No. 24-1238

IN THE

Supreme Court of the United States

SHAWN MONTGOMERY,

Petitioner,

v.

CARIBE TRANSPORT II, LLC, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF PREEMPTION SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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December 8, 2025

120780

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QUESTION PRESENTED

Whether the Federal Aviation Administration Authorization Act of 1994's preemption clause, 49 U.S.C. §14501(c), preempts a state common-law claim against a broker for negligently selecting a motor carrier or driver.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS..... ii

TABLE OF CITED AUTHORITIES iv

INTEREST OF AMICI.....1

SUMMARY OF ARGUMENT.....2

ARGUMENT.....3

I. The Seventh Circuit Over-Read the Scope of Federal Preemption Under the FAAAA 4

A. This Court's preemption jurisprudence has carefully confined the scope of federal displacement of state law, even in field preemption cases 6

B. State broker negligence claims fall outside the preemptive scope of the FAAAA 10

II. General Principles of Preemption Doctrine Support a Narrower Reading of the FAAAA's Preemptive Scope than the Seventh Circuit Offered 16

Table of Contents

Page

A. This Court's preemption cases have looked to statutory purposes to narrow the scope of ambiguous language 17

B. This Court's traditional presumption against preemption is not inconsistent with a focus on statutory text 20

1. The *Rice* presumption informs statutory meaning by providing important context, rather than asking courts to set aside the more plausible readings of statutes 21

2. To the extent that *Rice* functions as a substantive canon, it is well-grounded in the Constitution and historical practice. 25

CONCLUSION 29

TABLE OF CITED AUTHORITIES

Page

Cases

Alonzo v. Menholt,
9 N.W.3d 148 (Minn. 2024) 13

Arizona v. United States,
567 U.S. 387 (2012). 9

Aspen American Ins. Co. v. Landstar Ranger, Inc.,
65 F.4th 1261 (11th Cir. 2023) 5, 11

Atascadero State Hosp. v. Scanlon,
473 U.S. 234 (1985). 22

Basic Energy Services, L.P. v.
Petroleum Resource Mgt. Corp.,
343 P.3d 783 (Wyo. 2015). 13

Bates v. Dow Agrosciences LLC,
544 U.S. 431 (2005) 19

Biden v. Nebraska,
600 U.S. 477 (2023). 17, 21, 23, 24, 26

Branch v. Smith,
538 U.S. 254 (2003) 25

Cal. Div. of Labor Standards Enf't v.
Dillingham Constr., N.A., Inc.,
519 U.S. 316 (1997) 18

Cited Authorities

Page

California Coastal Comm'n v. Granite Rock Co.,
480 U.S. 572 (1987) 8

Chamber of Commerce v. Whiting,
563 U.S. 582 (2011) 8, 9, 10, 11

Dan's City Used Cars, Inc. v. Pelkey,
569 U.S. 265 . . . . . .10, 12, 14, 15, 19

FDA v. Brown & Williamson Tobacco Corp.,
529 U.S. 120 (2000) 24

Geier v. American Honda Motor Co.,
529 U.S. 861 (2000) 19

Hines v. Davidowitz,
312 U.S. 52 (1941) 8

Huron Portland Cement Co. v. City of Detroit,
362 U.S. 440 (1960) 6

Medtronic, Inc. v. Lohr,
518 U.S. 470 (1996) 3, 20

Morales v. Trans World Airlines, Inc.,
504 U.S. 374 (1992) 5, 10, 13, 14

N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.,
514 U.S. 645 (1995) 18, 19

Page

Nationwide Freight Sys., Inc. v. Illinois Com. Comm'n, 784 F.3d 367 (7th Cir. 2015). 5

Oneok, Inc. v. Learjet, Inc., 575 U.S. 373 (2015) 7, 13

Pacific Gas and Electric Company v. State Energy Resources Conservation & Development Commission, 461 U.S. 190 (1983) 7, 8, 9, 14

Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1947) 3, 20-25, 27, 28

Rowe v. New Hampshire Motor Transport Ass'n, 552 U.S. 364 (2008). 10, 11, 16, 18

Ruh v. Metal Recycling Services, LLC, 889 S.E.2d 577 (S.C. 2023) 13

Savage v. Jones, 225 U.S. 501 (1912) 6

Silkwood v. Kerr-McGee Corp., 464 U.S. 238 (1984). 15

Southland Corp. v. Keating, 465 U.S. 1 (1984) 6

Page

United States v. Locke,
529 U.S. 89 (2000). 20

Virginia Uranium, Inc. v. Warren,
587 U.S. 761 (2019) 7, 17

Western Stock Ctr., Inc. v. Sevit, Inc.,
578 P.2d 1045 (Colo. 1978) 13

Wooden v. United States,
595 U.S. 360 (2022). 28

Wyeth v. Levine,
555 U.S. 555 (2009). 3, 19, 20

Ye v. GlobalTranz Enters., Inc.,
74 F.4th 453 (7th Cir. 2023) 4, 5, 10, 11

Statutes and Rules

49 U.S.C. § 14501(c) 10

49 U.S.C. § 14501(c)(1) 3, 5, 10, 12, 17

49 U.S.C. § 140501(c)(2) 3

Americans With Disabilities Act. 6, 10, 13, 15, 16

Employee Retirement Income Security Act 18, 19

Page

Federal Aviation Administration Authorization Act of 1994 . . . . . 2-6, 10-12, 15, 16, 18, 19, 21, 24

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Supreme Court Rule 37.6 1

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8 A.L.R.2d 267 § 1 13

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Page

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Congressional Research Service, *Federal Preemption: A Legal Primer* (updated May 18, 2023) 14, 18

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Philip P. Frickey, *Getting from Joe to Gene (McCarthy): The Avoidance Canon, Legal Process Theory, and Narrowing Statutory Interpretation in the Early Warren Court*, 93 CALIF. L. REV. 397 (2005) 27

