No. _____

IN THE

Supreme Court of the United States

William B. Trescott
Petitioner

v.

Federal Motor Carrier Safety Administration
Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is it Constitutional for a court to defer to a person lacking professional experience under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984), or does the 14th Amendment require "that the courts make certain that professional judgment in fact was exercised" as this Court ruled in *Youngberg v. Romeo,* 457 U.S. 307 at 321 (1982)?

2. Can an agency rely solely on public comments to determine that a state health and safety law is an "unreasonable burden on interstate commerce" as the 9th Circuit ruled in *Int'l B'hood of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.*, 986 F.3d 841, 857 (9th Cir. 2021), or if it thinks that the health effects are not problematic, does the Due Process Clause require it to "say so in the rule and to explain why" as the DC Circuit ruled in *Public Citizen v. FMCSA,* 374 F.3d 1209, 1217 (D.C. Cir. 2004)?

PARTIES

Petitioner is:
William B. Trescott, a trucker by trade who has not issued debt securities to the public.

Respondent is:
The Federal Motor Carrier Safety Administration.

Petitioners before the Ninth Circuit were:
International Brotherhood of Teamsters, Locals 848 and 2785; Everardo Luna; Charles "Lucky" Lepins; Julio Garcia; Jesus Maldonado; Jose Paz; Duy Nam Ly; Phillip Morgan; and The Labor Commissioner For The State of California.

Intervenor before the Ninth Circuit was:
William B. Trescott.

Amici Curiae before the Ninth Circuit were:
The State of Washington; State and National Employment Lawyers Associations; Specialized Carriers & Rigging Association, PODS Enterprises LLC, Ryder System Inc., Western States Trucking Association; American Trucking Associations Inc., California Trucking Association, Washington Trucking Associations, Intermodal Association of North America, American Moving and Storage Association; CRST Expedited Inc., FAF Inc., Heartland Express Inc., John Christner Trucking LLC, Penske Logistics LLC, Penske Truck Leasing Co. L.P., Rail Delivery Services Inc., U.S. Xpress Inc; and, The Chamber of Commerce of the United States.

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JURISDICTION

The Judgment of the Court of Appeals was entered January 15th 2021. A Petition for Panel Rehearing was filed on January 24th 2021 which was denied the following day on January 25th 2021. A Petition for Rehearing En Banc was filed on February 7th 2021 and a second Petition for Rehearing En Banc along with two additional petitions for Panel Rehearing and Rehearing En Banc were filed on March 1st 2021, which were denied on March 25th 2021. This Court has Jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment provides:

> Congress shall make no law…abridging…
> the right of the people peaceably to assemble…

The Seventh Amendment provides:

> In suits at common law, where the value in

> controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

The Fourteenth Amendment provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. 1985 provides:

> If two or more persons...conspire or go in disguise...for the purpose of preventing or hindering...the equal protection of the laws... the party so injured or deprived may have an action for the recovery of damages.
> .

49 U.S.C. § 113(c) provides:

> The head of the Administration shall be…an individual with professional experience in motor carrier safety.

49 U.S.C. § 31136(a)(4) provides:

> At a minimum, the regulations shall ensure that…the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.

STATEMENT OF THE CASE

In 2004, the DC Circuit Court of Appeals vacated the Federal Motor Carrier Safety Administration's truckers' hours of service rules promulgated under 49 C.F.R. 395 because the agency failed to consider their impact on driver health. For instance, bus drivers (unable to stop for breaks) were found to have an increased risk of bladder cancer, while men able to drink additional fluids had reduced risk.[1]

> "It may be the case, for example, that driving for extended periods of time and sleep deprivation cause drivers long-term back problems, or harm drivers' immune systems. The agency may of course think that these and other effects on drivers are not problematic…but if so it was incumbent on it to say so in the rule and to explain why." *Public Citizen v. FMCSA,* 374 F.3d 1209, 1217 (D.C. Cir. 2004)

Consistent with this decision, a California court ruled that truckers had to receive meal and rest breaks—reducing tractor-trailer occupant fatalities sixty percent between 2002 and 2010.[2] *Cicairos v. Summit Logistics, Inc.*, 133 Cal App.4th 949 (2006). However, on April 26th 2006, four students and an employee of Taylor University, a small Evangelical Christian college, were killed by an overworked

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[1] R.C. Reulen et al., "A meta-analysis on the association between bladder cancer and occupation"; M. Brinkman, M.P. Zeegers, "Nutrition, total fluid, and bladder cancer," *Scandinavian Journal of Urology and Nephrology*, Sept. 2008

[2] Fatality Analysis Reporting System, NHTSA, www-fars.nhtsa.dot.gov

trucker who allegedly fell asleep at the wheel near Fort Wayne Indiana. Due to a mix-up by the coroner, a student so horrifically crushed she was unrecognizable was buried in the wrong grave while another was nursed back to health by the dead girl's parents.[3] Though the mix-up had nothing whatsoever to do with motor carrier safety, three weeks later in response to sensational media outrage, President Bush appointed an alumnus of Taylor University to lead the Federal Motor Carrier Safety Administration in violation of the *Motor Carrier Safety Improvement Act of 1999*, which required him to appoint "an individual with professional experience in motor carrier safety" to head the agency. 49 U.S.C. § 113(c).

Though John H. Hill's performance as a law enforcement officer was impeccable prior to his joining the Bush Administration, he never met the minimum standard for employment in the motor carrier safety profession—an above average safety record driving 18-wheelers. Nor did he publish anything demonstrating expertise designing trucks or testing safety devices as any reasonable person would expect of someone with professional experience in motor carrier safety.

When Hill chose not to legalize modern safety devices found on cars such as roll bars, crash absorbent bumpers, and underride beams, Petitioner filed a petition under 49 U.S.C. 30162, requiring the Secretary of Transportation to explain the reason for the ban within 120 days or to begin a rulemaking to replace obsolete vehicle size and weight limits with

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[3] www.taylor.edu/news/taylor-university-observance-of-2006-crash-is-next-week

cargo size and weight limits that did not ban modern safety features. When Hill stopped the head of the Federal Highway Administration's Size and Weight Division from responding by promoting him to head his Enforcement Division, the House Transportation Committee summoned him to appear on the day the response was due.

On July 11th 2007, Hill claimed before the House Transportation Committee that "2005 enjoyed one of the lowest large-truck fatality rates in thirty years" when in fact the number of truckers killed on the job increased 17% from 2002 to 2005 and the number of pedestrians and bicyclists killed by trucks increased 29%—a 14 year high. Truckers killed in daytime multi-vehicle crashes doubled.[4] Three weeks later, the FBI raided the home of the Senate Commerce Committee Chairman who confirmed him without a hearing, who was subsequently convicted of failing to report gifts (*USA v. Stevens*, DDC-08-0231, 10/27/08)(Petitioner's 49th birthday). Charges were abruptly dropped after Petitioner sent the FBI a complaint alleging that a dozen truckers killed in Texas had a greater than fifty-fifty chance of being victims of wrongful death[5]; subsequently provoking a disgruntled trucker to murder eleven Jews at a synagogue near Pittsburgh on the tenth anniversary of his conviction—the deadliest attack on Jews in the history of the United States.[6] Leaving office, Hill blew the whistle claiming, "I thought I would have a lot of say in truck safety in this country [but] politi-

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[4] Fatality Analysis Reporting System, NHTSA, www-fars.nhtsa.dot.gov

[5] www.truckingvideo.com/litigation/complaint.pdf

[6] Rich Lord, *Pittsburgh Post Gazette*, 10/29/2018

cal people tell the appointed people what they're going to do."[7] Without an army to enforce its order, the DC Circuit could only re-vacate the vacated rules when they were re-promulgated in violation of the *Administrative Procedures Act*. See *OOIDA v. FMCSA*, 494 F.3d 188 (D.C. Cir. 2007).

Consistent with this decision, the agency denied a petition to preempt California's meal and rest break rules, 73 F.R. 79,204 (Dec. 24th 2008), and in 2009 it agreed to obey the orders of the DC Circuit after the Department of Justice refused to defend the agency (*Public Citizen v. FMCSA,* DC-09-1094). The California Supreme Court also upheld the rest break rules. *Brinker v. Superior Court of San Diego,* 273 P.3d 513 (Cal. 2012). Within hours of reaching the settlement agreement, however, the Commerce Committee confirmed Anne Ferro, President of the Maryland Motor Truck Association, as President Obama's Federal Motor Carrier Safety Administrator.

Like Hill, Ferro did not meet the minimum standard for employment in the motor carrier safety profession—an above average safety record driving eighteen-wheelers. Nor did she demonstrate experience designing trucks or testing safety devices as required under Section 113(c). Blowing the whistle, Hill claimed, "I can assure you that Anne Ferro is getting marching orders."[7] His allegation was not without support. According to the University of Michigan Transportation Research Institute, Maryland reported only one truck crash after Ferro took over, compared to 114 crashes per month when Hill ran the agency.[8] Also, the National Highway Traffic

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[7] www.truckinginfo.com/news/news-detail.asp?news_id=73580

[8] csa.fmcsa.dot.gov/Documents/Evaluation-of-the-CSA-Op-

Safety Administration reported that trucks drove one-third more miles under Ferro[9] than under Hill.[10] Obviously, if crashes are under-reported and miles driven are exaggerated, an administrator with no apparent qualifications can appear to improve safety.

