



March 11, 2010

TO THE MEMBERS OF THE UNITED STATES CONGRESS:

The U.S. Chamber of Commerce and the National Association of Manufacturers urge you to reject any effort to modify longstanding federal trucking rules codified in the Federal Aviation Administration Authorization Act (FAAAA) that preempt state and local regulation of interstate trucking.

We understand that the International Brotherhood of Teamsters, the Change to Win organization and others are currently pressing Congress to consider granting local governments the ability to regulate the harbor drayage industry to address environmental and port security matters, and thereby eliminate the federal preemption of state and local regulation of foreign and interstate commerce. While we strongly support efforts to improve air quality and port security in and around America's ports, it is entirely unnecessary to undermine federal preemption of state regulation of interstate commerce in the process. These restrictions are specifically designed to eliminate competition from small independent businesses in favor of companies that the Teamsters believe could be more easily organized. If enacted, these changes could unfairly sideline independent operators who provide valuable support for the nation's supply chain and create a fragmented, local patchwork regulatory structure for foreign and interstate commerce which runs contrary to the intent of the interstate commerce clause in the U.S. Constitution.

This call for diminishing federal preemption is born from an effort by the Port of Los Angeles to regulate interstate trucking services as a part of their plans to improve air quality and port security. In 2007, the Port of Los Angeles established its Clean Truck Program to reduce emissions from the harbor trucks serving southern California marine terminals. In addition to banning the oldest trucks serving the marine terminals and imposing a fee on beneficial cargo owners for every truck move using equipment that fails to meet 2007 U.S. Environmental Protection Agency emissions standards, the Port of Los Angeles Clean Truck Program included a controversial truck concession program that banned any harbor trucking company from using independent owner operator drivers in favor of employee drivers.

In 2008, the American Trucking Association responded by filing suit against the Port of Los Angeles and the Port of Long Beach¹ claiming that the truck concession portion of the Clean Truck Program is preempted by federal law regulating rates, routes, and service under the FAAAA. The ATA requested a preliminary injunction which was sustained in part by both the

¹ The Port of Long Beach adopted a similar Clean Truck Program, including the requirement for drayage operators to sign concession contracts with the port; however, the Long Beach program did not ban independent owner operators from serving that port.

U.S. District Court for the Central District of California and the U.S. Court of Appeals for the 9th Circuit. Those courts determined that the ports' concession plans regulate interstate trucking "prices, routes, and services" and thus are unconstitutional because they are preempted by the FAAAA. The Ninth Circuit further found that the ban on independent drivers, among other concession rules, did not fall within an exception to preemption based on "motor vehicle safety."

Improving air quality at America's ports is an important objective that should be supported at all levels of government. The Clean Truck Program is by all accounts a success—*without* the concession rules—having already resulted in the removal of roughly 8,000 dirty trucks at the Ports of Los Angeles and Long Beach. As both ports acknowledge these programs have reduced emissions by 80%, a full two years ahead of schedule.

The business community depends on an efficient, interconnected transportation network that moves commerce fluidly from U.S. marine ports to the network of surface transportation systems of roads and rails. As the Court of Appeals recognized, federal preemption of interstate trucking services was designed to prevent such a patchwork of burdensome state and local trucking rules as would be created by the Port of Los Angeles concession plan. The Chamber and the National Association of Manufacturers urges you to reject such efforts which would undermine the current efficient, competitive, and safe freight transportation system.

Sincerely,

National Association of Manufacturers
U.S. Chamber of Commerce