UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA TRUCKING ASSOCIATION, et al., and OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION,

Plaintiffs,

v.

ATTORNEY GENERAL ROB BONTA, et al., and INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Defendants.

Case No.: 18cv2458-BEN-BLM

DECISION

Plaintiffs' renewed motions for a preliminary injunction were combined with a trial on the merits pursuant to Federal Rule of Civil Procedure 65(a)(2). The motions for a preliminary injunction are denied and judgment on all claims is entered in favor of Defendants. These are the findings of facts and conclusions of law.

I. BACKGROUND

Plaintiffs California Trucking Association ("CTA"), Ravinder Singh, and Thomas Odom previously sought industry-wide relief from the operation of a new California state law: Assembly Bill 5 (commonly known as AB5). Purportedly, AB5 was enacted to address a widespread problem of the misclassification of employee workers, including freight hauling drivers, classifying them instead as independent contractors. *Am. Soc'y of Journalists & Authors, Inc. v. Bonta*, 15 F.4th 954, 957 (9th Cir. 2021) ("To confront the misclassification of employees as independent contractors, California passed Assembly Bill (AB) 5, then AB 2257, which codified a more expansive test for determining

workers' statuses, albeit with certain occupational exemptions."). In effect, the operation of AB5 deems most, if not all, freight hauling drivers driving in or into California as employees of a freight hauling business. This occurs by application of a test known as the "ABC test." AB5 was superseded by AB-2257 on January 1, 2021, without significant changes. *See* Cal. Labor Code § 2775. AB5 as superseded by AB-2257 is referred to as AB5 throughout for ease of understanding.

A preliminary injunction was entered based upon the preliminary conclusion that AB5 was preempted by the Federal Aviation Administration Authorization Act ("FAAAA"). Title 49 U.S.C. § 14501(c)(1). Because it appeared that the preemption claim was sufficient to grant relief, the Court did not reach the alternate claim concerning the dormant Commerce Clause doctrine. Defendants appealed. The Court of Appeals concluded that AB5 was not preempted by the FAAAA and reversed. *See California Trucking Assoc. v. Bonta*, 996 F.3d 644 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 2903 (2022). Following remand, Plaintiffs amended their Complaint, and Owner-Operator Independent Drivers Association ("OOIDA") was granted leave to intervene as a Plaintiff. Renewed motions for a preliminary injunction were filed. Most of the salient facts were set out in this Court's prior Order and are re-adopted here.

The CTA Plaintiffs put forth four primary claims for relief in their Third Amended Complaint (filed May 19, 2023). Dkt. 168. First, they re-allege express FAAAA preemption of AB5. Second, they allege implied preemption of AB5. Third, they allege AB5 runs afoul of the dormant Commerce Clause. Fourth, they allege AB5 violates the Equal Protection Clause by creating irrational or animus-based classifications.[1]

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[1] Plaintiffs waived their Third claim for relief that the Supremacy Clause, together with the express preemption provision of 49 U.S.C. § 31141, prohibits states from enforcing a law or regulation on commercial motor vehicle safety that the Secretary of Transportation has determined to be preempted. *See* Pltfs' Mem. of Cont. of Facts and Law, Dkt. 189, at 33 ("At trial, Plaintiffs do not intend to seek any relief based upon their Third Claim for Relief in the Third Amended Complaint, ECF No. 168, ¶¶ 87-94.").

OOIDA's Amended Complaint (filed May 19, 2023), *see* Dkt. 166, alleges four similar claims for relief (albeit in a different order) and are considered together with CTA's claims. All Plaintiffs seek declaratory and injunctive relief on all claims.

CTA is an association of licensed motor-carrier companies that manage, coordinate, and schedule the movement of property throughout California. Many of CTA's motor-carrier members contract with owner-operators as independent contractors. Plaintiff Ravinder Singh is one example. He owns and operates his own truck, and he contracts as an independent contractor with different motor carriers and brokers in California to perform various trucking services. Plaintiff Thomas Odom also owns and operates his own truck. He contracts as an independent contractor with a national motor carrier to haul property within California and between California and Texas. OOIDA is an association of 150,000 members located throughout the country. These members own and operate more than 200,000 heavy-duty trucks. Many members own and drive their own trucks and work as independent contractors. Among their truck driving members are 6,103 in California, with 7,050 more in Arizona, Nevada, Oregon and Washington.

For decades, the trucking industry has used an owner-operator model to provide for the transportation of property in interstate commerce. That model generally involves a licensed motor carrier contracting with an independent contractor driver to transport the carrier-customer's property. Individual owner-operators commonly use the independent contractor business model in California and across the country. They typically buy or lease their own trucks and may, in turn, lease both their trucks and contract for their driving services to freight hauling businesses.

Whether certain laws and regulations in the California Labor Code apply to truck drivers, generally depends on their status as employees or independent contractors. *S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations*, 48 Cal. 3d 341, 350 (1989). In the past, California courts have used a test based on the *Borello* decision to determine whether workers are correctly classified as employees or independent contractors. *See id.* at 341. The *Borello* standard considers the "right to control work," as well as many other

factors.[2] *Id.* at 355. In April of 2018, the California Supreme Court replaced the *Borello* classification test for California Wage Order No. 9 with the "ABC test" or the "*Dynamex* test." *Dynamex Operations West v. Superior Court*, 4 Cal. 5th 903 (2018). California's Assembly Bill 5 codified the ABC test adopted in *Dynamex* and expanded its reach to contexts beyond Wage Order No. 9, to include workers' compensation, unemployment insurance, and disability insurance.

