No. 12-52

IN THE
Supreme Court of the United States

DAN'S CITY USED CARS, INC. D/B/A
DAN'S CITY AUTO BODY,
Petitioner,
v.
ROBERT PELKEY,
Respondent.

ON A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW HAMPSHIRE

MOTION FOR LEAVE TO FILE AND BRIEF FOR *AMICI CURIAE* INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, AND NATIONAL LEAGUE OF CITIES IN SUPPORT OF RESPONDENT

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MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, AND NATIONAL LEAGUE OF CITIES IN SUPPORT OF RESPONDENT

Pursuant to Rule 37.3(b), the International Municipal Lawyers Association, the National Association of Counties, and the National League of Cities respectfully move to file the attached brief as *amici curiae* in support of Respondent. Respondent consented to the filing of this brief on February 6, 2013, but Petitioner withheld its consent on February 20, 2013. The parties' letters consenting or withholding such consent have been filed with the Clerk's office in conjunction with the certificate of service.

The International Municipal Lawyers Association ("IMLA") is a nonprofit, nonpartisan professional organization consisting of more than 3500 members. The membership is comprised of local government entities, including cities and counties, and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. IMLA serves as an international clearinghouse of legal information and cooperation on municipal legal matters. Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts.

The National League of Cities ("NLC") is dedicated to helping city leaders build better communities. Working in partnership with the 49 state municipal leagues, NLC serves as a resource to and an advocate for the more than 19,000 cities, villages and towns it represents.

The National Association of Counties ("NACo") is the only national organization that represents county governments in the United States. NACo provides essential services to the nation's 3,068 counties through advocacy, education and research.

Each of the Amici Curiae has an interest in protecting residents of their member communities from predatory towing and in maintaining local autonomy for regulating nonconsensual towing and the commercially reasonable disposition of those towed vehicles.

Wherefore, the *amici curiae* respectfully request that their motion for leave to file the enclosed brief be granted.

Respectfully submitted,

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INTERESTS OF THE *AMICI CURIAE*[1]

As noted in the motion for leave to file, *supra*, the International Municipal Lawyers Association ("IMLA"), the National League of Cities ("NLC"), and the National Association of Counties ("NACo") have an interest in protecting residents of their member communities from predatory towing and in maintaining local autonomy for regulating nonconsensual towing and the commercially reasonable disposition of those towed vehicles.

SUMMARY OF THE ARGUMENT

Tow companies are reputed to engage in predatory conduct, and incidences of such conduct are not isolated. Regulation of such nonconsensual tows and particularly disposition of the towed cars in conformity with state common law bailment must remain regulated at the state and local level.

Petitioner's interpretation of 42 U.S.C. § 14501(c)(1) contradicts the statute's established

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[1] Pursuant to Rule 37.6 *amici curiae* affirm that no counsel for a party authored this brief in whole or in part, that no counsel or a party made a monetary contribution intended to the preparation or submission of this brief, and no person other than *amici curiae,* their members, or their counsel made a monetary contribution to its preparation or submission.

Respondent consented to the filing of this brief on February 6, 2013, but Petitioner withheld its consent on February 20, 2013. The parties' letters consenting or withholding such consent have been filed with the Clerk's office in conjunction with the certificate of service.

purpose and a plain reading of its text. Courts have consistently found the purpose of § 14501(c)(1) to be the creation of a consistent regulatory climate in order to eliminate burdens on tow truck companies and promote economic efficiency. To allow Petitioner's reading of the statute would manipulate New Hampshire law under the guise of preemption and would create information asymmetries and other economic inefficiencies within the market. Further, a plain reading of the statute demonstrates that the broad phrase "related to" is constrained by later language, including "with respect to the transportation of property."

Conflicting judicial rulings on the preemption of particular regulations have created substantial legal uncertainty as to which regulations are exempt from preemption under the "safety regulation" exception. The Federal government is incapable of properly addressing abusive towing practices, as demonstrated by its shift from regulation to deregulation. Towing companies already abide by state regulations on private trespass towing. According to a May 2007 report issued to Congress by the Motor Carrier Safety Division, towing organizations such as the Towing and Recovery Association of America would prefer to remove confusion surrounding preemption and leave state and local governments free to enact regulations. Preserving state regulations in place will continue to allow consumers to be able to seek redress at the state level.