Stephen Gardbaum, *The Nature of Preemption*, 79 CORNELL L. REV. 767 (1994) 28

John F. Manning, *Legal Realism and the Canons' Revival*, 5 GREEN BAG 2D 283.....26

Daniel J. Meltzer, *Preemption and Textualism*, 112 MICH. L. REV. 1 (2013).....17, 18

Restatement (Second) of Torts § 411 (1965).....13

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Page

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Ernest A. Young, *"The Ordinary Diet of the Law": The Presumption Against Preemption in the Roberts Court*, 2011 SUP. CT. REV. 253. . . .9, 20, 23, 26-28

Ernest A. Young, *Two Cheers for Process Federalism*, 46 VILL. L. REV. 1349 (2001) 28

INTEREST OF AMICI

Amici are law professors interested in federal preemption of state law.[1] Our interest arises from teaching and writing in a variety of related fields, including administrative law, constitutional law, environmental law, health law, and torts. William Buzbee is the Edward and Carole Walter Professor at Georgetown University Law Center. Daniel Farber is the Sho Sato Professor at the University of California, Berkeley School of Law. Daniel Lyons is Professor and Associate Dean of Academic Affairs at Boston College Law School. Thomas McGarity holds the William Powers, Jr. and Kim Heilbrun Chair in Administrative Law at the University of Texas School of Law. Paul McGreal is the James Koley '54 Professor of Constitutional Law at Creighton University School of Law. David Rubenstein is a Professor of Law at Washburn University School of Law. Wendy Wagner holds the Richard Dale Chair in Law at the University of Texas School of Law. Ernest Young is the Alston & Bird Distinguished Professor at Duke Law School.

Each of us believes that legal scholarship should be concerned with and made useful to the decision of issues presently before the courts. We join this brief solely in our individual capacities as lawyers and scholars, and the views expressed here should not be attributed to our institutions.

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1. Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

This Court has read federal statutes displacing state law to do so for particular purposes and within a limited scope. The Federal Aviation Administration Authorization Act of 1994 ("FAAAA") was one of a series of federal statutes that deregulated aspects of the various transportation industries, beginning with the airlines and later extending to the trucking industry. Those statutes did not, of course, eliminate *all* regulation of these industries; they sought to establish free and competitive markets for transportation services, but left intact state authority to regulate unsafe practices and prevent accidents. Several lower courts, however, have read that statute to preempt any state measures that have a "significant economic impact" on the trucking industry. That approach is inconsistent with this Court's precedents, which have read the FAAAA's preemptive force as limited by its concern with anti-competitive regulation. The lower courts' reading also contradicts more general principles of preemption jurisprudence, which counsel courts to carefully define the limits of a statute's preemptive scope.

As scholars of both statutory interpretation and federalism, *amici* aim to situate the FAAAA's limited preemptive force within the broader context of interpretive theory and federalism doctrine. The key point is that Congress typically legislates against a background of state law that it may wish to modify but rarely intends to disrupt or displace altogether. As Professors Henry Hart and Herbert Wechsler explained many years ago, "[f]ederal law is generally interstitial in its nature. It rarely occupies a legal field completely, totally excluding all participation by the legal systems of

the states."[2] Rather, "[f]ederal legislation, on the whole, has been conceived and drafted on an *ad hoc* basis to accomplish limited objectives. . . . Congress acts, in short, against the background of the total *corpus juris* of the states in much the way that a state legislature acts against the background of the common law, assumed to govern unless changed by legislation."[3] This understanding of federalism provides vital context for reading the textual provisions of federal statutes, and it grounds this Court's "presumption against preemption" when construing laws of ambiguous preemptive scope.[4]

These principles confirm what the FAAAA's text indicates: That Congress meant to remove regulatory impediments to competitive markets for trucking services, but *not* to upend the states' ability to regulate unsafe practices that result in deadly accidents.

ARGUMENT

The FAAAA contains both a preemption clause (§ 14501(c)(1)) and a "safety exception" (§ 14501(c)(2)). *Amici*

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2. William Baude, Jack Goldsmith, John F. Manning, James E. Pfander, & Amanda L. Tyler, Hart and Wechsler's The Federal Courts and the Federal System 649-50 (8th ed. 2025) (quoting the first edition of 1953).

3. *Id.*

4. *See, e.g.*, *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *see also Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (stating that the "two cornerstones of our pre-emption jurisprudence" are (1) "'the purpose of Congress is the ultimate touchstone,'" and (2) the presumption "'that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'") (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)).

agree with Petitioners that this case may be properly resolved either by holding that state-law negligence claims against freight brokers fall within the safety exception or by holding that such claims fall outside the scope of the preemption clause. This brief focuses on the latter, because the lower courts have read that clause to effectively mandate field preemption of anything that "directly effects" the trucking industry. That reading threatens not only safety regulation but other generally applicable requirements—anti-discrimination laws, for example, or wage and hour legislation. This reading runs counter to longstanding principles of preemption jurisprudence, which are also reflected in this Court's prior constructions of the FAAAA.

Rather than deflecting attention from the statutory text, these general principles place that text in context. They recognize that Congress legislates against a background of state law, and federal statutes generally seek to alter that background in targeted ways rather than displacing broad swaths of it. To the extent that the Court finds the text legitimately ambiguous, however, the same general principles—embodied in the longstanding presumption against preemption—counsel that the text's meaning should be informed by the constitutional importance of maintaining the States' vital role in our federalist structure.