Defying both court orders, in 2011 Ferro re-promulgated the twice-vacated rules with changes that the Inspector General of the Department of Transportation later determined were insignificant.[11] Unexpectedly, the DC Circuit then reversed itself, ruling that truckers such as the Petitioner lacked standing to challenge a trucking regulation despite having won the two previous cases. *American Trucking Ass'ns v. FMCSA*, 724 F.3d 243, 249 n.7 (D.C. Cir. 2013) ("Trescott offers nary an argument in his briefs as to why his lobbying activities would establish standing. For this reason, we need not reach the merits of his arguments.")(Cert. denied, 13-509, Jan. 13th 2014). Congress responded by mooting this case in the *Consolidated Appropriations Act of 2014* (Pub. L. 113-235, 128 Stat. 2712)—suspending enforcement of Ferro's reforms. However, the judge who authored the opinion was allowed to retire and keep her pension—provoking another irate trucker to kill seven people and himself on the second anniversary of her retirement.[12]

In response, Petitioner proposed an automatic system with rest break rules similar to Section 11090

Model-Test.pdf

[9] www-nrd.nhtsa.dot.gov/Pubs/811628.pdf

[10] www-nrd.nhtsa.dot.gov/Pubs/811158.pdf

[11] www.oig.dot.gov/library-item/35549

[12] Lucinda Holt, Manny Fernandez, "West Texas Shooting Spree Terrorized Two Towns and Killed 7," *New York Times*, 9/1/2019

of the California Labor Code.[13] This was enacted as the *Commercial Motor Vehicle Safety Enhancement Act of 2012*—requiring the agency to equip trucks with electronic logging devices "capable of recording a driver's hours of service and duty status accurately and automatically," 49 U.S.C. § 31137(f)(1)(A)—removing language permitting the devices to "be used to monitor productivity of the operators" (31137(a)-superceded). However, the agency failed to redact 49 C.F.R. § 390.36(b)(2) allowing carriers "to monitor productivity [or strike participation] of a driver." The proposed device had no tracking ability.

In defiance of the new law, on December 16th 2015, the agency re-promulgated (with minor changes) an electronic logging devices rule vacated by the 7th Circuit because the agency failed to ensure that electronic monitoring would not be used to harass drivers. 49 C.F.R. § 395.8 et seq., 80 F.R. 78383. See *Owner-Operator Independent Drivers Ass'n v. FMCSA*, 656 F.3d 580 (7th Cir. 2011). Although the agency claimed that the purpose of monitoring citizens with tracking devices was to improve safety, the effect of electronic monitoring was to preempt California's meal and rest break rules rather than extend them nationwide. Instead of receiving additional breaks, truckers could be ordered to drive up to eight hours without a break, then be ordered to remain for thirty minutes at a place of the employer's choosing to prevent them from participating in any protests. This resulted in 28% more truckers being killed on the job in 2017 than in 2014 and 68% more than in 2009[14] because they forced truckers to race

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[13] www.truckingvideo.com/hos.htm

[14] Fatality Analysis Reporting System, NHTSA,

against the clock to arrive at a safe pace to park before running out of driving time, violating speed limits whenever delayed by weather or traffic, then fall asleep instantly at a time determined by a computer. Other than hypnotism, the only known method for human beings to sleep on command is to take powerful sedatives or drink dangerous amounts of alcohol. Not surprisingly, alcohol related truck fatalities jumped sixty percent in just one year when this politically motivated rule went into effect in 2017—harming both highway safety and driver health.[15]

Nevertheless, in contradiction of its 2008 Determination, on December 21st 2018, the agency issued a new Determination preempting California's meal and rest break laws. 83 F.R. 67470. Ignoring both court orders, on Sept. 12th 2019, the agency ordered the hours of service rules twice vacated by the DC Circuit "restored to full force and effect." 84 F.R. 48079. At the height of the Coronavirus epidemic on June 1st 2020, the agency ruled that "the 2005 rule would not have any effect on these potential health issues," 85 F.R. 33403, even though the agency found additional rest provided "health benefits in the form of decreased mortality risk based on decreases in daily driving time, and possible increases in sleep." 85 F.R. 33447. An additional 1,457 truckers and 3,242 motorists were killed on the highways since tracking devices were first required in 2009.[14]

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www-fars.nhtsa.dot.gov

[15] NHTSA, *2017 Fatal Motor Vehicle Crashes: Overview*, p.5

REASONS FOR GRANTING THE WRIT

The 9th Circuit has entered a decision that has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

A. A half-million Americans have lost their lives due to a coronavirus epidemic attributable in part to long haul trucking. Dependence on obsolete 18-wheelers for food delivery decades after truckers decided to replace them with modern intermodal vehicles has prevented local governments from shutting down highways to prevent its spread. This court ruled, "due process of law requires an evaluation based on disinterested inquiry pursued in the spirit of science, on a balanced order of facts [and] the detached consideration of conflicting claims." *Rochin v. California* 342 U.S. 165 at 172 (1952). As Justice Powell wrote for a unanimous court in *Youngberg v. Romeo,* 457 U.S. 307 at 321 (1982) (quoting 644 F.2d at 178):

> "If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge … the Constitution only requires that the courts make certain that professional judgment in fact was exercised (internal quotes omitted) …By "professional" decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue." *Id.* at 323 n.30.

Congress made clear in *The Motor Carrier Safety Improvement Act of 1999* that only "an individual

with professional experience in motor carrier safety" may make preemption determinations. 49 U.S.C. § 113(c). The court's *Chevron* Part I analysis should therefore have ended when Respondents failed to dispute allegations that court orders were ignored by a person lacking professional experience who failed to comply with all of the legal requirements of rulemaking. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

The 9th Circuit's conclusions that it need not "address these arguments, as IBT Local 2785 failed to argue these issues with any specificity in [its] briefing" even though their Intervenor did so, or "[t]hese issues are also not part of the FMCSA's preemption determination and are thus not before us" (*see* App. p. 35 n.5), reveal that the panel did not satisfy the due process requirement that it "make certain that professional judgment in fact was exercised" as required in *Youngberg.* A court is not supposed to "vacate various federal regulations" (*id.*) when Congress requires "professional experience" under 49 U.S.C. § 113(c) or "clear evidence" that Congress intended preemption under Executive Order 13132; it is supposed to enforce existing court orders. A court cannot vacate a regulation that has already been vacated by another court. Granting *Chevron* Part II deference to a twice-convicted drunk driver posing as a motor carrier safety professional[16] creates the same appearance of corruption that

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[16] September 1987, Fairfax County, Virginia; August 1989, Nassau County, New York. When Federal Motor Carrier Safety Administrator Raymond P. Martinez was supposedly acquiring an above-average safety record driving 18-wheelers, he was actually working as an assistant to First Lady Nancy Reagan.; James Jaillet, *Overdrive*, November 6th 2017.

stopped a nomination to this Court,[17] provoking the deadly reprisals described above. A circuit court ignoring another circuit court's orders calls for an exercise of this Court's supervisory power.

B. The National Highway Traffic Safety Administration's *Traffic Safety Facts—Large Trucks* fact sheets[18] show that in states with meal and rest break laws,[19] single vehicle trucker fatalities, such as running off the road or falling asleep at the wheel, increased by one-third after tracking devices were required until they matched the high rates seen in non-rest-break states—killing an additional 50 truckers per year. In California, single vehicle trucker fatalities more than doubled 118% between 2014 and 2017, confirming that its meal and rest break laws had a significant safety benefit—reducing trucker fatalities sixty percent during the nine years they were being enforced. Yet, they were preempted in violation of 49 U.S.C. § 31141(c)(4)(A), which provides that "the State law or regulation may be enforced unless [it] has no safety benefit."

It is well known that the Tea Party Movement began with a nationwide trucker strike on the 200th anniversary of the Boston Tea Party in 1973.[20] On

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[17] DC-14-90026, DC-14-90027; DC-15-90023, DC-15-90024

[18] DOT HS 812 150; DOT HS 812 279; DOT HS 812 373; DOT HS 812 497; DOT HS 812 663 (see state tabulations)

[19] California, Colorado, Connecticut, Delaware, Illinois, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, Tennessee, Vermont, Washington, and West Virginia

[20] Mike Parkhurst, *Trucker Wars*, Hollywood Continental Films, 2013

the 242nd anniversary of the Boston Tea Party, December 16th 2015, the agency required trucks to be equipped with tracking devices that forced truckers to skip state mandated meal and rest breaks, increasing trucker fatalities sixty-eight percent (*see* above p. 8). 49 C.F.R. § 395.8 et seq., 80 F.R. 78383. Thus, the real reason for preempting California's meal and rest break laws was to prevent protests—not to improve safety. Citizens monitored by tracking devices who are forbidden by their employers to stop to rest are unable "peaceably to assemble" as guaranteed by the First Amendment. Regulations promulgated under Section 31136 must comply with a Congressional mandate: "At a minimum, the regulations shall ensure that … the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators." 49 U.S.C. § 31136(a)(4). As the DC Circuit ruled, "[i]ts failure to do so, standing alone, requires us to vacate the entire rule as arbitrary and capricious." *Public Citizen* at 1217.