ARGUMENT

I. THE TOWING INDUSTRY IS RIFE WITH PREDATORY CONDUCT AND UNFAIR BUSINESS PRACTICES

Consumers frequently report towing companies engaging in less-than-wholesome business practices. A tow truck can provide a driver with necessary assistance during a vulnerable moment, such as towing a vehicle stranded as the result of an accident or breakdown. Unfortunately, drivers are often confronted by tow truck companies that tow away vehicles under questionable circumstances. While some experiences of ordinary citizens are particularly outrageous, complaints regarding the conduct of tow truck operators are unfortunately all too common.

A. Tortious Conduct by Tow Companies is Widespread.

Many citizens have had the unpleasant experience of leaving their automobile to run an errand, only to find upon their return their vehicle is no longer there, or is in the process of being hauled away.

For example, the Immanuel Presbyterian Church in Hollywood discovered the vehicle it used to deliver goods to the poor had been taken from its own parking lot in the middle of the night. After locating the tow company that had taken the vehicle, the church inquired who had authorized its removal. The

company gave the church's address, claiming that the church had ordered the vehicle towed. *See* Andrew Pollack, *Tow Trucks Prowl, Authorities Crack Down*, N.Y. TIMES (July 31, 2005), http://www.nytimes.com/2005/07/31/national/31towing.html?pagewanted=all.

In Silver Spring, Maryland, a driver parked his car at an office supply store and walked to an ATM while his daughter, the passenger, went into the store. The driver then walked into the store to locate his daughter and to pay for her supplies. Upon emerging from the store, he saw his car getting towed. The tow truck driver alleged that the driver had "walked off" and was not a patron of the supply store: *See* Aaron Kraut, '*Predatory towing' complaints a growing problem in Wheaton*, GAZETTE (May 16, 2012), http://www.gazette.net/apps/pbcs.dll/article?AID=/20120516/NEWS/705169561/1007/news&source=RSS&&template=PrinterFriendlygaz.

Additionally, a Portland woman woke up one morning and went to her paid-for parking spot to retrieve her vehicle and head to work. Her car was not there, and she thought her vehicle had been stolen. She went to her apartment building's management office, and before calling the police, the manager thought to check with the tow truck company that monitored the parking lot. A towing company employee had taken the vehicle because, while the employee could see the parking permit in the woman's car, he could not see the expiration date on the permit. *See* Jenny Hansson, *Portland towing*

company's ethics questioned (Dec. 1, 2011), http://www.koinlocal6.com/news/local/story/Portland-towing-companys-ethics-questioned/7IHLZFz_f06ytB0s22XB_A.cspx.

The above stories are but a few among many examples of nonconsensual towing that unfairly impinged upon the rights of the vehicle owner.

B. Tortious Conduct by Tow Companies Extends to Disposition and Sale of Nonconsensually Towed Vehicles

Against the backdrop of unscrupulous tow companies, anecdotal evidence of unscrupulous sales also abounds. For example, a Miami resident rented a parking space from a private facility to store his car. Without receiving any notice, a towing company towed his vehicle and sold the car at an "auction" to one of its own employees. *See* Francisco Alvarado, *Tow and Sell: He says Beach Towing took his car. Is yours next?*, MIAMI NEW TIMES NEWS (Feb. 9, 2006), http://www.miaminewtimes.com/2006-02-09/news/tow-and-sell/.

Similarly, a Seattle couple went on a long business trip and left their car in their condominium's garage. While they were away, their car was towed and sold at auction. The couple later realized that they had parked their car on the wrong floor of their garage. The tow company, however, had taken their vehicle under the authorization of an individual whom the company knew could not authorize the car's removal. Additionally, the

company sold the car with a significant amount of the couple's personal property inside. *See* Danny Westneat, *Seattle Couple's Car Towed into a Twilight Zone*, SEATTLE TIMES, (Feb 13, 2012), http://o.seattletimes.nwsource.com/html/dannywestneat/2017485688_danny12.html.

The frequency of predatory conduct by towing companies shows that there would likely be continued abuse if the Federal Aviation Administration Authorization Act ("FAAAA") of 1994 was interpreted as deregulating sale and disposal of nonconsensually towed vehicles.

