No. 15-1305

IN THE

Supreme Court of the United States

BEAVEX, INCORPORATED,
Petitioner,
v.

THOMAS COSTELLO, MEGAN BAASE KEPHART, and OSAMA DAOUD, on behalf of themselves and all other persons similarly situated,
Respondents.

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

Brief in Opposition of Respondents Kephart and Daoud

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QUESTION PRESENTED

Whether the Seventh Circuit correctly determined that the Illinois Wage Payment and Collection Act's definition of employee does not have a sufficiently significant impact on motor carrier prices, routes, and services to be preempted by the Federal Aviation Administration Authorization Act of 1994, 49 U.S.C. § 14501(c)(1).

PARTIES TO THE PROCEEDING

BeavEx, Inc., was the appellant in the court of appeals.

Thomas Costello, Megan Baase Kephart, and Osama Daoud were the appellees in the court of appeals. At the time, they were proposed class representatives.

On June 14, 2016, the district court certified a class in this case.

On June 17, 2016, Mr. Costello moved to be dismissed from the lawsuit. On June 20, 2016, the district court granted the motion and dismissed Mr. Costello from the lawsuit.

This brief is being filed on behalf of Ms. Kephart and Mr. Daoud, individually and on behalf of the class.

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF AUTHORITIES iv

INTRODUCTION 1

STATEMENT OF THE CASE 2

A. The IWPCA and Factual Background 2

B. The District Court Decision 3

C. The Seventh Circuit Decision 4

REASONS FOR DENYING THE WRIT 7

I. The Seventh Circuit Correctly Held that the FAAAA Does Not Preempt the IWPCA. 7

II. The First and Seventh Circuits' Different Conclusions About Whether the Laws Before Them Would Have a Significant Effect on Prices, Routes, and Services Were Based on the Different Scopes of the Laws 10

III. Lower Courts Are Capably Handling Cases in Which Defendants Argue that Employee Definitions Are Preempted. 15

CONCLUSION 17

TABLE OF AUTHORITIES

Cases **Pages**

American Trucking Ass'ns, Inc. v. City of Los Angeles, 133 S. Ct. 2096 (2013) 16

American Trucking Ass'ns, Inc. v. City of Los Angeles, 660 F.3d 384 (9th Cir. 2011) 16

American Trucking Ass'ns, Inc. v. City of Los Angeles, 2010 WL 3386436 (C.D. Cal. Aug. 26, 2010) 15, 16

Dan's City Used Cars, Inc. v. Pelkey, 133 S. Ct. 1769 (2013).....7

Gennell v. FedEx Ground Package System, Inc., 2013 WL 4854362 (D.N.H. Sept. 10, 2013) 15

Khan v. East Coast Critical, LLC, No. MICV 2015-2762-D (Mass. Super. Ct. May 4, 2016) 12

Massachusetts Delivery Ass'n v. Healey, No. 15-1908, 2016 WL 2732054 (1st Cir. May 11, 2016).....11

Massachusetts Delivery Ass'n v. Healey, 117 F. Supp. 3d 86 (D. Mass. 2015) 11

Massachusetts Delivery Ass'n v. Coakley, 769 F.3d 11 (1st Cir. 2014) 5, 9, 10, 13, 14

Morales v. Trans World Airlines, Inc., 504 U.S. 374 (1992).....3, 7

People ex rel. Harris v. PAC Anchor Transport, Inc., 329 P.3d 180 (Cal. 2014).....15

Rowe v. New Hampshire Motor Transport Ass'n,
552 U.S. 364 (2008).....3, 7, 14

Sanchez v. Lasership, Inc.,
937 F. Supp. 2d 730 (E.D. Va. 2013) 15

Schwann v. FedEx Ground Package System, Inc.,
813 F.3d 429 (1st Cir. 2016) 10, 11, 12, 13, 14

STATUTES

49 U.S.C. § 14501(c)(1) 1, 3, 7, 8

820 Ill. Comp. Stat. 115/2.....2, 3, 17

820 Ill. Comp. Stat. 115/9.....2, 6

Mass. Gen. Laws ch. 149, § 148B(a)(2) 10, 11

INTRODUCTION

This case presents the question whether the Federal Aviation Administration Authorization Act of 1994 (FAAAA), which prohibits states from enacting or enforcing laws "related to a price, route, or service of any motor carrier … with respect to the transportation of property," 49 U.S.C. § 14501(c)(1), preempts the definition of "employee" in the Illinois Wage Payment and Collection Act (IWPCA). In the decision below, the Seventh Circuit carefully examined the Illinois law's potential impact on motor carrier prices, routes, and services, determined that the law would not have a significant impact related to a price, route, or service, and held that the law is not preempted.