Numerology is normally a part of astrology, not law. However, when courts do certain things on certain dates, one can be reasonably certain that someone in the courthouse is trying to send a message, such as when the Commerce Committee Chairman was convicted of failing to report gifts on Petitioner's birthday (*see* above p. 5), or when the 7th Circuit published its opinion in a related tracking devices case on Halloween (cert. denied 15-1263; 16-1228). While the actions of the 9th Circuit are not as egregious as those of the 7th Circuit in suppressing evidence, such as serving documents at Petitioner's home knowing it would be impossible to timely receive them, or requiring Petitioner to block a road in front of a post office by denying truckers the use of

the court's electronic case filing system, or the DC Circuit denying standing to truckers; to issue its Mandate on Good Friday (*see* Appendix p. 42), the traditional anniversary of the death of Christ, in response to the reprisal against Jews (*see* above p. 5) has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

C. This Court has recognized "that deliberate indifference is egregious enough to state a substantive due process claim." See *County of Sacramento v. Lewis,* 523 U.S. 833 (1998):

> "conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level … Historically, this guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property" (quoting *Daniels v. Williams*, 474 U.S. at 331).

Justice Rehnquist wrote in *DeShaney v. Winnebago County Dept. of Social Servs.*, 489 U.S. 189, 200 (1989):

> "it is the State's affirmative act of restraining the individual's freedom to act on his own behalf—through…restraint of personal liberty —which is the 'deprivation of liberty' triggering the protections of the Due Process Clause."

In *Rochin*, a stomach pump was used to extract a confession in the same manner that tracking devices are used to extract confessions from truckers who

choose to stop to eat, rest, or protest without their employer's permission. The twice-vacated rule found under 49 C.F.R. § 395.3(a) ("nor shall any such driver drive…unless the driver complies with the following requirements") is an individual mandate that violates "liberty interests in freedom of movement and in personal security [that] can be limited only by an overriding, non-punitive state interest." *Youngberg* at 313 (internal quotes omitted). Thus, when Congress stipulates that rules must be *needed* under 49 U.S.C. §§ 31136(c)(2)(B) & 31502(b)(2), the burden of proof falls on the agency, not the petitioners. It is difficult to understand why hours of service rules are needed when modern intermodal vehicles[21] can dramatically reduce the hours truckers need to work. The agency responded to Petitioner's petition to replace obsolete 18-wheelers with modern vehicles by replacing truckers with foreign workers (*see* above p. 4). The only historical precedent for this was in 1934 when the Boeing company decided to replace rickety biplanes with modern airliners and President Roosevelt transferred its airmail contracts to the Army, causing a dramatic increase in crashes —which World War I Ace Eddie Rickenbacker called "legalized murder."[22] See *Public Citizen* at 1220 ("This directive, in our view, required the agency, at a minimum, to collect and analyze data on the costs and benefits").

D. The 9th Circuit did not address the apparent conflict with its 103-year-old precedent in *United States v. Southern Pacific Co.* 245 Fed. 722 (9th Cir.

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[21] US Patents 6494313, 6776299, 6840724, 6910844, & 7070062
[22] *Chronicle of Aviation*, JOL, 1992, p. 315

1917) that a temporary relief from duty where employees had to remain in the vicinity was a form of on-duty time. This flows from the this Court's 107-year-old precedent in *Missouri K.&T. Ry. Co. v. United States.* 231 U.S. 112 (1913) that "[e]mployees, though inactive, are none the less on duty…where they are under orders, liable to be called upon at any moment, and not at liberty to go away." The 9th Circuit has not explained why wages no longer must be paid to drivers for this type of "on duty" time when they are "not at liberty to go away" and likely to be "called upon at any moment" by customers or dispatchers, such as when they are "under orders" to take a mandatory 30-minute break from driving under 49 C.F.R. § 395.3(a)(3)(ii). The agency recently acknowledged that such "on duty" breaks made some drivers "more tired." 85 F.R. 33416.

The Secretary's own statistical evidence shows that preemption of state meal and rest break laws actually occurred on December 16th 2015, 80 F.R. 78383, long before California's civil penalties and wage orders were preempted on December 21st 2018. 83 F.R. 67470. Thus, the present case in practical effect is purely financial, requiring a trial by jury. In claiming jurisdiction under 49 U.S.C. § 31141(f)(2) to resolve what is essentially a wage dispute (*see* App. pp. 14, 17), the 9th Circuit is in conflict with this court's decision in *Tull v. United States*, 481 U.S. 412, 421 n.5 (1987) holding that the 7th Amendment applies to cases involving civil penalties to abate interferences with public health or safety.

The 9th Circuit's ruling that the FMCSA reasonably determined that a State law "on commercial motor vehicle safety" is one that "imposes requirements in an area of regulation that is already addressed by a regulation promulgated under [sec-

tion] 31136" (*see* App. pp. 15, 19, 23), is unsupported by citation of any federal regulation requiring employers to provide "off duty" breaks as required under California law wherein drivers are "at liberty to go away," not "under orders," or "liable to be called upon at any moment." Nor has The 9th Circuit cited any instance of California regulating a commercial motor vehicle by requiring safety devices to be installed or placing a vehicle out of service to enforce its meal and rest break laws. California's remedies are purely financial, having nothing at all to do with the operation of commercial motor vehicles. In failing to include any discussion about why vehicles owned and operated by self-employed truckers are not being regulated, the 9th Circuit failed to differentiate between commercial motor vehicle regulations under Section 31136, which do not involve civil penalties, and motor carrier regulations promulgated under 49 U.S.C. 31502 that do, which fall outside the Secretary's jurisdiction for preemption under 31141.

The 9th Circuit's *Chevron* Part I analysis failed to address the claim that in granting jurisdiction to courts of appeals and removing all references to the "Commercial Motor Vehicle Safety Regulatory Review Panel" originally required under *The Motor Carrier Safety Act of 1984*, Pub. L. No. 98-554, title II, 98 Stat. 2829, 2832 (49 U.S.C. § 31131-superceded; Pub. L. No. 103-272, 108 Stat. 745); Congress expressed a clear intent to limit agency jurisdiction to laws not covered by the 7th Amendment. Now, truckers are not only treated unequally compared to other California workers, they are prevented from recovering damages under 42 U.S.C. 1985.

E. When *Rochin* was decided in 1952, this Court would normally grant about two hundred of the five

hundred petitions received each year. Today, the circuit courts have been so corrupted by cronyism that this Court grants only a small fraction of the thousands of petitions it receives annually. To end the long-standing practice of suppressing evidence[23] by abusing courts of appeals as courts of first impression with non-randomly-assigned politically connected judges whose orders are simply ignored if they do not do what they are told and are rewarded with Supreme Court nominations if they do, this Court should grant this petition to broadly extend the due process standard stated in *Rochin* and *Youngberg* to all government agencies.

The Federal Motor Carrier Safety Administration did not exist when the transfer of authority from the Interstate Commerce Commission to the National Transportation Safety Board (both quasi-judicial bodies equivalent to a jury for Seventh Amendment purposes) occurred in 1966, therefore, appellate courts are not constitutionally adequate to review its administrator's decisions. The *Department of Transportation Act* states that only authority "specifically assigned to the Administrator…may be reviewed judicially…in the same way as…before the transfer or assignment." Pub. L. 89-670, 80 Stat. 931, 49 U.S.C. § 351(a). See *Aulenback v. FHWA*, 103 F.3d 156 (D.C. Cir. 1997) (holding that courts of appeals have jurisdiction to review actions of Department of Transportation agencies only if the action is taken pursuant to authority that was transferred from the Interstate Commerce Commission); *Owner-Operator Independent Drivers Ass'n v. Pena*, 996 F.2d 338 (D.C. Cir. 1993) (same). Authority in Section 31141

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[23] Robert Caro, *Means of Ascent*, Knopf 1990, p.380

was not specifically assigned by Congress to the Federal Motor Carrier Safety Administrator. Appellate jurisdiction under Section 31141(f)(1) should therefore be limited to safe design and construction of commercial motor vehicles under Section 31136, not regulations of the personal lives of citizens promulgated under Sections 31502 and 390.36(b)(2) ("to monitor productivity [strike activity] of a driver") shown to have no safety benefit. The threshold amount triggering 7th Amendment protections is far exceeded by the loss of additional pay allowed under California law if meals are skipped, not to mention the approximately thirty percent reduction in wages resulting from truckers' inability to bargain collectively[24]—which benefited the Commerce Committee Chairman not convicted of receiving gifts (Presidential Candidate John McCain) who's wife owned a trucking company that distributed beer.

It is difficult to imagine by what psychic power an unskilled person could learn the trade secrets of truckers so as to be able to perform a valid cost-benefit analysis without being apprenticed in the trade. Because safety determinations require special expertise not possessed by ordinary persons, not unlike courts of law, when an impostor impersonates a safety professional (or a judge), an impostor's decision does not carry the same weight as a valid court order to be appealed and is in fact just an ordinary tort. Therefore, to maintain impartiality in the spirit of science, *Rochin* at 172, and make certain that professional judgment is exercised, *Youngberg* at 321, a court should defer to an agency under *Chevron* Part II only if a decision-maker possesses

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[24] Michael Belzer, *Sweatshops on Wheels*, Oxford, 2000, p.122

professional experience. If a political appointee lacks such expertise, then a court's *Chevron* Part I analysis should end when Congress makes clear that professional experience is required. One may reasonably argue that the intent of Congress is that professional judgment is always required.