C. Stories of Tow Truck Operator Malfeasance Are Not Isolated Incidents.

The behavior of tow truck companies affects communities large and small. The Officer of Consumer Complaints for Montgomery County, Maryland has received hundreds of complaints since 2010 regarding the practices of tow truck companies. Continuing the trend from previous years, the officer received 61 complaints between January–May 2012. *See* Kraut, *supra*. In 2011, the Better Business Bureau ("BBB") received 150 complaints and more than 5,800 inquiries about towing services over a period of 36 months regarding towing services in Charlotte. *BBB Warns Clemson and Virginia Tech Fans about Towing in Charlotte*, BETTER BUS. BUREAU (Nov. 28, 2011), http://charlotte.bbb.org/article/bbb-warns-clemson-and-virginia-tech-fans-about-towing-in-charlotte-31005. In the same year, Austin, Texas saw a 55

percent increase in the number of towing complaints that the BBB received over a 12-month period. *Complaints Against Towing Companies Rise 55 Percent*, BETTER BUS. BUREAU (July 22, 2011), http://austin.bbb.org/article/complaints-against-towing-companies-rise-55-percent-28481.

Aggressive towing practices have also been reported in other major cities. In a 2011 Member Company Survey conducted by the Property Casualty Insurers Association of America, respondents reported that Chicago, Philadelphia, New York, Atlanta, and Houston are particularly renowned for aggressive towing practices. *See Towing and Storage Wars: PCI Releases Special Report to Help Motorists*, PROP. CAS. INSURERS ASS'N AM. (Aug. 12, 2012), http://www.pciaa.net/LegTrack/web/NAIIPublications.nsf/lookupwebcontent/CD76A90E622061A486257A610063EAC?opendocument.

In 2011, there were over 184,000 inquiries and 2,900 official complaints filed nationwide with the BBB concerning automotive towing practices. *See 2011 Complaint and Inquiry Statistics*, U.S. Statistics Sorted by Industry, BETTER BUS. BUREAU 42 (2011), http://www.bbb.org/us/storage/0/Shared%20Documents/complaintstats/stat2011/US%20-%20Industry%20-%202011.pdf. While complete national data for 2012 regarding automotive towing is not yet available, the BBB reported that by the end of September 2012, it had received more than 4,000 official complaints regarding the behavior of tow truck companies.

Thousands of Consumers File Complaints Against Towing Companies, BBB Reports, BETTER BUS. BUREAU (Sept. 28, 2012), http://austin.bbb.org/article/thousands-of-consumers-file-complaints-against-towing-companies-bbb-reports-37196.

This widespread misbehavior by tow truck operators counsels caution and deliberation when considering whether FAAAA preempts the statutes at issue, and others like them, in this case.

II. THE PURPOSE OF CONGRESS IN PASSING § 14501(c)(1) WAS NOT TO PREEMPT STATE LAW CAUSES OF ACTION ARISING FROM DISPOSITION OF NONCONSENSUALLY TOWED VEHICLES

The common practices of statutory interpretation by this Court demonstrate that § 14501(c)(1) does not preempt any of Respondent's claims. First, by using tools of interpretation specifically applied by this Court to preemption statutes, FAAAA yields a purpose of promoting economically sound practices in the trucking industry, which is antithetical to Petitioner's application of the statute. Second, a plain reading of the text demonstrates both the soundness of the interpretation supporting the Respondent, and the degree to which the text of FAAAA must be manipulated and stretched to support the business activity of the Petitioner.

A. Congress' Purpose in Passing § 14501(c)(1) Was Not to Deny a Remedy For Improper

Disposition of Nonconsensually Towed Vehicles.

Analysis of a statute's preemptive purpose must begin with its text. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484-85 (1996). In addition to the language of the text, an "understanding of the way in which Congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and the law" is equally relevant. *Id.* at 486.

Two important presumptions further guide an analysis of the preemptive effect of statutes. First, "[i]n all preemption cases, and particularly in those in which Congress has 'legislated . . . in a field which the States have traditionally occupied,' we '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.'" *Id.* at 485 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). Second, "'[t]he purpose of Congress is the ultimate touchstone' in every preemption case." *Id.* (quoting *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963)). These presumptions guide the determination of the purpose of Congress in enacting § 14501(c)(1).