Petitioner BeavEx, Inc., now seeks review of the question whether the FAAAA "preempts generally-applicable State laws that force motor carriers to treat and pay all drivers as 'employees' rather than as independent contractors." Pet. i. The Seventh Circuit's holding, however, did not concern all such laws. The court based its decision on the limited effects of the IWPCA, distinguished the Illinois law from a Massachusetts law with a broader scope, and specifically stated that it was not adopting "a categorical rule exempting from preemption all generally applicable state labor laws." Pet. App. 19 (citation omitted). The Seventh Circuit's determination that the IWPCA does not have a significant effect on motor carrier prices, routes, and services is correct, is not in conflict with the determination of any other circuit, and does not warrant this Court's review.

STATEMENT OF THE CASE

A. The IWPCA and Factual Background

The IWPCA prohibits employers from taking deductions from employees' wages unless those deductions are "required by law," "to the benefit of the employee," "in response to a valid wage assignment or wage deduction order," or "made with the express written consent of the employee, given freely at the time the deduction is made." 820 Ill. Comp. Stat. 115/9. The Act defines an employee as "any individual permitted to work by an employer in an occupation," unless the individual is "free from control and direction over the performance of his work, both under his contract of service with his employer and in fact," "performs work which is either outside the usual course of business or is performed outside all of the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees," and works "in an independently established trade, occupation, profession or business." *Id.* 115/2.

This case was brought by former delivery drivers for Beavex, Inc., a courier company. BeavEx drivers are paid per delivery and "generally begin their shift by reporting to one of BeavEx's office locations." Pet. App. 57. Drivers obtain routes and delivery assignments from BeavEx and are not allowed to deviate from those routes. D. Ct. Doc. No. 77, at 6. Drivers use their own vehicles, which they must lease to BeavEx, and which must display the BeavEx name, logo, phone number, and Illinois Commerce Commission number on both sides. Pet. App. 57. Drivers also must wear apparel with the BeavEx logo and a BeavEx identification badge. *Id.* at 86. Drivers are not allowed to make deliveries for other

companies while driving a BeavEx route. D. Ct. Doc. No. 77, at 7.

Although delivering packages is within the "usual course of [BeavEx's] business," 820 Ill. Comp. Stat. 115/2, BeavEx classifies its drivers as independent contractors, rather than employees, and takes deductions from their pay for items including occupational accident insurance, cargo insurance, uniforms, scanners, phone chargers, and contract management services processing fees. Pet. App. 58.

B. The District Court Decision

The plaintiffs filed this case on October 1, 2012, alleging, as relevant here, that BeavEx misclassified its drivers and made illegal deductions from their wages. Pet. App. 2. BeavEx moved for summary judgment, arguing that the IWPCA's definition of employee is preempted by the FAAAA, which preempts state laws "related to a price, route, or service of any motor carrier … with respect to the transportation of property," 49 U.S.C. § 14501(c)(1).

The district court denied BeavEx's motion. The court explained that the "FAAAA preempts a state law (1) whenever the state law actually references the rates, routes, or services of carriers or (2) if it has a 'significant impact' on Congress' deregulatory objectives." Pet. App. 62-63 (citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 371 (2008)). Because "the IWPCA does not reference motor carriers" the court explained, "to succeed with its preemption defense, BeavEx must demonstrate that the Plaintiffs' claim has a sufficient economic effect on its prices, routes, or services to warrant" preemption. *Id.* at 64.