I. The Seventh Circuit Over-Read the Scope of Federal Preemption Under the FAAAA.

This case, as Judge Scudder properly noted, "concerns express preemption." *Ye v. GlobalTranz Enters., Inc.*,

74 F.4th 453, 457 (7th Cir. 2023). Yet the lower courts' interpretation of the FAAAA's preemption clause, in practice, looks a lot like *field* preemption. From this Court's statement that § 14501(c)(1)'s reference to state laws "related to" transportation services had a "broad preemptive purpose," *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (construing the Airline Deregulation Act), the Seventh Circuit concluded that "the state law in question need only have a 'connection with, or reference to' these services." 74 F.4th at 458. Even a connection that is "only indirect" suffices; state law is preempted if it "relates to broker 'rates, routes, or services either by expressly referring to them, or by having a significant economic effect on them.'" *Id.* (quoting *Nationwide Freight Sys., Inc. v. Illinois Com. Comm'n*, 784 F.3d 367, 373-74 (7th Cir. 2015)). It was enough that the threat of broker liability might "change how they conduct their services—for instance, by incurring new costs to evaluate motor carriers." *Id.* at 459.[5] It is difficult to imagine any form of state regulation applicable to the trucking industry that could not have a "significant economic impact" on the participants in that industry. The court of appeals' standard is inconsistent with the way this Court has analyzed the preemptive scope of federal statutes, even when those statutes preempt an entire field of regulation.

5. *See also Aspen American Ins. Co. v. Landstar Ranger, Inc.*, 65 F.4th 1261, 1267-68 (11th Cir. 2023) (holding that any regulation of a broker's conduct falls within § 14501(c)(1)'s scope).

A. This Court's preemption jurisprudence has carefully confined the scope of federal displacement of state law, even in field preemption cases.

The court of appeals's exceptionally broad reading of "relating to" is inconsistent both with general principles of preemption jurisprudence and with this Court's caselaw under the FAAAA and the ADA. As Justice Stevens once observed, "even where a federal statute does displace State authority, it 'rarely occupies a legal field completely, totally excluding all participation by the legal systems of the states. . . . Federal legislation, on the whole, has been conceived and drafted on an *ad hoc* basis to accomplish limited objectives. It builds upon legal relationships established by the states, altering or supplanting them only so far as necessary for the special purpose.'" *Southland Corp. v. Keating*, 465 U.S. 1, 18 (1984) (Stevens, J., concurring in part) (quoting Paul Bator, Paul Mishkin, David Shapiro, & Herbert Wechsler, Hart and Wechsler's The Federal Courts and the Federal System 470-471 (2d ed. 1973)).[6] This Court has thus carefully traced the boundaries of federal statutes' preemptive scope, even in areas where Congress

6. *See also Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 443 (1960) ("In determining whether state regulation has been pre-empted by federal action, 'the intent to supersede the exercise by the state of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress, fairly interpreted, is in actual conflict with the law of the state.'") (quoting *Savage v. Jones*, 225 U.S. 501, 533 (1912)).

has preempted a particular field of regulation, insisting that "we must proceed cautiously, finding pre-emption only where detailed examination convinces us that a matter falls within the pre-empted field as defined by our precedents." *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 385 (2015).[7]

Two of this Court's leading preemption cases illustrate the point. In *Pacific Gas and Electric Company v. State Energy Resources Conservation & Development Commission*, 461 U.S. 190 (1983), this Court considered preemption under the Atomic Energy Act. The AEA not only extensively regulated "radiological safety," but it also ended the federal monopoly over "control and ownership of nuclear technology," choosing to "encourag[e] the private sector to become involved in the development of atomic energy for peaceful purposes under a program of federal regulation and licensing." *Id.* at 205-07. These fields were preempted; "[u]pon these subjects, no role was left for the states." *Id.* a 207. But the Court rejected the argument that the Act was "intended to preserve the federal government as the sole regulator of all matters nuclear." *Id.* at 205. It recognized that, despite the federal licensing scheme, Congress had not disturbed the States' traditional authority to assess "[n]eed for new power facilities [and] their economic feasability," or to regulate "rates and services." *Id.* at 205. In the absence of federal provisions regulating "the economic question whether

7. *See, e.g.*, *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761 (2019) (ruling out field preemption even in cases where state regulation was motivated by purpose to achieve ends reserved to the federal government); *Oneok*, 575 U.S. at 388 (finding that the Natural Gas Act did not preempt state antitrust claims involving manipulation of both wholesale and retail gas prices).

a particular plant should be built," the Court found it "almost inconceivable that Congress would have left a regulatory vacuum," concluding that "Congress intended the states to continue to make these judgments." *Id.* at 208.[8]

Likewise, the Court in *Chamber of Commerce v. Whiting*, 563 U.S. 582 (2011), confronted a setting involving powerful arguments for field preemption. This Court had previously described legislation concerning immigration and the rights of aliens to be "the one aspect of our government that from the first has been most generally conceded imperatively to demand broad national authority," such that "[a]ny concurrent state power that may exist is restricted to the narrowest of limits." *Hines v. Davidowitz*, 312 U.S. 52, 67-68 (1941).[9] *Whiting* involved an Arizona statute allowing state courts to suspend or revoke a company's license to do business in the state if it employs an unauthorized alien. This Court rejected arguments that the state law was expressly or impliedly preempted under the federal Immigration Reform and Control Act (IRCA), which extensively regulates employment of unauthorized aliens. The Chamber and the dissenters argued that the Arizona law was too broad to fit into a statutory savings

8. *See also California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 581-89 (1987) (refusing to hold that federal preemption of state land use laws with respect to lands in a national forest foreclosed state environmental regulations that did not directly conflict with federal regulation).

9. *See also* Viet Dinh, *Reassessing the Law of Preemption*, 88 GEO. L. J. 2085, 2099 (2000) ("*Hines* may be better understood as a field preemption case because the opinion relied on the uniquely national nature of regulating aliens to hold that state laws on the same subject are displaced.").

clause for state "licensing and similar laws," and that in any event it was impliedly preempted because it "upsets the balance that Congress sought to strike" between "deterring unauthorized alien employment, avoiding burdens on employers, protecting employee privacy, and guarding against employment discrimination." 563 U.S. at 596-99, 603-04. But the Court interpreted the savings clause broadly, *id.* at 594-96, and it insisted that "[o]ur precedents 'establish that a high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal Act." *Id.* at 607.