Modern federal courts have used these methods and guidelines to arrive at a consistent interpretation of the purpose of § 14501(c)(1). Through the use of an overarching federal statute, Congress sought to "eliminate a tangled web of state and local ordinances that regulated the transportation of property" by motor carriers. *R.*

Mayer of Atlanta, Inc. v. City of Atlanta, 158 F.3d 538, 546 (11th Cir. 1998) (discussing § 14501(c)(2)(A) exception abrogated by *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 449 (2002)). This Court noted that FAAAA was meant to remedy the unreasonable burden on free trade that occurred based on the state's differing regulations. *Ours Garage*, 536 U.S. at 440.

In short, it is clear that the goal of FAAAA was to provide a more uniform environment for trucking companies to promote their economic enterprises. The statute sought to protect industries involved in the movement of property from being subject to various regulations that would only hinder the industry's autonomy in operating its prices, routes, and services.

To expand the meaning of § 14501(c)(1) to include the preemption of statutes which protect citizens from improper disposition of nonconsensual tows seems strained at best. The laws which Mr. Pelkey sought protection under not only fall within the "traditional police powers" of New Hampshire to protect its citizens, but also foster the economic efficiency which § 14501(c)(1) stands to encourage. New Hampshire has provided tow truck enterprises with a legal framework to sell towed vehicles at auction to recoup any outstanding debts incurred. New Hampshire attaches simple conditions to these auctions, which prevent misinformation and allow the rightful owner to receive, at minimum, notice of the vehicle's impending sale.

Petitioner seeks to flip the very essence of § 14501(c)(1) on its head to serve its own purposes. Under the guise of preemption, Petitioner wants to create a situation where it does not have to follow one section of New Hampshire law to enjoy the benefits of another. The two sections of the New Hampshire statute clearly promote different aspects of economic efficiency: Sale of towed cars encourages efficient use of resources, while notice to the owner eliminates information asymmetries within the market. Petitioner seeks to use § 14501(c)(1) to prevent requiring tow truck companies to contact rightful owners before selling the vehicle. Therefore, Petitioner would both perpetuate and profit from inefficiencies within the market for towed cars. This distortion of federal law promotes economic inefficiency, the very opposite of the purpose of § 14501(c)(1).

B. The Plain Language of FAAAA and Related Amendments Do Not Show a Congressional Purpose to Preempt State Law Causes of Action Arising from Towing Abuses.

A plain reading of FAAAA fails to demonstrate any intention of Congress to preempt claims such as the ones advanced by the Respondent. Upon examination of the phrases "relating to"—and "with respect to"—"the transportation of property," a plain reading does not support expanding the meaning of the text to include the interpretation offered by Petitioner.

Traditionally, courts have focused on the expansive nature of the phrase "related to." *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992). The ordinary meaning of "related to" is broad: "[T]o stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with." *Id.* (citing Black's Law Dictionary 1158 (5th ed. 1979)). The Court held that "the words thus express a broad pre-emptive purpose." *Id.*

Nevertheless, the phrase "related to" does have its limits. The phrase "related to" means nothing without considering the rest of the statute. Decisions discussing statutes such as the Airline Deregulation Act ("ADA") and FAAAA focus on the broad scope of "related to" only as it is constricted by the qualifying language of the statute. Indeed, this Court has recognized that § 14501(c)(1) was modeled on previous statutes such as the ADA. *See Rowe v. New*

Hampshire Motor Transport Ass'n, 552 U.S. 364, 390 (2008). In examining that statute, this court noted that the effect of the phrase "related to" on state statutes is limited. This court explained that "[s]ome state actions may affect [airline fares] in too tenuous, remote, or peripheral a manner" to preempt the state laws on the matter. *Id.* (quoting *Morales*, 504 U.S. at 390). It further emphasized the limits of preemption power in *Morales*, 504 U.S. at 390-91, when this Court stated "we note that our decision does not give the airlines *carte blanche* to lie to and deceive consumers * * *." Therefore, this Court has cautioned that an extreme expansion of the implied meaning of a regulatory scheme may not survive judicial review.