The court found that BeavEx did not demonstrate that the IWPCA had the required impact on its prices, routes, and services. The court first noted that the state law "only applies to the employment relationship between employers and employees in general, therefore operating at least a step away from the point that BeavEx offers services to customers." *Id.* at 67. It "simply standardizes the employment arena in Illinois," affecting "BeavEx only as a member of the public." *Id.*

Moreover, the court continued, "BeavEx has failed to demonstrate the significant impact the law would have." *Id.* "BeavEx offers no evidence other than unabashed conclusory statements that compliance with the IWPCA will increase costs." *Id.* at 68. Because "no evidence has been introduced to confirm BeavEx's argument that the IWPCA will significantly impact its pricing and services," the court held that the "IWPCA is not preempted by the FAAAA as it applies to BeavEx." *Id.* at 70.

After holding that the IWPCA's definition of employee is not preempted, the district court denied the plaintiffs' motion for class certification and granted plaintiffs' partial motion for summary judgment, holding that the plaintiffs are employees under the IWPCA. *Id.* at 70-87.

BeavEx moved for reconsideration of the denial of its motion, and the plaintiffs moved for reconsideration of the denial of class certification. The district court denied both motions. *Id.* at 40-51.

C. The Seventh Circuit Decision

On interlocutory appeal, the Seventh Circuit affirmed the district court's denial of BeavEx's motion for summary judgment.

The Seventh Circuit began by discussing at length the history of the FAAAA, this Court's case law, and

lower courts' application of the law. Pet. App. 7-17. The court then explained that because "the IWPCA is not specifically directed to motor carriers, the task before [it was] to determine whether the IWPCA will have a significant impact on the prices, routes, and services that BeavEx offers to its customers." *Id.* at 17. Stating that there are "no bright-line rules to resolve whether a state law is preempted," *id.*, the court concluded that the law would not have the requisite impact.

The court noted that, unlike the law at issue in the First Circuit's decision in *Massachusetts Delivery Ass'n v. Coakley*, 769 F.3d 11 (1st Cir. 2014) ("*MDA I*"), the "scope of the IWPCA is limited." Pet. App. 18. "BeavEx has not cited any authority showing that the IWPCA would trigger state employment laws to the extent of those in *MDA I*." *Id.* "Because the scope of the IWPCA is limited, its logical effect is necessarily more limited than the statute at issue in *MDA I*." *Id.*

Moreover, the court noted, the IWPCA is a "background labor law … that only indirectly affects prices by raising costs." *Id.* at 18. Although the court made clear that it was not "adopting 'a categorical rule exempting from preemption all generally applicable state labor laws,'" *id.* at 19 (quoting *MDA I*, 769 F.3d at 20), it concluded that "the IWPCA's effect on the cost of labor is too tenuous, remote, or peripheral to have a significant impact on BeavEx's setting of prices for its consumers." *Id.*

In determining that the IWPCA would not have the required impact on prices, routes, and services, the court explained that the only substantive requirement at issue was the requirement that the employer not make unauthorized deductions. *Id.* at 20. It stated that it could not see, as a matter of logic, how prohibiting the deductions

would "have a *significant* impact on the prices that BeavEx offers to its customers," and it determined that BeavEx had "offered no evidence to persuade [it] differently." *Id.*

The court found it even "less obvious" that prohibiting the deductions would have a significant impact on BeavEx's routes or services. *Id.* It agreed with BeavEx that reclassifying BeavEx's drivers for all purposes could undermine its ability to offer certain delivery services. *Id.* However, it could "not see ... how ruling that the IWPCA applies to BeavEx's couriers would create that situation." *Id.* at 21. BeavEx, it noted, "prefer[s] to rely on conclusory allegations that compliance with the [IWPCA] will require BeavEx to switch its entire business model from independent-contractor-based to employee-based. We see no basis for concluding that the IWPCA would require that change given that the federal employment laws and other state labor laws have different tests for employment status." *Id.*

Finally, the court pointed out that the IWPCA allows drivers to make deductions if they are made with "the express written consent of the employee, given freely at the time the deduction is made." 820 Ill. Comp. Stat. 115/9. The court noted that it was up to BeavEx to decide whether to stop taking the deductions or to obtain the required consent. Pet. App. 22.

The court concluded that it was clear that "BeavEx has not demonstrated to this court that preventing it from deducting from its couriers' wages or the transaction costs associated with acquiring consent to do so would have a significant impact related to its prices, routes, or services." *Id.* Accordingly, it held that the IWPCA is not preempted by the FAAAA.

