

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA EX REL. KAMALA D.
HARRIS, AS ATTORNEY GENERAL OF
THE STATE OF CALIFORNIA,**

Plaintiff and Appellant,

v.

**PAC ANCHOR TRANSPORTATION,
INC., A CORPORATION, AND
ALFREDO BARAJAS, AN INDIVIDUAL,**

Defendants and Respondents.

Case No. S194388

**SUPREME COURT
FILED**

JUL 15 2011

Frederick K. Ohlrich Clerk

Deputy

Court of Appeal, Second Appellate District, Case No. B220966

Los Angeles County Superior Court, Case No. BC397600

Hon. Elizabeth A. White, Judge

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

Petitioners Pac Anchor Transportation, Inc. and Alfredo Barajas seek review of the Court of Appeal's decision that this action by the People of the State of California was not preempted by the express preemption provision of the Federal Aviation Administration Authorization Act ("FAAAA"), 49 U.S.C. Section 14501(c)(1). The Court of Appeal's ruling reverses the judgment on the pleadings entered by the trial court. For the reasons set forth below, the petition should be denied.

ISSUE PRESENTED

Petitioners frame their issue in the following manner: "Can the State of California (the "State") enforce its employment laws against motor carriers by seeking an injunction under the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq., to compel them to treat individuals who drive trucks for them as employees, rather than independent contractors, or is such an action unconstitutional because it is preempted by the Federal Aviation Administration Authorization Act ("FAAAA"), 49 U.S.C. § 14501(c)(1)?"

The petition erects a straw man. The Court of Appeals' holding accepts and rests upon the People's allegation that petitioners' drivers are, *in fact*, employees and are not independent contractors.

THE PETITION SHOULD BE DENIED BECAUSE NO GENUINE ISSUE OF LAW EXISTS THAT REQUIRES THIS COURT'S RESOLUTION.

Petitioners raise two grounds for review. First, petitioners assert that review is necessary to resolve a conflict between "an express federal policy against state interference with the forces of competition" and an imagined "state policy favoring the use of employee drivers over independent contractors." Second, petitioners assert that review is necessary to resolve a conflict between the underlying Court of Appeal decision in this case, and

an earlier decision by the same appellate district in *Fitz-Gerald v. SkyWest Airlines, Inc.* (2007) 155 Cal.App.4th 411. Both justifications fail.

Contrary to petitioners' claims, there is no fundamental conflict between state and federal policy regarding the use of independent contractors in the trucking industry. Petitioners misrepresent both the People's complaint and federal transportation policy as embodied in the FAAAA in order to construct a false dichotomy between a fictional state policy discriminating against independent contractors, and federal policy promoting free competition in the trucking industry.

In truth, far from embodying any discrimination against genuine independent contractors, the People's action simply seeks to impose generally applicable tax, insurance, and wage standards on petitioners *based on their use of employee drivers*. (See Appellant's Appendix ("Appx.") at Vol. I, p. 9, line 26 to p. 10, line 11, and p. 13, line 4 to p. 14, line 23.) The People have no objection whatsoever to the use of genuine independent contractors. The People's action simply alleges that petitioners' drivers are *in fact* employees, and that simply calling them "independent contractors" does not permit petitioners to ignore their obligations to comply with state wage and hour standards, to withhold and submit payroll taxes, and to purchase workers' compensation insurance. (See Appx., Vol. I, at 9:26-10:11, 13:4-14:23.)

Petitioners nevertheless suggest that the People's lawsuit is part of a concerted effort by agents of the State of California to impose a preference for the use of employee drivers on the trucking industry. To this end, petitioners cite to various actions by the Legislature and the City of Los Angeles that restrict the use of independent contractors as evidence of this conspiracy. (Petition at 6-7.) However, not only are these assertedly discriminatory actions irrelevant to the question whether the *Office of the Attorney General*, on behalf of the People, has any motive to discriminate

against the use of independent contractors, but more importantly, the existence of any such motive is irrelevant to the question whether the People’s action – which focuses on use of *employee drivers* – is preempted by the FAAAA.

Defendants also mischaracterize Congress’ intent by exaggerating the preemptive scope of the FAAAA. The statute only preempts state actions that are “related to a price, route, or service of any motor carrier.” (49 U.S.C. § 14501(c)(1).) Thus, while Congress surely intended to preempt certain state regulation in order to promote competitive market forces in the trucking industry, it chose to do so by means of a specific provision that, while broad, is manifestly not intended as a blanket prohibition against all state regulation affecting competition in the trucking industry. (See e.g., *Rowe v. New Hampshire Motor Transport Association* (2008) 552 U.S. 364, 375 [FAAAA does not preempt state claims that affect prices, routes, or services in “too tenuous, remote, or peripheral a manner”].) As the Court of Appeal correctly concluded in this case, any relation between the tax, insurance, and wage standards the People seek to enforce, and the “prices, routes, or services” of Defendants is too remote and tenuous to support preemption. (Slip opn. at p. 10.)

CONCLUSION

The petition should be denied.

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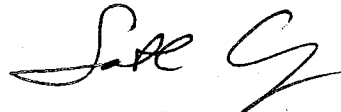
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Dated: July 14, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARK J. BRECKLER
Senior Assistant Attorney General
JON M. ICHINAGA
Supervising Deputy Attorney General

A handwritten signature in black ink, appearing to read "Satoshi Yanai", written in a cursive style.

SATOSHI YANAI
Deputy Attorney General
Attorneys for People

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CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER TO PETITION FOR REVIEW
uses a 13 point Times New Roman font and contains 1,069 words.

Dated: July 14, 2011

KAMALA D. HARRIS
Attorney General of California

A handwritten signature in black ink, appearing to read "Satoshi Yanai", with a stylized flourish at the end.

SATOSHI YANAI
Deputy Attorney General
Attorneys for People

DECLARATION OF SERVICE

Case Name: **People v. PAC Anchor Transportation**

No.: **S194388**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **July 14, 2011**, I served the attached **ANSWER TO PETITION FOR REVIEW** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail system of the Office of the Attorney General, addressed as follows:

Clerk of the Court
L.A. County Superior Court
Stanley Mosk Courthouse
111 N. Hill Street
Los Angeles, CA 90012
(by U.S. Mail)

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Consumer Law Section
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Los Angeles, CA 90013-1230
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Prof. Code § 17209**
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County of Los Angeles
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(by U.S. Mail)

Clerk of the Court
Second District Court of
Appeal, Division Five
300 South Spring
Second Floor, North Tower
Los Angeles, CA 90013
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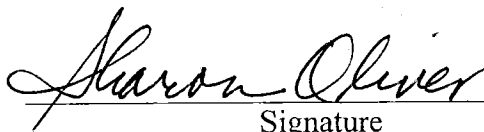
On **July 14, 2011**, I caused the original and thirteen (13) copies of the **ANSWER TO PETITION FOR REVIEW** in this case to be delivered to the California Supreme Court, at **350 McAllister Street, San Francisco, CA 94102-4797**, by **Fed Ex Overnight Mail Delivery**. A copy to be sent to opposing counsel by **Fed Ex Overnight Mail Delivery** as follows:

Neil S. Lerner
Sands Lerner
12400 Wilshire Boulevard, Suite 1300
Los Angeles, CA 90025
*Attorneys for Defendants and Appellees
Pac Anchor Transportation, Inc. and
Alfredo Barajas*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **July 14, 2011**, at Los Angeles, California.

Sharon Oliver

Declarant



Signature

LA2009604737
Document in ProLaw