Applying such caution to the statute at issue, members of this Court have suggested the preemptive effects of § 14501(c)(1) are limited. Justice Scalia explained that this provision preempts the authority of political subdivisions only with respect to a state's ability "to regulate 'a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder *with respect to the transportation of property*'," and noted that "the italicized language massively limits the scope of preemption to include only laws, regulations, and other provisions that single out for special treatment 'motor carriers of property.'" *Ours Garage*, 536 U.S. at 449 (2002) (Scalia, J., dissenting) (emphasis in original). These additional clauses constrain the scope of the broad phrase "related to." The statute categorizes the phrase "transportation" into two distinct groups relevant to this issue: "equipment of any kind related to the movement of

property" and "services related to that movement * * *." 49 U.S.C. § 13102(23).

In this situation, there is a disconnect between the language of § 14501(c)(1) and Petitioner's actions. The expansive nature of both the phrase "related to" and the statutory definition of "transportation" are nevertheless limited to a concept encapsulated within the very essence of § 14501(c)(1): the movement of property. Petitioners state that the law allows them to do with Mr. Pelkey's car as they see fit—before, during, or after they have performed their job. This interpretation of the statute contradicts its plain reading.

Taking a broad view of "transportation", § 14501(c)(1) is still limited, because regulations on movement must relate to a "price, route, or service." Towing companies engage in a range of different conduct. Certainly not all towing company conduct is related to the act of towing. It is difficult, however, to see how a towing company could classify the deceptive sale of nonconsensually towed cars as a "service." Despite the broad scope of § 14501(c)(1), deceptive sales could not have been a "service" that Congress contemplated.

The relevant New Hampshire statute which respondent uses does not focus on the movement of property, but rather the methods by which a towing company may recover costs. *See* N.H. REV. STAT. ANN. §§ 262, 358-A:2; *Pelkey v. Dan's City Used Cars, Inc.*, 44 A.3d 480, 492-93 (N.H. 2012). In order to be preempted, these methods must be related to a

service provided by Petitioner in their towing capacity. When Petitioner forces the sale of a nonconsensually towed vehicle within the New Hampshire market, it has moved beyond the scope of "transportation" as used in § 14501(c)(1). To the extent petitioner is using any "equipment related to the movement of property," such use ceases at the end of the tow. Petitioner is not performing a "service related to the movement of property" since the movement that involves a towing company is simply towing. The towing performed by the company is the extent of any "service" that is provided. The sale of the car is only to allow the towing company to pay for garageman's liens against the vehicle. In essence, this sale only serves Petitioner's financial interest, at Respondent's expense.

Tow truck companies have a right to go about their business with minimal interference from state government, but this protection is limited to the activities involved in the specific movement of property. In this case, the sale arose after Petitioner had performed its function as a towing company and moved the car. To rule that such behavior falls within the scope of § 14501(c)(1) would distort the effect of the statute to favor deceptive and predatory behavior within the towing industry. It could not have been Congress' intent to create such a system. Therefore, this Court must respect the language of § 14501(c)(1), and require that the Petitioner follow the law of the State of New Hampshire.

III. DEALING WITH ABUSIVE TOWING PRACTICES NECESSITATES LOCAL REGULATION

Incidences of predatory towing show a need for regulation of towing practices. Such regulation is most effective when it originates from the communities where predatory conduct is common. A ruling that such regulations are preempted would frustrate such efforts and the federal government is incapable of relieving this burden.

A. Deregulation Should Not be Broadly Interpreted.

Examining the state of transportation industries since passage of the Interstate Commerce Commission Termination Act ("ICCTA") of 1995 reveals that systematic deregulation has had harmful unintended consequences. Paul Stephen Dempsey, *The Rise and Fall of Interstate Commerce Commission: The Tortuous Path from Regulation to Deregulation of America's Infrastructure*. 95 MARQ. L. REV. 1151, 1187 (2012). For example, former American Airlines CEO Bob Crandall noted "[t]hree decades of deregulation have demonstrated that airlines have special characteristics incompatible with a completely unregulated environment." Crandall further explained that "experience has established that market forces alone cannot and will not produce a satisfactory airline industry, which clearly needs some help to solve its pricing, cost and operating problems." *Id.* at 1187–88.

The power, banking, and financial industries have also suffered from deregulation. The banking and financial industries were not saved through deregulation, but only with large taxpayer funded bailouts following the subprime mortgage crisis. *Id.* at 1188. This Court should not extend deregulation further without clear Congressional language. *See infra* Part II.