The critical point about *Whiting* is simply that, as in *Pacific Gas*, this Court understood the scope of preemption to be limited even in a field involving very strong federal interests.[10] It did this both through generous construction of textual exceptions to preemption and precise delimitation of the scope of Congress's purposes. And the Court understood that one of those purposes is generally the preservation of traditional forms of state regulation that may bear incidentally on matters of federal concern. *See* 563 U.S. at 606-07. To hold otherwise would impose a massive burden on Congress to anticipate all the myriad sorts of state regulation that might incidentally impact deregulated industries and provide for them through specific statutory provisions. That is an unrealistic burden for Congress to meet, and this Court has almost never imposed anything like it.

10. *See also Arizona v. United States*, 567 U.S. 387, 401 (2012) (defining the scope of field preemption in immigration as limited to "the field of alien registration"); Ernest A. Young, *"The Ordinary Diet of the Law": The Presumption Against Preemption in the Roberts Court*, 2011 Sup. Ct. Rev. 253, 298-302 (discussing *Whiting*).

This Court has been far more sensitive to the state-law background in its jurisprudence under the ADA and the FAAAA. In *Rowe*, the Court framed its preemption test as not simply whether a state law has a "significant impact" on the trucking business, but rather whether "state laws have a 'significant impact' *related to Congress's deregulatory and pre-emption-related objectives*." 552 U.S. at 371 (emphasis added). This Court explained that "Congress' overarching goal [was] helping ensure transportation rates, routes, and services that reflect 'maximum reliance on competitive market forces,' thereby stimulating 'efficiency, innovation, and low prices,' as well as 'variety' and 'quality.'" *Id.* (quoting *Morales*, 504 U.S. at 378). *Dan's City* provided an example. Although "Section 14501(c) does not exempt zoning regulations," the Court thought that "[i]t is hardly doubtful that state or local regulation of the physical location of motor-carrier operations falls outside the preemptive sweep of § 14501(c)(1)." 569 U.S. at 264. Zoning surely does have a significant economic impact on participants in the trucking business, and such laws may require them to alter their operations by relocating their facilities. But zoning laws obviously have little relation to the pro-competitive goals of the federal regime. They thus do not "relate to" motor carrier services within the meaning of the preemption clause.

B. State broker negligence claims fall outside the preemptive scope of the FAAAA.

Under the Seventh Circuit's rule, the FAAAA's preemption clause covers any state law that "would have a significant economic effect on broker services." *Ye*, 74 F.4th at 459. But as in *Whiting*, Congress surely "did not intend to preserve only those state laws that

would have no effect." 563 U.S. at 607. Nor is it plausible to read the statute as relying wholly on the safety exception to preserve state regulation that impacts the trucking industry while not interfering with Congress's pro-competitive purposes. The same overly aggressive reading of the FAAAA's preemptive effect, after all, led a majority of the circuits that considered the issue to construe the safety exception narrowly. In *Ye,* the court of appeals read the phrase "with respect to motor vehicles" to require a "direct link between negligent hiring claims and motor vehicle safety." 74 F.4th at 460.[11] And it found that link wanting because the safety exception failed to make "any reference to brokers or broker services" in the statutory text. *Id.* at 460.[12] For all the reasons discussed in Petitioners' brief, the stark inconsistency between the court of appeals' broad reading of "relating to" in the preemption clause and its narrow reading of "with respect to" in the safety exception is untenable. But the risk of such overreading exists only because the court of appeals read the preemption clause too broadly in the first place.

In any event, the "significant economic effect" test will likely sweep in a wide range of state measures that are not "related to Congress' deregulatory and pre-emption-related objectives," *Rowe*, 552 U.S. at 371, but address legitimate state concerns other than safety. All sorts of things could have a "significant economic effect on broker

11. The Eleventh Circuit read the safety exception similarly narrowly in *Aspen*. *See* 65 F.4th at 1217.

12. *See also id.* ("We see no mention of brokers in the safety exception itself or in Congress's definition of motor vehicles, which suggests that such claims may be outside the scope of the exception's plain text.").

services"—including a range of things that are surely not preempted. If Illinois added $.25/gallon to its gasoline tax, that would increase motor carriers' costs that brokers would have to pass through to shippers. If the state adopted a 30-hour work week for all firms doing business in Illinois, with time and a half for overtime above that mark, that would likewise impact freight brokers' costs and possibly their staffing and routing decisions. If the Illinois attorney general expanded enforcement of state civil rights laws in the trucking and freight brokerage industries, this might well also have a significant economic impact on operations. It seems highly unlikely that the "related to" language in § 14501(c)(1) was meant to sweep in these sorts of legal measures, and yet it is equally clear that they would meet the Seventh Circuit's test.

All these forms of state regulation are similar to this Court's own example of zoning laws offered in *Dan's City*. *See* 569 U.S. at 264. To the extent that such laws require motor carriers or brokers to locate their businesses in areas that are more expensive or less convenient, they may have a significant economic impact on motor vehicle services. They would thus fall within the scope of the FAAAA's preemption clause under the Seventh Circuit's test. Nor are zoning laws exercises of "the safety regulatory authority of a State with respect to motor vehicles" under the statute's safety exception. The only way to make sense of *Dan's City*'s conclusion that such laws would *not* to be preempted is to restrict the preemption clause's scope to state laws that interfere with what the FAAAA actually does, which is to remove anti-competitive restraints in both federal and state law.

This Court's preemption cases have defined the preemptive scope of federal legislation with considerably

greater care. The Court has been reluctant, for example, to find that federal regulation of a particular field, like natural gas production, preempts generally applicable, trans-substantive rules like state antitrust regulation. *See Oneok*, 575 U.S. at 387. Here, the tort of negligent selection of an independent contractor is a general common law principle, not directed at the trucking industry but applicable to a wide range of employment settings.[13] It has been adopted in at least 34 states and recognized in § 411 of the Restatement (Second) of Torts.[14] This Court did make clear in *Morales* that not all generally-applicable principles avoid preemption under the ADA. *See* 504 U.S. at 386. But that case involved efforts by the attorneys general of seven states to use their general consumer protection statutes to subject the major airlines to detailed

13. *See, e.g.*, *Basic Energy Services, L.P. v. Petroleum Resource Mgt. Corp.*, 343 P.3d 783, 790 (Wyo. 2015) (adopting the tort in a case involving a contractor hired to operate an oil well).

