference to any particular industry, nor does it infringe upon any aspect of commerce. Rather, it is a law of general application and does not "target" or regulate motor carriers or their prices, routes, or services. *See* N.J. Stat. Ann. §§43:21-1 to -24.30. Indeed, it does not target motor carriers or the trucking industry in any way. New Jersey's UCLs do not "limit when, where, or how" trucking companies should perform their businesses, *Dan's City*, 569 U.S. at 262, but

are uniformly applied to all employers within the State. Thus, they are aptly characterized as imposing a "garden variety" employment tax because they generally apply to employers in New Jersey and solely regulate issues of worker compensation. *See Gary*, 397 F.3d at 189. Companies in New Jersey remain free to rely on competitive market forces to guide their business choices.

Here, appellant's principal business is the transportation of property. But, similar to *Dan's City* and unlike *Rowe*, the ABC test does not regulate any aspect of the operations of that business; it simply regulates the manner in which workers are classified to ensure adequate benefits are maintained. The UCLs' only impact on motor carriers is therefore "solely in their capacity as members of the general public." *Rowe*, 552 U.S. at 375. The unemployment tax obligations resulting from the ABC test are a cost of doing business in the State – a principle deeply rooted in this State's and, indeed, this nation's history, legislation and jurisprudence. Therefore, the District Court properly concluded that the ABC test is too tenuously connected to invoke FAAAA preemption.

Just as the UCLs are laws of general application, so too are New Jersey's wage and hour and wage payment laws. Thus, their relation to prices, routes and services is too tenuous, remote and peripheral to warrant FAAAA preemption. *See generally* N.J. Stat. Ann. §§34:11-1 to -68. Notably, on certification from this Court, the Supreme Court of New Jersey declared that the ABC test should also be used for determining a worker's employment status in the context of the State's wage payment and wage and

hour laws. *Hargrove v. Sleepy's, LLC*, 220 N.J. 289, 295 (2015). This Court upheld that decision. *Hargrove v. Sleepy's, LLC*, 612 Fed. Appx. 116, 118-19 (3d Cir. 2015). Subsequently, the District Court of New Jersey denied Sleepy's summary judgment motion that argued the ABC test was preempted by the FAAAA. *Hargrove v. Sleepy's, LLC*, 2016 U.S. Dist. LEXIS 156697, at *12-13 (D.N.J. Oct. 25, 2016). These decisions remain undisturbed.

Finding that the ABC test is preempted by the FAAAA would not only invalidate the *Sleepy's* decisions, it would serve to decimate an entire body of state labor laws. Such a result is contrary to the industry-specific purpose of the FAAAA. H.R. Rep. No. 103-677, at 83-88; *Dan's City*, 569 U.S. at 260-61. In that instance the Department would not only be prevented from collecting millions in unemployment compensation taxes, it would also be stripped of its ability to enforce its wage laws, like collecting earned wages owed to employees and assessing appropriate penalties and fees against liable employers. As a result, the State's laborers could be exposed to any number of harmful business practices, *e.g.*, illegal deductions, failure to pay adequate wages, and failure to compensate for overtime. Surely the FAAAA was not intended to have such a devastating effect.

C. New Jersey's UCLs Are an Exercise of the State's Traditional Police Powers and Cannot Be Preempted by the FAAAA.

Aside from all the reasons weighing against preemption, the FAAAA should not be interpreted to infringe upon this State's traditional police powers.[5] The Court has long recognized the importance of protecting states' rights to regulate "[c]hild labor laws, minimum and other wage laws, laws affecting occupational health and safety, and workmen's compensation laws . . . ." *DeCanas v. Bica*, 424 U.S. 351, 356 (1976); *Terminal R.R. Ass'n of St. Louis v. Bhd. of R.R. Trainmen*, 318 U.S. 1, 6-7 (1943). In the employment context, preemption is not inferred lightly because these traditional police powers should not be disturbed. *Ouellette,* 479 U.S. at 491. States "remain free to enact and enforce general traffic safety laws, general restrictions on the weight of cars and trucks that may enter highways or pass over bridges, and other regulations that do not target motor carriers 'with respect to the transportation of property." *Columbus v. Ours Garage & Wrecker Serv. Inc.*, 536 U.S. 424, 449 (2002) (Scalia, J. dissenting).

Here, preemption fails because New Jersey's enactment of its UCLs represent an exercise of traditional police powers. *Special Care of N.J.*, 327 N.J. Super. at 209. The UCL's enabling statute expressly states:

> The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state requires the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the

[5] Indeed, the State agrees with appellee's assertion that the State's police powers otherwise authorize New Jersey to implement the ABC test. (Appellee's Brief, pp. 16-18).

> benefit of persons unemployed after qualifying periods of employment.
>
> [N.J. Stat. Ann. § 43:21-2 (emphasis added).]

The State of New Jersey retains the authority to regulate labor and workers' compensation laws via the Tenth Amendment. *U.S. Const.* amend. X. As a result, the UCL's enabling statute expressly states that its authority is derived from states' police powers. The ABC test is an extension of that right and it is not so far reaching as to be an abuse of that power.

CONCLUSION

New Jersey's UCLs, in particular the ABC test, are laws of general application that do not fundamentally inhibit employers' businesses. They are not preempted by the FAAAA because they are empowered by federal law, any alleged relation to employers' prices, routes and services is too tenuous, remote and peripheral to trigger preemption, and the State must be permitted to exercise its police powers to ensure that workers are properly classified and afforded proper wages and benefits for their work. Thus, the District Court's sound ruling should be affirmed.

Respectfully Submitted,

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By: /s/Emily M. Bisnauth
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Dated: August 13, 2018

STATEMENT REQUESTING PARTICIPATION IN ORAL ARGUMENT

Amicus Curiae, the State of New Jersey, Department of Labor and Workforce Development, respectfully requests permission to participate in oral argument, should oral argument be granted, pursuant to Fed. R. App. P. 29(a)(8).

CERTIFICATION OF BAR MEMBERSHIP

I certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

By: /s/Emily M. Bisnauth
Emily M. Bisnauth
Deputy Attorney General

Dated: August 13, 2018

CERTIFICATION OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), as well as L.A.R. 31.1(c), I certify that:

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7) and 29(a)(5) because the brief contains 4,292 words, excluding parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(i), and thus does not exceed the 6,500-word limit for a brief submitted by Amicus Curiae.
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using the Microsoft Word word-processing system in Garamond that is at least 14 points.
3. The text of the brief filed with the Court by electronic filing is identical, except for signatures, to the text of the paper copies.
4. This brief complies with L.A.R. 31.1(c) in that prior to being electronically filed and mailed to Court today, it was scanned by the following virus detection software and found to be free from computer viruses:

   Company: McAfee, Inc.

   Product: McAfee VirusScan Enterprise + AntiSpyware Enterprise, version 8.8.0 (8.8.0.1528).

By: /s/Emily M. Bisnauth
Emily M. Bisnauth
Deputy Attorney General

Dated: August 13, 2018

CERTIFICATION OF SERVICE

I hereby certify that on August 13, 2018, the brief for Amicus Curiae was caused to be filed with the Clerk of the United States Court of Appeals for the Third Circuit via electronic filing; and an original and nine copies of the brief was sent via UPS overnight mail. Counsel of record will receive service via the Court's electronic filing system and will receive one paper copy via UPS overnight mail.

By: /s/Emily M. Bisnauth
Emily M. Bisnauth
Deputy Attorney General

Dated: August 13, 2018