B. The Federal Government is Incapable of Properly Addressing Abusive Towing Practices.

Professor Bernard Schwartz asserts that the administrative process is often less efficient than the judicial process it was initially implemented to aid, despite the notion that administrative agencies are often established to dispense "cheap and inexpensive justice by experts." BERNARD SCHWARTZ, ADMINISTRATIVE LAW 26 (2d ed. 1984). The federal government has shifted from regulation to deregulation over the past few decades, depending on public perception of whether regulation succeeded. Dempsey at 1177.

For example, though the Interstate Commerce Commission ("ICC") was considered efficient for many years, ICCTA terminated it after critics attacked its failure to follow statutory mandates. *Id.* at 1171, 1181–82. ICCTA has now left the towing industry in a situation that pre-1995 courts would have found incomprehensible. Dan Casey Stinnett, *The Trouble with Tow Trucks: Federal Preemption of State Law Claims Against Tow Truck Companies*, 8

J. TEX. CONSUMER L. 26, 27, *available at* http://www.jtexconsumerlaw.com/V8N1pdf/V8N1tow.pdf. To preempt state laws, as one court stated, would be to leave the towing industry "free from any regulation by federal, state or local government." *Id.* (quoting *Giddens v. City of Shreveport*, 901 F. Supp. 1170, 1183 (W.D. La. 1995)). However, following Congress' termination of the ICC, courts have frequently struck down numerous state regulations by interpreting ICCTA as a mandate that such state regulations be preempted. *See Harris Cnty. Wrecker Owners for Equal Opportunity v. City of Houston*, 943 F. Supp. 711 (S.D. Tex. 1996) (striking down a city wrecker ordinance despite the city's argument that towing was exempted from federal regulation under 49 U.S.C. §§ 13506(b)(1), (3)). This cannot have been Congress' purpose.

C. State and Local Governments are Best Equipped to Deal with Abusive Towing Practices.

To be truly responsive to local needs and circumstances, States should be given greater freedom to regulate trespass tows. The limited allowances for regulation needlessly raise the preemption question in an already complicated regulatory landscape. A May 2007 study mandated under the Safe Accountable Flexible Efficient Transportation Equality Act: a Legacy for Users ("SAFETEA-LU") and conducted by the U.S. Department of Transportation recommended that federal preemption be removed to allow for safety

regulations that would improve the current system, per the requests of representatives from the towing industry, while also further protecting consumers. John A. Volpe Nat'l Transp. Sys. Ctr. Motor Carrier Safety Div., *Report to Congress on the 'Review of Federal and State Laws Regarding Vehicle Towing'*, at 34, *available at* http://ntl.bts.gov/lib/42000/42800/42819/Predatory_Towing_Final_Report_to_Congress.pdf [hereinafter "Report"].

Indeed, the Towing and Recovery Association of America ("TRAA"), representing the interests of the towing industry, has stated it would prefer no reexamination or refinement of preemption law. Report at 28. Rather, they would prefer that federal law be amended to allow States to regulate trespass tows without reservation, such that federal law would "*remove the ambiguity about Federal preemption* once and for all." *Id.* (emphasis in original). Because towers have abided by "strict State or local laws that have fully regulated private trespass towing for years," granting States such regulatory power would not unduly burden or further confuse towers, who find the "hoopla over [preemption]" more confusing. *Id.*

The study further recommended that, because state practices vary state by state, delegating regulatory power to state legislatures for more focused regulation would be preferable to leaving this issue to Congress. Report at 15, 35. Motorist concerns over nonconsensual towing would also be addressed by delegating power to States. The study notes that with more state regulations in place,

consumers would not find themselves in the "Catch-22 position" whereby State courts, contrary to a plain reading of § 14501(c)(1), would throw out nonconsensual towing cases on preemption grounds, but then deny motorists compensation at the federal level. Report at 35. This Court should not endorse the decisions of the lower courts that would continue this injustice.

Congress' purpose in passing § 14501(c)(1) was not to give towing companies the choice of which state laws to follow and which to disregard. To ensure justice for victims of illegal tows, such dispositions must remain regulated at the state and local level.

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of New Hampshire should be affirmed.

Respectfully submitted,

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