14. *See Alonzo v. Menholt*, 9 N.W.3d 148, 156-57 (Minn. 2024) (adopting the tort and observing that "[b]ecause the claim at issue is a natural extension of well-established tort principles, we discern no potential conflict between it and applicable law"); *Ruh v. Metal Recycling Services, LLC*, 889 S.E.2d 577, 655 (S.C. 2023) (noting disagreement as to whether the total number of states adopting the tort is 34 or 37 but suggesting the principle is well-established in South Carolina law); *Western Stock Ctr., Inc. v. Sevit, Inc.*, 578 P.2d 1045, 1048 (Colo. 1978) ("'The rule has been widely adopted that an employer of an independent contractor may be liable to one injured as a result of the contractor's fault where it is shown that the employer was negligent in selecting a careless or incompetent person with whom to contract.'") (quoting 8 A.L.R.2d 267 § 1); RESTATEMENT (SECOND) OF TORTS § 411 (1965) (stating that "[a]n employer is subject to liability for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor").

guidelines on consumer advertising and other aspects of the airlines' business.[15] Those efforts posed obvious anticompetitive risks, including "curtail[ing] the airlines' ability to communicate fares to their customers." *Id.* at 389. As the Court commented, "[t]he present litigation plainly does not present a borderline question." 504 U.S. at 390. But no comparable anti-competitive argument has been made against imposing the same general duty of care that binds all employers on brokers serving the trucking industry.

This Court's cases have also been sensitive to the risk of creating regulatory vacuums through overbroad readings of statutory preemption.[16] *Dan's City*, for example, held that state claims against a towing company for unlawful disposal of a vehicle were not preempted. This Court reasoned that "if such state-law claims are preempted, no law would govern resolution of a non-contract-based dispute arising from a towing company's disposal of a vehicle previously towed or afford a remedy for wrongful disposal. . . . No such design can be attributed to a rational

15. Although the consumer protection statutes that the state attorneys general proposed to use to enforce the NAAG guidelines were generally applicable beyond the airline industry, the "Air Travel Industry Enforcement Guidelines" themselves certainly were not. *See* 504 U.S. at 379-80; Congressional Research Service, *Federal Preemption: A Legal Primer* (updated May 18, 2023), at 9 (explaining *Morales*'s result "on the grounds that the guidelines expressly referenced airfares and were likely to have a significant impact on airfares").

16. *See, e.g.*, *Pacific Gas*, 461 U.S. at 207-08 ("It is almost inconceivable that Congress would have left a regulatory vacuum; the only reasonable inference is that Congress intended the states to continue to make these judgments.").

Congress." 569 U.S. at 265. Similarly, federal law does not regulate the conduct of brokers in the trucking industry, and it provides no remedy for accident victims when a motor carrier with a poor safety record turns out to be under-capitalized and unable to pay a judgment. It is unlikely Congress intended such a result.[17]

A rational Congress would have anticipated this sort of problem—not by more extensively regulating brokers, but by conceiving of the statute's preemptive force as limited to its central deregulatory objective. After all, the competitive markets that the FAAAA sought to foster are constantly changing and adapting. The sort of preemption-without-replacement scheme envisioned by the Seventh Circuit is particularly vulnerable to changes in the structure of a market, such as the shift in the trucking industry to largely unregulated brokers playing a central role. Especially in the absence of a federal agency with broad regulatory authority, state law is more likely to be nimble in responding to such changes. In such an area, the most plausible interpretation of the preemption clause is that it protects the FAAAA's deregulatory and pro-competitive provisions from state interference, without gutting states' ability to respond to market shifts that imperil Congress's effort to preserve state safety regulation.

Significantly, a large body of lower court precedent interprets the ADA's similar preemption provision for

17. *See Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 251 (1984) (("It is difficult to believe that Congress would, without comment, remove all means of judicial recourse for those injured by illegal conduct.") (cited in *Dan's City*, 569 U.S. at 265).

airlines in precisely this way. As Petitioners point out, "every federal court of appeals to address the question has agreed that the ADA preemption provision—which likewise preempts state laws 'related to a price, route, or service' of an air carrier—does *not* preempt state safety-related tort claims for personal injuries caused by negligent airline operations, and so those claims remain available even though the ADA does not include any express safety exception to its preemption provision." Petr. Br. at 47-48 (collecting cases).[18] These ADA cases confirm what this Court's preemption precedents prescribe—that is, that the FAAAA's preemptive scope should be carefully circumscribed in order to preserve the state law background, except to the extent that Congress explicitly changed it.

II. General Principles of Preemption Doctrine Support a Narrower Reading of the FAAAA's Preemptive Scope than the Seventh Circuit Offered.

This Court's preemption jurisprudence "examine[s] . . . arguments about [a statute's] preemptive effect much as we would any other about statutory meaning, looking to the text and context of the law in question and guided by

18. The FAAAA copied the preemption provision of the ADA, *see Rowe*, 552 U.S. at 370, but the ADA contained no safety exception like the FAAAA's. But it would be odd to argue that the addition of an explicit carve-out for safety regulation *broadened* the scope of the preemption clause as it applied to other forms of non-economic regulation that might not be captured by the safety exception. The FAAAA's express safety exception simply underscores what was true of the ADA without the exception—neither law preempts state regulation outside the economic sphere of rates, routes, entry controls, and the like.

the traditional tools of statutory interpretation." *Virginia Uranium*, 587 U.S. at 767 (plurality opinion). That approach has always included attention to statutory purposes in delimiting the scope of those statutes preemptive effect. And it has also often applied a presumption that statutes do not preempt state law unless Congress's intent to do so is clear.