CONCLUSION

This petition should be granted to make certain that professional judgment is exercised in every government agency.

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(979) 244-3134

APPENDIX TO:

William B. Trescott
Petitioner

v.

Federal Motor Carrier Safety Administration
Respondent

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

Contents of the Appendix:

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 2785; EVERARDO LUNA,
Petitioners,

v. No. 18-73488

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION,
Respondent, FMCSA No. 2018-0304

WILLIAM B. TRESCOTT,
Intervenor.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 848; CHARLES "LUCKY" LEPINS; JULIO GARCIA; JESUS MALDONADO; JOSE PAZ,
Petitioners,
No. 19-70323
v. FMCSA No. 2018-0304
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION; U.S. DEPARTMENT OF TRANSPORTATION,
Respondents.

LABOR COMMISSIONER FOR THE STATE OF CALIFORNIA,

Petitioner,

v.

No. 19-70329
FMCSA No. 2018-0304

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, Respondent.

DUY NAM LY; PHILLIP MORGAN,

Petitioners,

v.

No. 19-70413
FMCSA No. 2018-0304

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION; U.S. DEPARTMENT OF TRANSPORTATION,

Respondents.

OPINION

On Petition for Review of an Order of the Federal Motor Carrier Safety Administration

Argued and Submitted November 16, 2020 San Francisco, California

Filed January 15, 2021

Before: Jacqueline H. Nguyen, Andrew D. Hurwitz, and Daniel A. Bress, Circuit Judges.

Opinion by Judge Bress

SUMMARY[1]

Federal Motor Carrier Safety Administration

The panel denied petitions for review of the Federal Motor Carrier Safety Administration ("FMCSA")'s determination that federal law preempted California's meal and rest break rules (the "MRB rules"), as applied to drivers of property-carrying commercial motor vehicles who are subject to the FMCSA's own rest break regulations.

The FMCSA only has the authority to review for preemption State laws and regulations "on commercial motor vehicle safety." 49 U.S.C. § 31141(c).

The panel held the agency's interpretation of the statute and the phrase "on commercial motor vehicle safety" merited deference under Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), where the FMCSA acknowledged that it was departing from its 2008 interpretation of § 31141 and provided a reasoned analysis why it was doing so. The panel rejected petitioners' arguments that Chevron deference was inapplicable.

Turning to Chevron's two-step framework, the panel held that even assuming petitioners identified a potential ambiguity in the statute, the agency's

[1] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

reading was a permissible one. The FMCSA reasonably determined that a State law "on commercial motor vehicle safety" was one that "imposes requirements in an area of regulations that is already addressed by a regulation promulgated under [section] 31136." 83 Fed. Reg. at 67,473 (Dec. 28, 2018). The FMCSA's 2018 preemption decision also reasonably relied on Congress's stated interest in uniformity of regulation. The fact that California regulated meal and rest breaks in a variety of industries did not compel the conclusion that the MRB rules were not "on commercial motor vehicle safety." Finally, the panel held that the decision in Dilts v. Penske Logistics, LLC, 769 F.3d 637 (9th Cir. 2014), did not foreclose the FMCSA's interpretation. The panel concluded that the FMCSA permissibly determined that California's MRB rules were State regulations "on commercial motor vehicle safety," so that they were within the agency's preemption authority.

The panel held that the FMCSA's determination that the MRB rules were "additional to or more stringent than" the federal regulation was reasonable and supported. 49 U.S.C. § 31141(c)(1). The FMCSA reached this conclusion because California required more breaks, more often and with less flexibility as to timing. The panel rejected petitioners' challenges to this determination.

The panel held that the FMCSA did not act arbitrarily or capriciously in finding that enforcement of the MRB rules "would cause an unreasonable burden on interstate commerce." 49 U.S.C. § 31141(c)(4)(C). Petitioners' counterarguments did not show that the agency acted arbitrarily or Capri-

ciously.

COUNSEL

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OPINION

BRESS, Circuit Judge:

The Federal Motor Carrier Safety Administration (FMCSA), an agency within the Department of Transportation, is tasked with issuing regulations on commercial motor vehicle safety. The FMCSA also has authority to determine that state laws on commercial motor vehicle safety are preempted, based on criteria Congress has specified. In this case, the FMCSA determined that federal law

preempts California's meal and rest break rules, known as the "MRB rules," as applied to drivers of property- carrying commercial motor vehicles who are subject to the FMCSA's own rest break regulations. Compared to federal safety regulations, California's MRB rules generally require that employers allow commercial truck drivers to take more rest breaks, at greater frequency, and with less flexibility as to when breaks occur.

California's Labor Commissioner, certain labor organizations, and others now petition for review of the FMCSA's preemption determination. Because the agency's decision reflects a permissible interpretation of the Motor Carrier Safety Act of 1984 and is not arbitrary or capricious, we deny the petitions for review.

I

A

Congress passed the Motor Carrier Safety Act of 1984 "to promote the safe operation of commercial motor vehicles, [and] to minimize dangers to the health of operators of commercial motor vehicles and other employees." Pub. L. No. 98-554, tit. II, 98 Stat. 2832, § 202 (originally codified at 49 U.S.C. app. 2501). Under the Act, the Secretary of Transportation "shall prescribe regulations on commercial motor vehicle safety" that contain "minimum safety standards for commercial motor vehicles." 49 U.S.C. § 31136(a). Among other things, federal regulations "shall ensure" that "the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely." *Id.* §

31136(a)(2).

The Act also gives the Secretary the express power to preempt State law: "A State may not enforce a State law or regulation on commercial motor vehicle safety that the Secretary of Transportation decides under this section may not be enforced." *Id.* § 31141(a). To carry out this duty, "[t]he Secretary shall review State laws and regulations on commercial motor vehicle safety." *Id.* § 31141(c)(1).

The statute provides a multi-step process that the Secretary must follow in conducting this review. The Secretary must first compare the State law or regulation at issue to a regulation prescribed by the Secretary under 49 U.S.C. § 31136 and decide whether the State law "has the same effect as," "is less stringent than," or "is additional to or more stringent than" the federal regulation. *Id.* § 31141(c)(1). If the Secretary decides a State law or regulation has the "same effect" as the federal regulation, "the State law or regulation may be enforced." Id. § 31141(c)(2). If a State law is less stringent than the federal regulation, "the State law or regulation may not be enforced." *Id.* § 31141(c)(3).

If the Secretary decides that a State law is "additional to or more stringent" than a federal regulation, another decision tree applies. At that point, the State law "may be enforced unless the Secretary also decides that — (A) the State law or regulation has no safety benefit; (B) the State law or regulation is incompatible with the regulation prescribed by the Secretary; or (C) enforcement of the State law or regulation would cause an unreasonable burden on interstate commerce." *Id.* §

31141(c)(4). When considering the burden on interstate commerce, "the Secretary may consider the effect on interstate commerce of implementation of that law or regulation with the implementation of all similar laws and regulations of other States." *Id.* § 31141(c)(5).

The Secretary has delegated its rulemaking and preemption authority to the Administrator of the FMCSA. 49 C.F.R. § 1.87(f).

B

Federal regulations impose limits on the driving time for commercial motor vehicle drivers. These are known as the hours-of-service regulations. Under federal law, a property-carrying commercial motor vehicle driver "may not drive without first taking 10 consecutive hours off duty," 49 C.F.R. § 395.3(a)(1) (2018),[2] and "may not drive after the end of the 14-consecutive-hour period without first taking 10 consecutive hours off duty," id. § 395.3(a)(2). Within that 14-hour period, a driver may only drive 11 hours. *Id.* § 395.3(a)(3)(i). Federal regulations also impose weekly driving limits. Id. § 395.3(b) (prohibiting a driver from being on duty for more than 60 or 70 hours in seven or eight consecutive days, respectively).

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[2] The FMCSA revised 49 C.F.R. § 395.3 in 2019, and again in 2020. See Hours of Service of Drivers—Restart Provision, 84 Fed. Reg. 48,077 (Sept. 12, 2019); Hours of Service of Drivers, 85 Fed. Reg. 33,396 (June 1, 2020). In this opinion, we cite the 2018 version of the regulation, the rule in place at the time of the FMCSA's preemption determination. But the 2019 and 2020 changes do not affect the preemption analysis.

In 2011, the FMCSA revised the federal hours-of-service regulations and adopted the rules on breaks for truck drivers that form the basis for the FMCSA's 2018 decision to preempt California's MRB rules. See Hours of Service of Drivers, 76 Fed. Reg. 81,134, 81,188 (Dec. 27, 2011) (codified at 49 C.F.R. § 395.3). Except for certain "short- haul" drivers, a property-carrying commercial motor vehicle driver working more than eight hours must take at least one 30-minute break during the first eight hours, although the driver has flexibility as to when the break occurs. 49 C.F.R. § 395.3(a)(3)(ii). That 30-minute break can be spent "off-duty" or in a "sleeper berth." *Id.*[3] The 2011 break requirement supplemented longstanding federal regulations prohibiting a driver from operating a commercial motor vehicle if too fatigued or unable to safely drive. 49 C.F.R. § 392.3. Employers may not coerce drivers to violate this rule or the hours-of-service rules. *Id.* § 390.6. The federal regulations do not require other breaks.