Because the court concluded that the IWPCA is not related to a motor carrier price, route, or service, it did not address whether it is related to a price, route, or service "with respect to the transportation of property." Pet. App. 22 (quoting 49 U.S.C. § 14501(c)(1)). The court vacated the district court's denial of class certification and remanded for further proceedings. *Id.* at 23-31.

BeavEx filed a petition for rehearing and rehearing en banc, which was denied without any judge requesting a vote. *Id.* at 89.

REASONS FOR DENYING THE WRIT

I. The Seventh Circuit Correctly Held that the FAAAA Does Not Preempt the IWPCA.

The FAAAA preempts state laws "related to a price, route, or service of any motor carrier ... with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). This Court has explained that the term "related to" "embraces state laws 'having a connection with or reference to' carrier 'rates, routes, or services,' whether directly or indirectly." *Dan's City Used Cars, Inc. v. Pelkey*, 133 S. Ct. 1769, 1778 (2013) (quoting *Rowe*, 552 U.S. at 370). At the same time, the Court has recognized that the "the breadth of the words 'related to' does not mean the sky is the limit." *Id.* Moreover, it has "cautioned that § 14501(c)(1) does not preempt state laws affecting carrier prices, routes, and services 'in only a 'tenuous, remote, or peripheral ... manner.'" *Id.* (quoting *Rowe*, 552 U.S. at 371).

In determining whether a state law relates to prices, routes, or services, this Court has looked to whether the law "express[ly] reference[s]" or has a "forbidden significant effect" on them. *Morales*, 504 U.S. at 388. Because the IWPCA does not expressly reference motor carrier prices, routes, or services, the court below analyzed

whether the IWPCA would have the requisite forbidden impact and concluded that it would not.

BeavEx's primary argument for review is that it disagrees with the Seventh Circuit's decision. *See* Pet. 10-23. BeavEx makes four arguments, none of which undermines the correctness of the decision, let alone demonstrates a need for this Court's review.

First, BeavEx contends that the Seventh Circuit should have held that the IWPCA is preempted because the state law affects BeavEx's "business model" and "corporate structure." Pet. 13, 20. According to BeavEx, the law keeps it from being "what it wants to be: a national motor carrier with ten employees and 104 contractor-drivers in Illinois." *Id.* at 14. But the Seventh Circuit specifically considered "the impact that the *IWPCA* would have on BeavEx's business model," Pet. App. 18, and determined that, given the law's limited scope, there was "no basis for concluding" that the law would "require BeavEx to switch its entire business model from independent-contractor-based to employee-based." *Id.* at 21. This finding does not warrant review.

Moreover, the FAAAA preempts state laws only if they relate to a motor carrier price, route, or service. 49 U.S.C. § 14501(c)(1). Thus, it is irrelevant whether a law affects a motor carrier's business model or corporate structure if that law does not have the requisite effect on the prices, routes, or services the motor carrier offers its customers. Likewise, although BeavEx argues that the decision below creates a "patchwork" of tests for employment status and interferes with its contracts with its drivers, Pet. 15, 16, whether laws differ from state to state or whether they govern contracts is irrelevant if they do not have the required impact on motor carrier prices, routes, or services. Here, looking at the IWPCA

and what it governs, the Seventh Circuit determined that the law would not have a significant impact related to motor carrier prices, routes, or services, and therefore correctly held that the law is not preempted.

Second, BeavEx argues that the Seventh Circuit erred because complying with the IWPCA would increase its overhead costs and because the plaintiffs seek damages that would cost it money. *Id.* at 15-17. Again, however, the question for preemption purposes is not whether the law would have an effect on the company's costs, but whether it would have the requisite effect on prices, routes, and services. The Seventh Circuit found that the increase in costs would not have such an effect. Pet. App. 20.