A. This Court's preemption cases have looked to statutory purposes to narrow the scope of ambiguous language.

Preemption cases should always begin (and sometimes end) with the text. But statutory terms like "related to" and "with respect to" can be read narrowly or broadly; the task of interpretation is to determine what meaning best reflects Congress's intention. This Court has divined that intention by looking to context, including the remainder of the statute, the underlying purposes that Congress was trying to achieve, and the state law background against which Congress legislated. This approach is no surrender of textualism; as Justice Barrett has observed, "a vacuum is no home for a textualist." *Biden*, 600 U.S. at 518 (Barrett, J., concurring).

In a careful exploration of recent preemption cases, for example, the late Professor Dan Meltzer argued that a purely textualist approach often could not resolve the complex statutory questions presented, to the extent that even dedicated and principled textualist justices had to resort to some degree of purposivist analysis. *See* Daniel J. Meltzer, *Preemption and Textualism*, 112 MICH. L. REV. 1 (2013). Professor Meltzer used the "related to" language of § 14501(c)(1) as an example in which "[o]ne doubts that

anyone in the enacting Congress even considered, much less entered into a legislative compromise concerning, the effect of the Act" on state laws like the one in *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364 (2008).[19] Perhaps for that reason, the Court felt obliged to explain why the Maine statute at issue—which forbade anyone other than Maine-licensed tobacco retailers to accept orders for delivery of tobacco—interfered with the particular pro-competitive purposes of the FAAAA. *See* 552 U.S. at 372-73.[20]

A similar line of cases under the Employee Retirement Income Security Act (ERISA) likewise combines textual analysis with attention to the limits of Congress's statutory purposes.[21] "If 'relate to' were taken to extend to the furthest stretch of its indeterminacy," Justice Souter wrote in *Travelers*, then for all practical purposes pre-emption would never run its course." 514 U.S. at 655.[22] The Court has thus eschewed "uncritical literalism" and

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19. *See* Meltzer, *supra*, at 20.

20. *See also* Congressional Research Service, *supra*, at 6 (observing that "the Court has cautioned against strictly literal interpretations of 'related to' preemption clauses" and "has looked to Congress's statutory objectives to cabin the clauses' scope").

21. *See* Meltzer, *supra*, at 20-24 (citing, *inter alia*, *N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656 (1995)).

22. *See also Cal. Div. of Labor Standards Enf't v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring) ("[A]pplying the 'relate to' provision [of ERISA] according to its terms was a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else.").

"look[ed] instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive." *Id.* at 656. In *Dan's City*, this Court explicitly quoted this passage from *Travelers* in construing the preemptive force of the FAAAA. 569 U.S. at 260 (quoting *Travelers*, 514 U.S. at 655-66).

To be sure, individual justices of this Court have rightly expressed concern that "[p]re-emption analysis should not be '[a] freewheeling judicial inquiry into whether a state statute is in tension with federal objectives, but an inquiry into whether the ordinary meanings of state and federal law conflict.'" *Wyeth*, 555 U.S. at 588 (Thomas, J., concurring in the judgment) (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 459 (2005) (Thomas, J., concurring in part and dissenting in part)).[23] Certainly state law should never be preempted based on untethered legislative purposes not grounded in the text. But that is a far cry from what this Court has done in FAAAA cases, which is to understand the scope of statutory terminology ("related to") in light of the purpose evident in the remainder of the Act, which is to eliminate regulatory barriers to competition in the trucking industry. Whether or not the words will bear an expansive interpretation to cover all state laws having any economic impact on that industry, this Court has instead interpreted the preemptive language so as to displace the state law regulatory background only within the scope of Congress's more limited purpose.

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23. *See also Geier v. American Honda Motor Co.*, 529 U.S. 861, 911 (2000) (Stevens, J., dissenting) ("[P]reemption analysis is, or at least should be, a matter of precise statutory [or regulatory] construction rather than an exercise in free-form judicial policymaking.").

B. This Court's traditional presumption against preemption is not inconsistent with a focus on statutory text.

In preemption cases, the "traditional tools of statutory construction" have generally included an interpretive canon—the presumption against preemption. That presumption dates back at least as far as *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947), which said that preemption analysis should "start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress."[24] This Court does not always invoke the *Rice* presumption; in many cases Congress has made its meaning clear, and no canon of construction is necessarily to resolve the dispute. The present dispute may well be one of those cases; *amici*

24. This Court's opinions have not been altogether consistent as to the *Rice* presumption's scope. *Rice* itself emphasized that "Congress legislated here in a field which the States have traditionally occupied," 331 U.S. at 230, and some cases have suggested that the presumption should not apply in areas with "a history of significant federal presence," *United States v. Locke*, 529 U.S. 89, 108 (2000). Other cases have affirmed that the presumption applies "'[i]n all pre-emption cases.'" *Wyeth*, 555 U.S. at 565 (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). Certainly, it is often difficult to tell whether a case falls in a "federal" or "state" field—*Locke*, for example, involved both maritime safety and compliance with international treaties, on the one hand, but also regulation of pollution in state waters, on the other. *See generally* Young, *Ordinary Diet*, *supra*, at 332-40 (arguing against any effort to distinguish between state and federal domains). But there is no dispute in this case that broker liability for negligent selection of an independent contractor involves a field of traditional state regulation.

agree with Petitioners that it can readily be resolved on a fairly straightforward reading of the FAAAA's text, especially in view of Congress limited purpose to eliminate anti-competitive regulation. But to the extent that the question is close, the *Rice* presumption plays a valuable role.

Rice's presumption against preemption has never required courts to strain or ignore statutory text, and it falls within a longstanding tradition of judicial interpretation. It reflects both the federalist context in which Congress operates and constitutionally-derived regard for federalism. As such, *Rice*'s presumption is compatible with judicial obligations to respect statutory text and serve as faithful agents of Congress.

1. The *Rice* presumption informs statutory meaning by providing important context, rather than asking courts to set aside the more plausible readings of statutes.