The California rules are different. California's rules are contained in wage orders issued by the State's Industrial Welfare Commission (IWC), which is tasked with protecting workers' "health, safety, and welfare." Martinez v. Combs, 231 P.3d 259, 271

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[3] Under the 2020 revisions to the regulation, the 30-minute break requirement now applies "only when a driver has driven (instead of having been on-duty) for a period of 8 hours without at least a 30-minute non-driving interruption." 85 Fed. Reg. at 33,396. Additionally, a driver can now satisfy the break requirement with "any non-driving period of 30 minutes, i.e., on-duty, off-duty, or sleeper berth time." *Id.*; see also 49 C.F.R. § 395.3(a)(3)(ii) (2020).

(Cal. 2010) (quoting Cal. Lab. Code § 1173). To that end, the IWC has issued eighteen wage orders, mostly on an industry-wide or occupation-wide basis. Cal. Code Regs. tit. 8, §§ 11010–11170; Martinez, 231 P.3d at 272–73. These orders cover all employees in California unless they are specifically exempted. See Brinker Rest. Corp. v. Superior Court, 273 P.3d 513, 521 n.1 (Cal. 2012); Martinez, 231 P.3d at 273 & n.24; Cal. Code Regs. tit. 8, § 11170(1)(A). Seventeen IWC orders contain meal period requirements and sixteen contain rest period requirements. See Cal. Code Regs. tit. 8, §§ 11010–11170.

Wage Order 9-2001 applies to "all persons employed in the transportation industry," which necessarily includes property-carrying commercial truck drivers. *Id.* § 11090(1). Under the order, an employee working more than five hours a day is entitled to a "meal period of not less than 30 minutes." *Id.* § 11090(11)(A). If, however, "a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee." *Id.* An employee is entitled to "a second meal period of not less than 30 minutes" when working more than 10 hours in a day. *Id.* § 11090(11)(B). The employee and employer can only agree to waive the second meal break if the employee does not work more than 12 hours in a day and did not waive the first break. *Id.*; see also Cal. Lab. Code § 512(a) (imposing these same meal break rules for all employees unless otherwise exempted).

The California Wage Order also entitles transportation industry employees to 10-minute rest breaks for every four hours worked throughout the

day. Cal. Code Regs. tit. 8, § 11090(12)(A). These rest breaks "insofar as practicable shall be in the middle of each work period." *Id.* California's Labor Commissioner can grant an employer an exemption from the rest break requirement if it "would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer." *Id.* § 11090(17).

Under California law, an employer who fails to provide a meal or rest break must "pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." Cal. Lab. Code § 226.7(c); see also Cal. Code Regs. tit. 8, § 11090(11)(D), (12)(B). Employees can bring a claim seeking such payment under California's Private Attorneys General Act of 2004 (PAGA), Cal. Lab. Code §§ 2698–2699.6. See Cal. Lab. Code § 2699.3. Employees can also seek civil penalties on behalf of themselves and other employees; the State receives a portion of any award. *Id.* § 2699.

C

In response to a petition from a group of motor carriers, the FMCSA in 2008 declined to preempt California's MRB rules as applied to commercial motor vehicle drivers subject to FMCSA's hours-of-service regulations. See Petition for Preemption of California Regulations on Meal Breaks and Rest Breaks for Commercial Motor Vehicle Drivers; Rejection for Failure to Meet Threshold Requirement, 73 Fed. Reg. 79,204, 79,204–06 (Dec. 24, 2008). The FMCSA ruled that it lacked the authority to preempt

because the MRB rules applied far beyond the trucking industry and were thus not "on commercial motor vehicle safety." *Id.* at 79,205–06.

In 2018, two industry groups, the American Trucking Association and the Specialized Carriers and Rigging Association, asked the FMCSA to revisit its 2008 "no preemption" determination. After seeking public comment on the preemption question, see California Meal and Rest Break Rules, 83 Fed. Reg. 50,142 (Oct. 4, 2018), the FMCSA declared California's MRB rules preempted as applied to operators of property-carrying motor vehicles subject to the federal hours-of-service regulations.[4] See California's Meal and Rest Break Rules for Commercial Motor Vehicle Drivers, 83 Fed. Reg. 67,470 (Dec. 28, 2018). The FMCSA determined that the MRB rules were in fact "on commercial motor vehicle safety" and could not be enforced under 49 U.S.C. § 31141(c). 83 Fed. Reg. 67,472–80.

California's Labor Commissioner and three other sets of petitioners (labor organizations and affected individuals) filed timely petitions for review. See 49 U.S.C. § 31141(f)(1). We have jurisdiction to review these consolidated petitions under 49 U.S.C. § 31141(f)(2). Although the petitioners place different weight on different points, for ease of reference we generally refer to them collectively as "petitioners."

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[4] The preemption determination does not apply to drivers of passenger-carrying commercial motor vehicles. 83 Fed. Reg. at 67,470 n.1.

II

We review the FMCSA's preemption determination under the Administrative Procedure Act (APA) framework for judicial review. The question is therefore whether the FMCSA's preemption decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C). Petitioners argue both that the FMCSA lacks the statutory authority to preempt the MRB rules, and, to the extent it could do so, that the agency's preemption decision was arbitrary and capricious. Based on our careful review of the FMCSA's decision and after applying the deference that is due the agency, we conclude that petitioners' challenges lack merit.

A

The FMCSA only has authority to review for preemption State laws and regulations "on commercial motor vehicle safety." 49 U.S.C. § 31141(c). The initial question we must address is the meaning of this phrase.

In its preemption determination, the FMCSA concluded that a State law or regulation is "on commercial motor vehicle safety" if it "imposes requirements in an area of regulation that is already addressed by a regulation promulgated under [section] 31136.'" 83 Fed. Reg. at 67,473. Under this interpretation, the MRB rules are "on commercial motor vehicle safety" because federal regulations promulgated under section 31136 govern breaks for

commercial motor vehicle drivers. *Id.*

The petitioners argue that laws "on commercial motor vehicle safety" are those *specifically directed* at commercial motor vehicle safety. They maintain that the MRB rules do not qualify because they apply to many workers other than truck drivers and regulate employee health and wellbeing generally. The FMCSA counters that at the very least, the statute is ambiguous and that the agency's interpretation merits deference under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

We reject, at the outset, petitioners' arguments that Chevron deference is inapplicable. An agency usually receives Chevron deference in its construction of an ambiguous statute that it administers. See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000). Relying mainly on *Wyeth v. Levine*, 555 U.S. 555 (2009), petitioners argue that the FMCSA is entitled to no deference when it comes to preemption determinations. But *Wyeth* does not apply here.

In *Wyeth*, the Supreme Court declined to defer to the FDA's preemption decision because "Congress ha[d] not authorized the FDA to pre-empt state law directly." 555 U.S. at 576. That is not the case here because Congress in 49 U.S.C. § 31141(a) expressly gave the agency authority to preempt "State law[s] and regulation[s] on commercial motor vehicle safety" when the agency "decides" certain criteria are met. Because the agency's power to preempt is part of the overall power Congress expressly delegated to it, *Wyeth* does not diminish the deference due the

agency's interpretation of a statute it is charged with administering. See *Wyeth*, 555 U.S. at 576–77 (explaining that "agencies have no special authority to pronounce on pre-emption absent delegation by Congress" (emphasis added)); id. at 576 & n.9 (contrasting the FDA's lack of express preemptive power with statutes that gave agencies the power to preempt state laws); *Durnford v. MusclePharm Corp.*, 907 F.3d 595, 601 n.6 (9th Cir. 2018) (agencies do not receive *Chevron* deference in interpreting a preemption provision "[i]n the absence of a specific congressional delegation of authority to interpret the scope of preemption"); see also *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013) (rejecting "[t]he misconception that there are, for Chevron purposes, separate 'jurisdictional' questions on which no deference is due").

The petitioners also argue that the FMCSA should receive no deference because the 2018 preemption determination reversed the agency's 2008 determination that it lacked the power to preempt California's MRB rules. But we have explained that "[a]n initial agency interpretation is not instantly carved in stone" because "the agency . . . must consider varying interpretations and the wisdom of its policy on a continuing basis." *Resident Councils of Wash. v. Leavitt*, 500 F.3d 1025, 1036 (9th Cir. 2007) (quoting *Chevron*, 467 U.S. at 863–64). As a result, "an agency's 'new' position is entitled to deference 'so long as the agency acknowledges and explains the departure from its prior views.'" *Id.* (quoting *Seldovia Native Ass'n v. Lujan*, 904 F.2d 1335, 1346 (9th Cir. 1990)); see also *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981, 1001 (2005) (explaining

that an agency "is free within the limits of reasoned interpretation to change course if it adequately justifies the change" and that "[a]gency inconsistency is not a basis for declining to analyze the agency's interpretation under the *Chevron* framework"); *Rust v. Sullivan*, 500 U.S. 173, 186 (1991) (explaining that the Supreme Court "has rejected the argument that an agency's interpretation is not entitled to deference because it represents a sharp break with prior interpretations of the statute in question" (quotations omitted)).