Third, BeavEx argues that the "import" of the Seventh Circuit's decision is that "the FAAAA does not preempt generally applicable state labor laws." Pet. 18. The Seventh Circuit opinion belies this characterization, as the court expressly stated that it was not "adopting 'a categorical rule exempting from preemption all generally applicable state labor laws.'" Pet. App. 19 (quoting *MDA I*, 769 F.3d at 20). Rather, the court focused specifically on the IWPCA and concluded that the "IWPCA's effect on the cost of labor is too tenuous, remote, or peripheral to have a significant impact on BeavEx's setting of prices for its consumers." *Id.*

Finally, BeavEx asserts that the Seventh Circuit erred in noting that BeavEx had not presented evidence showing that the IWPCA would have a significant effect on its prices, routes, and services because the court should have looked only to logic. Pet. 21-23. This argument misrepresents the court's opinion. The Seventh Circuit *did* look to the statute's logical effects, *see* Pet. App. 18, and it specifically noted that "[e]mpirical

evidence is not mandatory for this court to conclude that the IWPCA is preempted." *Id.* After concluding as a matter of logic that the IWPCA would not have the requisite impact on prices, the court noted that "BeavEx has offered no evidence to persuade us differently." *Id.* at 20. Observing that BeavEx failed to prove by evidence what it also failed to demonstrate by logic was not error at all, much less a basis for review.

II. The First and Seventh Circuits' Different Conclusions About Whether the Laws Before Them Would Have a Significant Effect on Prices, Routes, and Services Were Based on the Different Scopes of the Laws.

BeavEx claims a split between the decision below and the First Circuit's decisions in *MDA I*, 769 F.3d 11, and *Schwann v. FedEx Ground Package System, Inc.*, 813 F.3d 429 (1st Cir. 2016). According to BeavEx, *MDA I* and *Schwann* "held that the FAAAA preempts a Massachusetts law that forces motor carriers to define their drivers as 'employees,'" Pet. 23, and motor carriers in Massachusetts can thus classify their drivers as independent contractors. *Id.* at 24.

In *MDA I*, the First Circuit considered whether the FAAAA preempts the second prong of the Massachusetts Independent Contractor Statute's three-pronged test for determining whether a worker is an employee, Mass. Gen. Laws ch. 149, § 148B(a)(2).[1] Stating that a

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[1] Section 148B(a) states that an individual performing a service is an employee unless: "(1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and (2) the service is performed outside the usual course of the business of the employer; and, (3) the individual is customarily engaged in an

(*Footnote continued*)

potential, logical, indirect effect on prices, routes, and services is sufficient for preemption if the effect is significant enough, the court remanded to the district court to determine, based on the full record, whether the provision at issue would have such an effect. 769 F.3d at 21-22. On remand, the district court concluded that it would, *see Mass. Delivery Ass'n v. Healey*, 117 F. Supp. 3d 86 (D. Mass. 2015), and the First Circuit recently affirmed that decision, *see Mass. Delivery Ass'n v. Healey*, No. 15-1908, 2016 WL 2732054 (1st Cir. May 11, 2016).

In *Schwann*, 813 F.3d 429, the First Circuit held, after the Seventh Circuit decided this case, that the prong of the Massachusetts Independent Contractor Statute at issue in *MDA I* is preempted.

As an initial matter, *MDA I* and *Schwann* do *not* hold that motor carriers in Massachusetts can classify their drivers as independent contractors. Those cases only considered whether the FAAAA preempts the second prong of the Massachusetts Independent Contractor Statute's three-pronged test for determining whether a worker is an employee. After holding in *Schwann* that the second prong of the test was preempted, the First Circuit held that the second prong was severable from the first and third prongs of the test, overturned the district court's holding that the first and third prongs were preempted, and remanded to the district court for further proceedings. 813 F.3d at 440-42. Thus, whether motor carriers in Massachusetts may classify their employees as independent contractors has not been settled; the district court may still determine based on the two other prongs of the test that drivers must be classified as

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independently established trade, occupation, profession or business of the same nature as that involved in the service performed."

employees. *See Khan v. East Coast Critical, LLC*, No. MICV 2015-2762-D, slip op. at 3 (Mass. Super. Ct. May 4, 2016) (concluding that a complaint by a delivery driver "alleges sufficient facts to show an employee/employer relationship under Prongs 1 and 3" and relying on *Schwann* to hold that, "[a]t least on the allegations of the complaint, there is no logical basis for finding FAAAA preemption of Prongs 1 and 3").