The presumption against preemption is not a "strong-form substantive canon" that "counsels a court to *strain* statutory text to advance a particular value." *Biden*, 600 U.S. at 477 (Barrett, J., concurring). That label has two distinct dimensions. *Amici* take "strong-form" to refer to the evidence that is necessary to overcome a presumption, while "substantive" refers to the distinction between canons that purport to describe the legislature's most likely intent and those that introduce values that a court finds independently important.[25]

25. *See also* Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 117 (2010) (making a similar distinction between "linguistic" or "substantive" canons").

In our view, the *Rice* presumption is not a strong-form canon at all. Both courts and scholars have often distinguished between "clear statement rules" that require a specific and explicit indication of Congress's intent to take a particular action in the text of the statute itself,[26] and "presumptions" that permit Congress's intent to take an action to be divined from any of the traditional sources of statutory meaning but simply require a higher confidence level in a court's conclusion. And presumptions can vary in strength; then-professor Barrett, for example, distinguished between canons of construction that "serve simply as tie breakers between two equally plausible interpretations of a statute," "canons that permit a court to qualify clear text," and canons that "afford[] federal courts the ability to depart from the best interpretation of a statute in favor of one that is less plausible yet still bearable."[27]

The Court made clear that the presumption against preemption is just a presumption in *Rice* itself, stating that a purpose to preempt state law "may be evidenced in several ways," including the "pervasive[ness]" of the statutory scheme, the presence of a "dominant" federal interest, evidence of the statutory object and the "character of obligations" it imposes, or simply the fact that "state policy may produce a result inconsistent" with the statutory objective. 331 U.S. at 230-231. Subsequent

26. *See, e.g.*, *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985) ("Congress may abrogate the States' constitutionally secured immunity from suit in federal court only by making its intention unmistakably clear in the language of the statute.").

27. Barrett, *supra*, at 117, 163-64.

cases applying *Rice*'s presumption have thus looked at all these traditional indicia of intent.[28]

Nor has *Rice* posed a particularly high barrier to finding preemption when that is the most plausible meaning of the statute in question. If it is a thumb on the scale, it is a relatively light one.[29] Certainly it has not been employed to qualify clear text or to "strain" the meaning of that text. Nor does one encounter many cases in which a court says that the preemptive reading is *more* plausible, but a *somewhat* plausible non-preemptive reading prevails because of the presumption. Rather than function as a tiebreaker or a thumb on the scale, however, *Rice* more often assists the court in determining the most plausible reading by offering institutional context. It reminds courts that federal statutes operate interstitially against a background of state law that Congress generally does not intend to disrupt. In that setting, the better reading of Congress's intent—in the sense of reflecting what Congress usually prefers to do—will be the less broadly preemptive one.

From this perspective, *Rice*'s presumption against preemption is analogous to Justice Barrett's defense of the major questions doctrine in *Biden v. Nebraska*, 600

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28. *See* Young, *Ordinary Diet*, *supra*, at 271 (pointing out that "[i]f *Rice* were a strong clear statement rule, then there would only be 'express' preemption cases").

29. The weight metaphor may be more appropriate in conflict preemption cases, where some friction between federal and state policies may be inevitable and the question is really what degree of conflict federal law can tolerate. *See* Young, *Ordinary Diet*, *supra*, at 275.

U.S. 477 (2023).[30] There, Barrett argued that the major questions doctrine need not be understood as a "strong-form substantive canon"; rather, "[t]he doctrine serves as an interpretive tool reflecting 'common sense as to the manner in which Congress is likely to delegate a policy decision of such economic and political magnitude to an administrative agency.'" 600 U.S. at 511 (Barrett, J., concurring) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). Any statute's context, she explained, includes both the "[b]ackground legal conventions" against which Congress legislates and "our constitutional structure" within which the statute must operate. 600 U.S. at 511, 515. Barrett concluded that to the extent that it offers this sort of context, major questions does not cause a court to abandon a statute's most plausible reading, but rather a tool for "arriv[ing] at the most plausible reading" in the first place. *Id.* at 520.

The presumption against preemption likewise reflects common sense concerning the context in which Congress makes decisions about preempting state law. The *Rice* presumption is a longstanding and familiar canon of construction, and it reflects a key reality of our federal structure—that is, that Congress legislates interstitially against a state law background that it generally does not wish to displace or disrupt. When Congress does deregulate, as it did in the FAAAA, it does so for particular purposes within limits consonant with those purposes; it does not blow up state safety regulation or

30. Indeed, in at least some regulatory settings, "[w]hether state claims are preempted would arguably be included in any reasonable version of what constitutes a major question." Michael Barsa & David Dana, *The Major Questions Doctrine's Upside for Combatting Climate Change*, 32 N.Y.U. Env. L. J. 1, 3 (2024).

other general requirements that do not impede its effort to establish more competitive markets. In this sense, the presumption against preemption is simply a special case of the canon disfavoring implied repeals.[31] Both principles emphasize the importance of "reading statutes against the entire background of existing customs, practices, rights, and obligations—in other words, those that emphasize the importance of not changing existing understandings any more than is needed to implement the statutory objective."[32] This understanding grounds the care with which this Court's preemption cases described in Part I delimit the metes and bounds of a federal statute's displacement of state law. But in so doing, the *Rice* presumption is a tool for determining the best reading of Congress's intent—not an external factor that may override a court's judgment about a federal statute's best reading.

2. To the extent that *Rice* functions as a substantive canon, it is well-grounded in the Constitution and historical practice.

Rice itself phrased its presumption as an "assumption" about what Congress most likely wanted. 331 U.S. at 230. But some scholars—including some *amici*—have argued that the presumption "is better justified as a normative

31. *See, e.g.*, *Branch v. Smith*, 538 U.S. 254, 273 (2003) (plurality opinion) ("An implied repeal will only be found where provisions in two statutes are in 'irreconcilable conflict,' or where the latter Act covers the whole subject of the earlier one and 'is clearly intended as a substitute.').