These principles of administrative law recognize that democratic processes, improved understandings, or changed circumstances may prompt agencies to alter their own views over time. Petitioners have not articulated how a rule that precludes deference anytime an agency changes its mind could be justified under the basic delegation theory animating Chevron. See *Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 742 (1996) ("[C]hange is not invalidating, since the whole point of Chevron is to leave the discretion provided by the ambiguities of a statute with the implementing agency."). Nor have petitioners explained why the agency would be required to hew to a statutory interpretation that it no longer believes is correct. See *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 417 (1993) ("The Secretary is not estopped from changing a view she believes to have been grounded upon a mistaken legal interpretation.").

In this case, the FMCSA acknowledged that it was departing from its 2008 interpretation of § 31141 and provided a reasoned analysis for why it was doing so. See *Resident Councils of Wash.*, 500

F.3d at 1036. The FMCSA explained that its earlier 2008 interpretation "was unnecessarily restrictive" because "[t]here is nothing in the statutory language or legislative history that supports" its prior decision limiting the preemption provision to State laws specifically directed at commercial motor vehicle safety. 83 Fed. Reg. at 67,473. The FMCSA also explained how circumstances had changed since 2008, because the agency in 2011 had enacted specific break regulations for commercial motor vehicle drivers. Id. at 67,474. These are the types of explanations that an agency can offer to ensure that Chevron deference is applied to its new interpretation. See, e.g., *Brand X Internet Servs.*, 545 U.S. at 981, 1001.

Turning to Chevron's familiar two-step framework, we first ask whether the statutory text is unambiguous. "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." Chevron, 467 U.S. at 842–43. But if the statute is ambiguous, "the question for the court is whether the agency's answer is based on a permissible construction of the statute." Id. at 843. Here, even assuming petitioners have identified a potential ambiguity in the statute, we hold that the agency's reading is a permissible one.

Once again, the operative statutory language is the phrase "on commercial motor vehicle safety." 49 U.S.C. § 31141(a), (c). The FMCSA reasonably determined that a State law "on commercial motor vehicle safety" is one that "imposes requirements in an area of regulation that is already addressed by a regulation promulgated under [section] 31136." 83

Fed. Reg. at 67,473. Section 31136(a) allows the FMCSA to issue regulations "on commercial motor vehicle safety." Given the parallel language used in sections 31136(a) and 31141(a), when the agency has issued a regulation under its section 31136(a) authority, it is reasonable for the agency to interpret section 31141(a) analogously to allow preemption of State regulation in that same area.

The FMCSA's 2018 preemption decision also reasonably relied on Congress's stated interest in uniformity of regulation. See 83 Fed. Reg. at 67,473 (explaining that the 1984 Act "clearly expresses Congress's intent that 'there be as much uniformity as practicable whenever a Federal standard and a State requirement cover the same subject matter'") (quoting S. Rep. No. 98-424, at 14 (1984)); see also Motor Carrier Safety Act of 1984 § 203(2), 98 Stat. At 2832 (originally codified at 49 U.S.C. app. 2502) (finding safety benefits from "improved, more uniform commercial motor vehicle safety measures"). The FMCSA could reasonably conclude that a State law disrupts regulatory uniformity even when the law was not specifically directed at commercial vehicle motor safety because a broader State law could still cover the same subject matter as FMCSA regulations.

Petitioners argue that the word "on" must be read narrowly, so that the FMCSA can only preempt State laws "specifically directed" at commercial motor vehicle safety. Petitioners thus maintain that the MRB rules cannot be "on commercial motor vehicle safety" because they also regulate working conditions and ensure employee health and wellbeing. But that the MRB rules may serve these

other purposes cannot insulate them from preemption when, as here, the rules also promote commercial motor vehicle safety. See, e.g., 83 Fed. Reg. at 67,474 ("[I]n her comments on this petition, the California Labor Commissioner acknowledged that the MRB Rules improve driver and public safety stating, 'It is beyond doubt that California's meal and rest period requirements promote driver and public safety.'").

Nor does the fact that California regulates meal and rest breaks in a variety of industries compel the conclusion that the MRB rules are not "on commercial motor vehicle safety." If California had specifically regulated the meal and break times of commercial motor vehicle drivers and no one else, that would of course be a regulation "on" commercial motor vehicle safety. But those drivers remain subject to the same regulations when California also applies its break laws to other types of workers. Because California's MRB rules apply to drivers whose breaks are the subject of federal regulation "on commercial motor vehicle safety," the MRB rules can be described as laws "on" commercial motor vehicle safety as well. Or at least the FMCSA could permissibly conclude that was so. See Brand X Internet Servs., 545 U.S. at 989 ("[W]here a statute's plain terms admit of two or more reasonable ordinary usages, the [agency's] choice of one of them is entitled to deference.").

Petitioners nevertheless suggest that the word "on" is inherently narrow and at least narrower than the phrase "pertaining to," which was the Motor Carrier Safety Act's original language. See §§ 206–08, 98 Stat. at 2832–37. But we conclude that the

statute does not unambiguously require petitioners' reading. See Chevron, 467 U.S. at 842–43. The word "on" is not inevitably as narrow as petitioners claim. See On, prep., Oxford English Dictionary (2d ed. 1989) ("22. a. In regard to, in reference to, with respect to, as to."), https://www.oed.com/oed2/00163302.

The history of the 1994 revision also counsels against petitioners' more confined reading. Congress changed "pertaining to" to "on" or "related to" in several provisions in a 1994 recodification. See Pub. L. No. 103-272, sec. 1(d), § 31141(a)–(c), 108 Stat. 745, 1008–09 (1994). But Congress made clear that these changes "may not be construed as making a substantive change in the laws replaced." Id. sec. 6(a), 108 Stat. at 1378. And "no changes in law or policy are to be presumed from changes of language" in a statutory recodification "unless an intent to make such changes is clearly expressed." *Finley v. United States*, 490 U.S. 545, 554 (1989) (quotations omitted), superseded by statute on other grounds, as recognized in *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005). Given the circumstances of the 1994 amendments and the ambiguity that otherwise exists between "on" and "pertaining to," petitioners have not shown that the 1994 recodification compels their preferred interpretation of the statutory text.

Given the language in the statute, the FMCSA could reasonably reject petitioners' charge that its reading of "on" would give the FMCSA unlimited power to preempt any law that merely "affects" commercial motor vehicle safety in some tangential way. 83 Fed. Reg. at 67,473. Petitioners argue, for

example, that the agency's reading of "on" would allow the FMCSA to preempt state laws allowing for pregnancy disability leave or leave to serve on a jury. These concerns, however, are overstated. The agency has not ushered in an era of unbounded FMCSA authority through its interpretation of the preposition "on."

The agency's interpretation is more circumscribed than petitioners suggest: MRB rules are regulations "on commercial motor vehicle safety" because they are within FMCSA's specific regulatory domain and the subject of existing federal regulation in the very same area. The agency has issued particularized regulations that govern break times for drivers of property-carrying commercial motor vehicles, and there is no dispute those are regulations "on commercial motor vehicle safety." There is thus no reason to believe that the agency's reading of "on" would allow it to issue regulations and preempt State laws in areas outside its delegated authority. Indeed, the agency expressly disclaims that power. See 83 Fed. Reg. at 67,473 ("This determination does not rely on a broad interpretation of section 31141 as applicable to any State law that 'affects' [commercial motor vehicle] safety."). The FMCSA's interpretation of "on" does not lead to such far-reaching authority, either. While petitioners stress that the MRB rules apply across many industries, the FMCSA has not preempted those state laws generally, but only as applied to drivers of property-carrying commercial motor vehicles subject to federal regulation.

Nor is the FMCSA's interpretation rendered unreasonable in the face of a claimed presumption against preemption. The Supreme Court has in-

structed that the "inquiry into the scope of a [federal] statute's pre-emptive effect is guided by the rule that the purpose of Congress is the ultimate touchstone in every pre-emption case." *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1297 (2016) (alteration in original) (quoting *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008)). When, as here, "the statute 'contains an express pre-emption clause,' we do not invoke any presumption against pre-emption but instead 'focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent.'" *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 136 S. Ct. 1938, 1946 (2016) (quoting *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 594 (2011)); see also *Atay v. County of Maui*, 842 F.3d 688, 699 (9th Cir. 2016) (same).

Petitioners maintain that the MRB rules are part of California's traditional "police power" and that a presumption against preemption should therefore still apply. But a state's traditional regulation in an area is not, standing alone, sufficient to defeat preemption in the face of an express preemption clause. As we have explained in the context of the MRB rules in particular, "[w]age and hour laws constitute areas of traditional state regulation, although that fact alone does not 'immunize' state employment laws from preemption if Congress in fact contemplated their preemption." *Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 643 (9th Cir. 2014). In this case, the issue is not the general preemptive force of 49 U.S.C. § 31141(a), but the agency's decision to exercise its express statutory preemptive powers. Petitioners have not explained how a case-dispositive presumption against preemp-tion could override an agency's textually permissible inter-

pretation of an express preemption provision it is charged with administering.

Finally, our decision in *Dilts*, 769 F.3d 637, does not foreclose the FMCSA's interpretation. *Dilts* concerned the scope of an express preemption provision in the Federal Aviation Administration Authorization Act of 1994 (FAAAA) that prohibits state laws that are "related to" prices, routes, or services of commercial motor vehicles. 49 U.S.C. § 14501(c)(1). Although Dilts held that this provision did not preempt California's MRB rules, see 769 F.3d at 647–50, we did not interpret the preemption provision at issue here. *Dilts* therefore did not address whether the MRB rules could fall within section 31141's scope. Indeed, the plaintiffs in *Dilts* worked exclusively in California as short-haul drivers and were thus not even "covered by . . . federal hours-of-service regulations." Id. at 648 n.2.