Moreover, that the First and Seventh Circuits reached different conclusions over whether the classification provisions they considered have a sufficient impact on price, routes, and services to be preempted does not demonstrate a conflict between the circuits. Rather, the courts' different conclusions about the laws' effects reflects differences in the scopes of the laws at issue. Indeed, the decision below heavily relied on the First Circuit's decision in *MDA I*, concluding that the reasoning of "*MDA I* counsels a different result here." Pet. App. 17. "Importantly," the court noted, "the Massachusetts statute at issue in *MDA I* triggers far more employment laws than the employment definition contained in the IWPCA." *Id.* "Because the scope of the IWPCA is limited, its logical effect is necessarily more limited than the statute at issue in *MDA I*. We find this distinction relevant and conclude that the impact of the IWPCA is too 'tenuous, remote, or peripheral' to warrant FAAAA preemption." *Id.* at 18.

BeavEx asserts that "[t]his case and *Schwann*, in particular, are parallel cases." Pet. 24. But the differences identified by the Seventh Circuit between this case and *MDA I* apply equally to this case and *Schwann*.

Moreover, in *Schwann*, the First Circuit stated that it had considered the Seventh Circuit's decision in this case. "Important to the [Seventh Circuit]," the First

Circuit noted, "were the carrier's ability under Illinois law to contract around the state rule prohibiting deductions from wages, the lesser scope of laws implicated by application of the challenged state independent contractor statute, and the carrier's failure to show that application of the law would require a change in the services the carrier itself provides." 813 F.3d at 440 n.8. BeavEx attempts to undercut these distinctions, arguing that its ability to seek consent for the deductions does not matter, that the definitions of employee affect other statutes in both states, and that the "Seventh Circuit's focus on evidence unique to BeavEx runs directly counter to the First Circuit's focus on the 'logical effect'" of the state law. Pet. 30 (quoting *Schwann*, 813 F.3d at 437). But although BeavEx may not want to seek consent for deductions, its ability to do so reduces any possible impact of the IWPCA on its prices, routes, and services.

In addition, the Seventh Circuit specifically determined that the Massachusetts statute "triggers far more employment laws than the employment definition contained in the IWPCA," Pet. App. 17, and the court did *not* require empirical evidence. *See id.* at 18 ("Empirical evidence is not mandatory for this court to conclude that the IWPCA is preempted."). It followed the First Circuit's lead of "engag[ing] with the real *and logical* effects of the state statute." *Id.* (quoting *MDA I*, 769 F.3d at 20). And although BeavEx objects to the Seventh Circuit's analysis of whether the law would affect BeavEx in particular, the First Circuit likewise analyzed the effect the law before it would have on the defendant before it, training its preemption analysis in *Schwann* "upon the manner in which Prong 2 of the Massachusetts Statute would apply to FedEx's operations." 813 F.3d at 437.

BeavEx nonetheless insists that *Schwann* and the decision below conflict, stating that the Seventh Circuit "did not begin with Congress' preemptive intent," "labeled [the IWPCA] 'a background labor law ... that only indirectly affects prices,'" and did not sufficiently recognize the "significant nature of forcing motor carriers to label hundreds of drivers 'employees.'" Pet. 27 (quoting Pet. App. 18), 28. However, the Seventh Circuit specifically described how Congress enacted the FAAAA "to complete deregulation of the trucking industry." Pet. App. 8. Furthermore, although the Seventh Circuit used the term "background labor law" as shorthand for a certain type of labor law that has too tenuous, remote, or peripheral an effect on prices, routes, and services to be preempted, Pet. App. 18, while the First Circuit has found that "shorthand" not to be "particularly helpful," *MDA I*, 769 F.3d at 19, the Seventh Circuit, like the First, specifically declined to adopt "a categorical rule exempting from preemption all generally applicable state labor laws," Pet. App. 19 (quoting *MDA I*, 769 F.3d at 20). And the Seventh Circuit *agreed* that requiring a motor carrier to "reclassify[] its couriers as employees for all purposes ... could have a significant impact on [its] ability to offer [certain] services." Pet. App. 20-21. The court determined, however, that given the IWPCA's limited scope, a ruling that the IWPCA applies to motor carriers would not "create that situation." *Id.* at 21.