32. David L. Shapiro, *Continuity and Change in Statutory Interpretation*, 67 N.Y.U. L. Rev. 921, 925 (1992).

canon designed to protect state autonomy in our federal system."[33] It is not clear that normative or substantive canons should be objectionable to textualists so long as they are not "strong form" requirements that Congress make its intent unmistakably clear.[34] In any event, the presumption against preemption draws strong support from its grounding in the Constitution's structure and historical practice.

Textualist scholars and judges have acknowledged that "many strong-form canons advance constitutional values, which heightens their claim to legitimacy." *Biden*, 600 U.S. at 509 n.2 (Barrett, J., concurring).[35] As then-Professor Barrett argued, "[c]onstitutionally inspired canons . . . have the virtue of promoting an identifiable . . . set of norms that have been sanctioned by a super-majority as higher law. They do less violence to the legislative bargain because legislators can anticipate their potential effect on statutory interpretation and modify their language accordingly."[36] More fundamentally, Barrett grounded

33. Ernest A. Young, *The Continuity of Statutory and Constitutional Interpretation: An Essay for Phil Frickey*, 98 Calif. L. Rev. 1371, 1380 (2010).

34. To be sure, by giving independent weight to a consideration that Congress may or may not have had in mind, even a weak presumption will occasionally cause a court to abandon the interpretation of a statute that it might have adopted absent the presumption. But this is true of *all* interpretive presumptions. *See generally* Young, *Ordinary Diet*, at 315-20.

35. *See also* John F. Manning, *Legal Realism and the Canons' Revival*, 5 Green Bag 2d 283, 292 n. 42 (noting that "textualists are, in practice, enthusiasts of canons that reflect constitutionally derived values").

36. Barrett, *supra*, at 168.

"[c]onstitutionally inspired canons as an outgrowth of the power of judicial review."[37] From this perspective, "the judicial duty to enforce the Constitution qualifies, though it does not trump, the obligation of faithful agency" to the legislature.[38]

The *Rice* presumption has long been understood as grounded in our Constitution's federal structure. It plays a vital functional role in protecting the autonomy of the states in a world where they share concurrent regulatory jurisdiction over most subjects with the national government.[39] Professor Stephen Gardbaum has shown that *Rice*'s focus congressional intent in preemption cases was "a logical result of the restructuring of American federalism that began with the New Deal in 1933 and that was judicially affirmed in 1937," such that "no area of intrastate commerce would be open to the states to regulate which at the same time is constitutionally closed

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37. *Id.* at 169.

38. *Id.*; *see also* Ernest A. Young, *Constitutional Avoidance, Resistance Norms, and the Preservation of Judicial Review*, 78 Tex. L. Rev. 1549, 1593-99 (2000) (arguing that substantive canons can be a legitimate way of enforcing constitutional principles).

39. *See generally* Young, *Ordinary Diet*, *supra*, at 320-24. As one of our leading scholars of statutory interpretation has written, normative canons are "particularly appropriate" for "cases, generally raising structural constitutional issues, in which line-drawing by the Court is especially difficult," and in which "courts, facing institutional impediments to the exercise of traditional judicial review, use the canon to protect what amount to 'underenforced' constitutional norms." Philip P. Frickey, *Getting from Joe to Gene (McCarthy): The Avoidance Canon, Legal Process Theory, and Narrowing Statutory Interpretation in the Early Warren Court*, 93 Calif. L. Rev. 397, 455, 459 (2005).

to Congress."[40] Hence, "the new constitutional strategy replaced a strict division of powers version of federalism with a new vision embodying the presumption that state powers, though no longer constitutionally guaranteed, survive unless clearly ended by Congress."[41]

From a more functional perspective, *Rice*'s presumption protects state regulatory autonomy far more effectively than, say, an effort to sharply circumscribe Congress's enumerated powers.[42] It ensures observance of the structural features of Article I—the States' representation in Congress and the procedural hurdles to federal lawmaking—that limit the displacement of state regulatory choices by supreme federal law.[43] And it protects these federalism values in a way that minimizes the need for courts to draw lines circumscribing the bounds of federal regulatory authority and preserves a primary role for elected representatives in Congress.

Using longstanding substantive canons also draws authority from historical practice.[44] Surveying a large

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40. Stephen Gardbaum, *The Nature of Preemption*, 79 Cornell L. Rev. 767, 806 (1994).

41. *Id.*

42. *See* Ernest A. Young, *Two Cheers for Process Federalism*, 46 Vill. L. Rev. 1349, 1384-86 (2001) (demonstrating that a great deal more state regulatory autonomy is generally at stake in preemption cases than in enumerated powers challenges to federal statutes).

43. *See, e.g.*, Young, *Ordinary Diet*, *supra*, at 279-80; Bradford R. Clark, *Separation of Powers as a Safeguard of Federalism*, 79 Tex. L. Rev. 1321, 1427-29 (2001).

44. *See, e.g.*, *Wooden v. United States*, 595 U.S. 360, 388-91 (2022) (Gorsuch, J., concurring in the judgment) (emphasizing the

sample of statutory construction decisions between 1789 and 1840, then-Professor Barrett concluded that "the historical record clearly establishes that federal courts believed themselves empowered to deploy a substantive canon like lenity for the purpose of clarifying truly ambiguous language."[45] She also found that the history "offers support for, but does not establish, the proposition that federal courts believed themselves empowered to deploy substantive canons to choose less plausible interpretations of statutory language to advance policy goals."[46] Such long established canons form a vital part of the background against which Congress acts.[47]

CONCLUSION

The decision of the U.S. Court of Appeals for the Seventh Circuit should be reversed.

Respectfully submitted,

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December 8, 2025

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historical pedigree of the rule of lenity as a tool informing the meaning of ambiguous statutes).

45. Barrett, *supra*, at 158.

46. *Id.* at 158-59.

47. *See id.* at 159.