Similarly, although the United States filed an amicus brief in *Dilts* adhering to its 2008 determination that the MRB rules were not preempted under 49 U.S.C. § 31141, the government also noted that the agency had "broad discretion" in interpreting that statute. See Brief for the United States as Amicus Curiae, *Dilts*, 769 F.3d 637 (No. 12-55705), 2014 WL 809150, at *26–27. The *Dilts* amicus brief did not maintain that the FMCSA's 2008 interpretation was unambiguously compelled. Instead, it insisted the interpretation deserved *Chevron* deference. Id. Thus, neither our decision in *Dilts* nor the United States' position in that case creates an impediment to the FMCSA's current preemption determination.

We therefore hold that the FMCSA permissibly determined that California's MRB rules were State regulations "on commercial motor vehicle safety," so that they were within the agency's preemption authority. 49 U.S.C. § 31141(a).

B

The FMCSA next was required to determine whether the MRB rules were "less stringent than," had the "same effect" as, or were "additional to or more stringent than" the federal regulations. 49 U.S.C. § 31141(c)(1). The FMCSA found the third option correct. See 83 Fed. Reg. at 67,474–75. Petitioners argue this determination was arbitrary and capricious. Our review is "highly deferential, presuming the agency action to be valid and affirming the agency action if a reasonable basis exists for its decision." *Nat'l Mining Ass'n v. Zinke*, 877 F.3d 845, 866 (9th Cir. 2017) (quotations omitted). We hold that the FMCSA's determination on this point was reasonable and supported.

The FMCSA concluded that the MRB rules were "additional to or more stringent than" federal regulations because California requires more breaks, more often, and with less flexibility as to timing. 83 Fed. Reg. at 67,474–75. Federal regulations generally require that a driver working more than eight hours must take a 30-minute break during the first eight hours, while providing flexibility as to when the break takes place. See 49 C.F.R. § 395.3(a)(3)(ii). By contrast, California generally requires a 30-minute meal break within the first five hours of work, another 30-minute meal break over the next five hours, and additional 10- minute rest periods

every four hours. Cal. Lab. Code § 512(a); Cal. Code Regs. tit. 8, § 11090(11)(A)–(B), (12). The 10-minute rest breaks "insofar as practicable shall be in the middle of each work period." Cal. Code Regs. tit. 8, § 11090(12). The differences between California and federal law thus support the agency's determination that the MRB rules impose requirements "additional to or more stringent than" federal law. 49 U.S.C. § 31141(c)(1)(C). Indeed, California acknowledges that its rules result in "more time off[] during the workday."

Petitioners make two main arguments in response. First, petitioners argue that California law has some flexibility in its design. For example, employees may agree to waive certain meal breaks. Cal. Lab. Code § 512(a); Cal. Code Regs. tit. 8, § 11090(11)(A)–(B). Employers can also seek exemptions from the rest break requirements from California's Labor Commissioner. Cal. Code Regs. tit. 8, § 11090(17). And the California Supreme Court has noted that rest breaks may take place at a time other than the middle of the work period "where practical considerations render [that] infeasible." *Brinker Rest. Corp.*, 273 P.3d at 530.

Nonetheless, as compared to the federal regulations, the California rules still require more breaks, with greater frequency, and with lesser ability to adjust the break time. See 83 Fed. Reg. at 67,474–75. The degree of flexibility that California law affords thus does not undermine the agency's conclusion that California's MRB rules are still "additional to or more stringent than" federal requirements.

Second, petitioners point out that, rather than provide the meal or rest breaks, an employer can "pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." Cal. Lab. Code § 226.7(c); Cal. Code Regs. tit. 8, § 11090(11)(D), (12)(B). Petitioners thus argue that California law does not really impose additional or more stringent requirements than federal law because an employer may simply pay to avoid complying with the MRB rules. It is not apparent how petitioners' characterization changes the analysis because employers under California law would still either need to provide breaks or make break-related payments that federal law does not require. See 83 Fed. Reg. at 67,475 n.9. Regardless, the agency's decision was consistent with California law.

As the FMCSA noted, California treats its MRB rules as requirements, providing that employers "shall not" deny the required breaks while creating a monetary remedy for their "fail[ure]" to do so. Cal. Lab. Code § 226.7(b), (c); see also 83 Fed. Reg. at 67,475. As California acknowledged at oral argument, an employer's failure to provide the required breaks is also a misdemeanor under California law. See Cal. Lab. Code § 1199; Ward v. United Airlines, Inc., 466 P.3d 309, 315 (Cal. 2020) (noting that California Labor Code § 1199(c) "mak[es] violation of an IWC wage order a misdemeanor"). Although California represents that these misdemeanor prosecutions have rarely, if ever, occurred, the apparent availability of this remedy underscores that failure to comply with the break requirements is a legal violation.

And that is how the California Supreme Court has treated them, in a series of decisions on which the FMCSA relied. In *Kirby v. Immoos Fire Protection, Inc.*, 274 P.3d 1160 (Cal. 2012), that court explained that "Section 226.7 is not aimed at protecting or providing employees' wages. Instead, the statute is primarily concerned with ensuring the health and welfare of employees by requiring that employers provide meal and rest periods as mandated by the IWC." Id. at 1167. As a result, "the legal violation is nonprovision of meal or rest breaks." *Id.* at 1168. The court was clear: "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay" because "[t]he failure to provide required meal and rest breaks is what triggers a violation of section 226.7." *Id.* at 1168.

Petitioners cite *Augustus v. ABM Security Services, Inc.*, 385 P.3d 823 (Cal. 2016), and *Murphy v. Kenneth Cole Productions, Inc.*, 155 P.3d 284 (Cal. 2007). But neither case suggests that the FMCSA's decision was arbitrary or capricious. In *Augustus*, the California Supreme Court noted that if employers "find it especially burdensome to relieve their employees of all duties during rest periods," they have the "option[]" to "pay the premium pay set forth in . . . section 226.7." 385 P.3d at 834. But *Augustus* cautioned that the payment option does not "impl[y] that employers may pervasively interrupt scheduled rest periods, for any conceivable reason—or no reason at all." *Id.* at 834 n.14. And *Augustus* clarified that payments instead of breaks "should be the exception rather than the rule, to be used when the employer—because of irregular or unexpected circumstances such as emergencies—has to summon

an employee back to work." *Id.*

Murphy likewise does not undermine the FMCSA's reasoning. In *Murphy*, a pre-*Kirby* decision, the California Supreme Court held that claims for additional wages for violating the MRB rules were governed by the statute of limitations period for wage claims, not the shorter limitations period for penalties. 155 P.3d at 297. But this does not change the overall characterization of the MRB rules as requiring meal and rest breaks, so that failing to provide them is a "legal violation." *Kirby*, 274 P.3d at 1167. As *Kirby* explained in reconciling *Murphy*, "[t]o say that a section 226.7 remedy is a wage . . . is not to say that the *legal violation* triggering the remedy is nonpayment of wages." *Id.* at 1168. The FMCSA in its preemption determination addressed petitioners' reliance on *Murphy* and explained how (per the California Supreme Court) *Murphy* was consistent with *Kirby*. 83 Fed. Reg. at 67,475. That reasoning was not arbitrary or capricious.

In short, the FMCSA faithfully interpreted California law in finding that California's rules were "additional to or more stringent than" federal regulations. 49 U.S.C. § 31141(c)(1)(C).

C

At this point in its analysis, the FMCSA could preempt the MRB rules as applied to drivers of property-carrying commercial vehicles if it decided that the State law (1) "has no safety benefit" or (2) "is incompatible with the regulation prescribed by the Secretary," or (3) that "enforcement of the State law or regulation would cause an unreasonable burden

on interstate commerce." *Id.* § 31141(c)(4)(A)–(C). The agency found all three criteria met. 83 Fed. Reg. at 67,475–80. Petitioners argue that each finding was arbitrary and capricious.

Any one of the three enumerated grounds is enough to justify a preemption determination. See 49 U.S.C. § 31141(c)(4). We do not address the agency's first two findings because we hold that the agency did not act arbitrarily or capriciously in finding that enforcement of the MRB rules "would cause an unreasonable burden on interstate commerce." *Id.* § 31141(c)(4)(C).

In reaching that conclusion, the FMCSA found that the MRB rules "impose significant and substantial costs stemming from decreased productivity and administrative burden." 83 Fed. Reg. at 67,479. The administrative record supports these conclusions. As to decreased productivity, the FMCSA could reasonably determine that the MRB rules cause an unreasonable burden on interstate commerce because they "decrease each driver's available duty hours." *Id.* The FMCSA examined the federal and California schemes and explained how the MRB rules required drivers to spend more time on breaks. See, e.g., id. at 67,478 & n.12.