BeavEx also notes that *Schwann* stated that by requiring companies to use employees when other states would let them use independent contractors, the Massachusetts law "runs counter to Congress's purpose to avoid 'a patchwork of state service-determining laws, rules, and regulations.'" 813 F.3d at 438 (quoting *Rowe*, 552 U.S. at 373). But the Seventh Circuit determined that, because of its limited scope, the IWPCA would not

have a significant effect on prices, routes, and services; in other words, it is not "service-determining."

As BeavEx itself points out, the First and Seventh Circuits "each issued opinions aware of the other's position." Pet. 32. Despite this awareness, and although they reached differing conclusions with regard to the state law provisions before them, neither indicated disagreement with the other circuit or expressed a belief that their opinions were in conflict. There is no need for this Court's attention here.

III. Lower Courts Are Capably Handling Cases in Which Defendants Argue that Employee Definitions Are Preempted.

BeavEx attempts to depict a larger split over preemption of state laws regarding the classification of drivers. It notes that a district court in New Hampshire and the Supreme Court of California held that state-law claims based on the misclassification of drivers were not preempted, *see Gennell v. FedEx Ground Package Sys., Inc.*, 2013 WL 4854362 (D.N.H. Sept. 10, 2013); *People ex rel. Harris v. PAC Anchor Transp., Inc.*, 329 P.3d 180 (Cal. 2014), *cert. denied*, 135 S. Ct. 1400 (2015), while a district court in Virginia held that the Massachusetts Independent Contractor Statute was preempted, *see Sanchez v. Lasership, Inc.*, 937 F. Supp. 2d 730 (E.D. Va. 2013), and a California district court held that a provision of a concession agreement requiring trucks at a port to be driven by employees was related to prices, routes, and services, *see Am. Trucking Ass'ns, Inc. v. City of L.A.*, 2010 WL 3386436, at *19 (C.D. Cal. Aug. 26, 2010) ("*ATA*").[2] BeavEx points to nothing in *People ex rel.*

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[2] *ATA* held that the provision was related to prices, routes, and services, but was not preempted because of a market participant

(*Footnote continued*)

Harris or *Gennell*, however, that conflicts with the decision below. And although the courts in *Sanchez* and *ATA* held that the provisions before them were preempted, whereas the Seventh Circuit held that the IWPCA is not, *Sanchez* and *ATA* addressed provisions that have different effects on prices, routes, and services than the IWPCA. *Sanchez* involved the same Massachusetts law at issue in *MDA I* and *Schwann*, which the Seventh Circuit determined implicated "far more employment laws" than the IWPCA. Pet. App. 17. And, in *ATA*, "the evidence show[ed] that the employee driver provision would affect motor carrier's routes or services." 2010 WL 3386436, at *19. Rather than showing a need for this Court's review, these cases demonstrate that the lower courts are fully capable of handling the cases in which defendants argue that state laws defining "employee" for labor-law purposes are preempted.

BeavEx's focus on this handful of cases highlights the fact that only two circuits have addressed whether state laws defining "employee" for labor-law purposes are related to motor carrier prices, routes, and services: the Seventh Circuit, which held that the IWPCA is not preempted, and the First Circuit, which held that one prong of a Massachusetts law is preempted, but severable from the other two prongs. Thus, no circuit has held

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exception to the FAAAA. *Id.* at 33. On appeal, the Ninth Circuit held that the exception did not apply and that the provision was preempted. *See Am. Trucking Ass'ns, Inc. v. City of L.A.*, 660 F.3d 384, 407-08 (9th Cir. 2011). Because the appellee had not challenged the district court's determination that the relevant law was related to prices, routes, and services, the Ninth Circuit did not address that issue. *Id.* at 407. The Ninth Circuit's decision was reversed in part on other grounds in *American Trucking Ass'ns, Inc. v. City of Los Angeles*, 133 S. Ct. 2096 (2013).

that the FAAAA preempts an entire statutory definition of "employee," let alone that it preempts all state laws under which drivers are properly classified as employees.

In any event, BeavEx focuses its argument here on the second part of the IWPCA's definition of employee, which requires an individual to perform work "outside the usual course of business" or "outside all the places of business of the employer" in order to be classified as an independent contractor. 820 Ill. Comp. Stat. 115/2; *see* Pet. 5. Even if a court determined that the FAAAA preempted that part of the IWPCA definition, that part of the definition would be severable and the case could proceed under the other parts of the definition.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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