The FMCSA also relied on public comments demonstrating how the MRB rules' more demanding break requirements affected productivity and, in turn, the efficient operation of an interstate delivery system. *Id.* at 67,479. For example, FedEx Corporation explained that "to take off-duty breaks, the 'drivers must slow down, exit the roadway, find a safe and suitable location to park and secure their

vehicles, and then exit the vehicle' and that the company has to build additional time, up to 90 minutes, into the drivers' routes." *Id.* Other public comments and studies showed the financial impact of the lost productivity and its effect on distribution systems. *Id.* These costs were exacerbated by "California's share of the national economy" and the fact that "California's three major container ports carry approximately 50% of the nation's total container cargo volume." *Id.* at 67,478–79. The evidence in the administrative record thus supports the FMCSA's determination that lost driving time leads to lost productivity and burdens interstate commerce.

The FMCSA also reasonably relied on "the administrative burden associated with complying with the MRB rules." *Id.* at 67,479. This burden included higher compliance costs, increases in administrative and operations headcount, changes to delivery and logistics programs, revision of routes, and changes to compensation plans. *Id.* The agency also properly considered "the effect on interstate commerce of implementation of [the MRB rules] with the implementation of all similar laws and regulations of other States." 49 U.S.C. § 31141(c)(5). The FMCSA noted that twenty States had their own meal and rest break rules, and this "patchwork of requirements," increased the burden on interstate commerce. 83 Fed. Reg. at 67,479–80. Among other things, companies had to create "elaborate schedules" to navigate the different State requirements. Id. Taken together, all these findings support the agency's determination that the MRB rules "cause an unreasonable burden on interstate commerce." 49 U.S.C. 31141(c)(4)(C).

Petitioners' counterarguments do not show that the agency acted arbitrarily or capriciously. Contrary to petitioners' assertion, the agency did weigh costs and benefits in concluding that the MRB rules posed an unreasonable burden on interstate commerce. The FMCSA "acknowledge[d] that the State of California has a legitimate interest in promoting driver and public safety." 83 Fed. Reg. at 67,479. It explained, however, that "the Federal [hour of service] rules and the provisions in the [federal motor carrier safety regulations] relating to fatigued driving and employer coercion serve to promote that interest." Id. Properly understood, the FMCSA simply determined that, in its view, federal regulations adequately and more appropriately balanced the competing interests between safety and economic burden. *Id.*; see also id. at 67,476 (explaining how federal regulations "balanc[e] the need to prevent excessive hours of continuous driving with a driver's need for flexibility in scheduling a rest break"). Petitioners have not shown that conclusion was unreasonable. Nor was the FMCSA required to conduct its preemption assessment in a manner identical to a dormant Commerce Clause undue burden analysis. See *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).[5]

We likewise reject petitioners' assertion that the FMCSA's cumulative burden analysis was flawed

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[5] One petitioner argues that the FMCSA did not consider the non- safety benefits of the MRB rules, such as workplace dignity or higher wages for drivers. But there is no indication that the statute requires the FMCSA to consider such factors, which are likely outside its expertise.

because industry must already comply with varying State laws in other areas, such as environmental and anti-discrimination laws. In petitioners' view, the "marginal cost" of complying with "one more set" of varying State laws is "negligible." But this argument does not show that the FMCSA's preemption determination, made under a statute which gives it the express authority to do so, was arbitrary or capricious.

As the FMCSA noted, many of the state laws that petitioners cite "are well outside the scope of the Agency's statutory authority." 83 Fed. Reg. at 67,480. And because motor carriers will always be subject to varying state laws to some extent, petitioners' argument, if accepted, would significantly limit the FMCSA's ability to determine that divergent state laws "on commercial motor vehicle safety" pose an unreasonable burden on interstate commerce. Nothing in the statute suggests the agency's preemptive powers are so constrained. Indeed, the statute is directly to the contrary: it allows the agency to consider the cumulative "effect on interstate commerce of implementation" of the state law in question "with the implementation of all similar laws and regulations of other States." 49 U.S.C. § 31141(c)(5). In any event, the FMCSA here had more than sufficient basis to conclude that the MRB rules burden interstate commerce in a way that is not merely "negligible."

Finally, petitioners err in claiming that two of our decisions invalidate the FMCSA's preemption determination. They do not. In *Sullivan v. Oracle Corp.*, 662 F.3d 1265 (9th Cir. 2011), we held that California's overtime rules did not violate the

dormant Commerce Clause because "California applies its Labor Code equally to work performed in California, whether that work is performed by California residents or by out-of-state residents." *Id.* at 1271. That holding has no apparent relevance to this case.

Nor did we resolve the cumulative burden question as a matter of law when we stated in Dilts that "applying California's meal and rest break laws to motor carriers would not contribute to an impermissible 'patchwork' of state-specific laws, defeating Congress' deregulatory objectives." 769 F.3d at 647. As we have noted, Dilts did not concern the statute at issue here. And the above statement turned on Dilts' determination that the meal and rest break laws were not "related to" prices, routes, and services under the FAAAA's preemption provision. Id. Like Sullivan, Dilts does not foreclose the agency's preemption determination.[6]

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[6] IBT Local 2785 briefly argues that the FMCSA also flouted numerous statutes and executive orders, but fails to explain how the agency violated these various laws. We do not address these arguments, as IBT Local 2785 "failed to argue" these issues "with any specificity in [its] briefing." *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008).

Petitioners Ly and Morgan also ask us to review an FMCSA legal memorandum issued months after the preemption determination. In that memorandum, an FMCSA lawyer opined that the agency's preemption decision applied retroactively. This determination was not part of the preemption determination on review, see 49 U.S.C. § 31141(f), nor was it final agency action, see 5 U.S.C. § 704. We thus do not consider the retroactivity issue.

* * *

We appreciate petitioners' arguments in favor of their preferred approach to governance in the area of commercial motor vehicle safety. But in this case, petitioners' objections are ultimately as much to the statute Congress drafted as they are to the FMCSA's preemption determination. Under the principles that govern our evaluation of the agency's decision, the petitions for review must be

DENIED.

Finally, pro se intervenor William Trescott asks the court to vacate various federal regulations. These issues are also not part of the FMCSA's preemption determination and are thus not before us. 49 U.S.C. § 31141(f). Trescott's motion to expedite the appeal is DENIED as moot.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 25 2021

MOLLY C. DWYER, CLERK, U.S. COURT OF APPEALS

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 2785; and EVERARDO LUNA,

Petitioners,

v.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION,

Respondent,

WILLIAM B. TRESCOTT,

Intervenor.

No. 18-73488

FMCS No. 2018-0304 Federal Motor Carrier Safety Administration

ORDER

INTERNATIONAL BROTHERHOOD OF TEAMSTERS; et al.,

Petitioners,

v.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION and U.S. DEPARTMENT OF TRANSPORTATION,

Respondents.

No. 19-70323

FMCS No. 2018-0304

LABOR COMMISSIONER FOR THE STATE OF CALIFORNIA,

Petitioner, No. 19-70329

v. FMCS No. 2018-0304

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION,

Respondent.

DUY NAM LY; PHILLIP MORGAN,

Petitioners, No. 19-70413

v. FMCS No. 2018-0304

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION and U.S. DEPARTMENT OF TRANSPORTATION

Respondents.

Before: NGUYEN, HURWITZ, and BRESS, Circuit Judges.

The panel has unanimously voted to deny intervenor William Prescott's petition for panel rehearing (Dkt. No. 131). The petition is DENIED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 2785; and EVERARDO LUNA,

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Respondent,

WILLIAM B. TRESCOTT,

Intervenor.

MAR 25 2021
MOLLY C. DWYER, CLERK, U.S. COURT OF APPEALS

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ORDER

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FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION and U.S. DEPARTMENT OF TRANSPORTATION

Respondents.

Before: NGUYEN, HURWITZ, and BRESS, Circuit Judges.

The panel has unanimously voted to deny the petitions for panel rehearing and rehearing en banc. The full court has been advised of the petitions for rehearing en banc and no judge of the court has requested a vote on any of the petitions. Fed. R. App. P. 35. The petitions for panel rehearing and rehearing en banc (Dkt. 135, 136, 137, 138) are DENIED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 02 2021

MOLLY C. DWYER, CLERK, U.S. COURT OF APPEALS

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 2785; and EVERARDO LUNA,

Petitioners,

v.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION,

Respondent,

WILLIAM B. TRESCOTT,

Intervenor.

No. 18-73488

FMCS No. 2018-0304 Federal Motor Carrier Safety Administration

MANDATE

INTERNATIONAL BROTHERHOOD OF TEAMSTERS; et al.,

Petitioners,

v.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION and U.S. DEPARTMENT OF TRANSPORTATION,

Respondents.

No. 19-70323

FMCS No. 2018-0304 Federal Motor Carrier Safety Administration

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LABOR COMMISSIONER FOR THE STATE OF CALIFORNIA, Petitioner, v. FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, Respondent.	No. 19-70329 FMCS No. 2018-0304 Federal Motor Carrier Safety Administration

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DUY NAM LY; PHILLIP MORGAN, Petitioners, v. FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION and U.S. DEPARTMENT OF TRANSPORTATION Respondents.	No. 19-70413 FMCS No. 2018-0304 Federal Motor Carrier Safety Administration

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The judgment of this Court, entered January 15, 2021, takes effect this date.

This constitutes the formal mandate of this

Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Nixon Antonio Callejas Morales
Deputy Clerk

Ninth Circuit Rule 27-7