As applied to the motor carrier context, AB5 provides a mandatory test for determining whether a person driving/hauling freight for another contracting person or entity is an independent contractor or an employee for all purposes under the California Labor Code, the Industrial Welfare Commission wage orders, and the Unemployment Insurance Code. Under AB5's new ABC test, an owner-operator is presumed to be an employee *unless* the motor carrier can establish each of three requirements:

> There is a rebuttable presumption . . . that a worker performing services . . . is an employee rather than an independent contractor. Proof of independent contractor status includes satisfactory proof of these factors:
>
> (a) That the individual has the right to control and discretion as to the manner of performance of the contract for services in that the result of the work and not the means by which it is accomplished is the primary factor bargained for.
>
> (b) That the individual is customarily engaged in an independently established business.
>
> (c) That the individual's independent contractor status is bona fide and not a subterfuge to avoid employee status. A bona fide independent contractor status is further evidenced by the presence of cumulative factors such as substantial investment other than personal services in the business, holding

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[2] These factors include: (a) whether the worker is engaged in a distinct occupation or business; (b) the amount of supervision required; (c) the skill required; (d) whether the worker supplies the tools required; (e) the length of time for which services are to be performed; (f) the method of payment; (g) whether the work is part of the regular business of the principal; and (h) whether the parties believe they are creating an employer-employee relationship.

> out to be in business for oneself, bargaining for a contract to complete a specific project for compensation by project rather than by time, control over the time and place the work is performed, supplying the tools or instrumentalities used in the work other than tools and instrumentalities normally and customarily provided by employees, hiring employees, performing work that is not ordinarily in the course of the principal's work, performing work that requires a particular skill, holding a license pursuant to the Business and Professions Code, the intent by the parties that the work relationship is of an independent contractor status, or that the relationship is not severable or terminable at will by the principal but gives rise to an action for breach of contract.

See Cal. Labor Code §§ 2750.5 and 2775. AB5 includes an exception that was not part of the *Dynamex* test, which is an exception for business-to-business contracting relationships, also known as the B2B exemption. *See* Cal. Labor Code § 2776 ("Section 2775 and the holding in Dynamex do not apply to a bona fide business-to-business contracting relationship, as defined below, under the following conditions . . . .").

II. DISCUSSION

A. First Claim for Relief: Express Preemption

Within the FAAAA, Congress included an express preemption provision providing that states "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). The preemption provision is a broad one. "The phrase 'related to' embraces state laws 'having a connection with or reference to' carrier 'rates, routes, or services,' whether directly or indirectly." *Cal. Trucking Ass'n v. Su*, 903 F.3d 953, 960 (9th Cir. 2018). As the Ninth Circuit has explained, "[t]here can be no doubt that when Congress adopted the FAAAA, it intended to *broadly* preempt state laws that were 'related to a price, route or service' of a motor carrier." *Am. Trucking Ass'n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1053 (9th Cir. 2009) (emphasis added); *see also Schwann v. FedEx Ground Pkg. System, Inc.*, 813 F.3d

429, 436 (1st Cir. 2016) (Congress had "dual objectives" for adopting a "broad reach" by copying the language of the Airline Deregulation Act of 1978 into the FAAAA's preemption clause). However, "Congress did not intend to preempt laws that implement California's traditional labor protection powers, and which affect carriers' rates, routes, or services in only *tenuous* ways." *Su*, 903 F.3d at 960-61 (emphasis added) (citing *Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 647-50 (9th Cir. 2014) (meal and rest break laws) and *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1189 (9th Cir. 1998) (prevailing wage law)); *see also Su*, 903 F.3d at 960 ("[T]he FAAAA does not preempt state laws that affect a carrier's prices, routes, or services in only a tenuous, remote or peripheral manner with no significant impact on Congress's deregulatory objectives.") (internal quotation marks omitted). FAAAA preemption is broad but not so broad that the sky is the limit: states retain the ability to execute their police power with laws that do not significantly impact rates, routes, or services. *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261 (2013).

That the FAAAA does not explicitly preempt AB5 was resolved earlier in this case. *California Trucking Assoc.* held that,

> Because AB-5 is a generally applicable law that impacts a motor carrier's business at the point where the motor carrier interacts with its workers, and the law affects motor carriers' relationship with their workers in a manner analogous to the worker classification laws we have previously upheld in *Su*, AB-5 is not significantly related to rates, routes, or services. Therefore, we conclude that the F4A does not preempt AB-5 as applied to motor carriers.

996 F.3d at 659. And *California Trucking Assoc.* reiterated its conclusion explaining,

> Because AB-5 is a generally applicable labor law that impacts the relationship between a motor carrier and its workforce, and does not bind, compel, or otherwise freeze into place a particular price, route, or service of a motor carrier at the level of its customers, it is not preempted by the F4A.

Id. at 664. While Plaintiffs continue to advance arguments that the FAAAA explicitly preempts AB5 and may preserve such arguments for appeal, the decision regarding preemption in *California Trucking Assoc.* is binding on this Court. *See Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. U.S. Dep't of Agr.*, 499 F.3d 1108, 1114 (9th Cir. 2007) ("[T]he district court should abide by 'the general rule' that our decisions at the preliminary injunction phase do not constitute the law of the case. Any of our conclusions on pure issues of law, however, are binding.") (citations omitted). The claim of FAAAA express preemption fails as a matter of law.

B. Implied Preemption

Plaintiffs make a related argument that the FAAAA implicitly preempts AB5. The FAAAA contains an express preemption provision. Where Congress sets out in express terms, as it did in the FAAAA, the type of state laws that are to be preempted, is there any room left for preempting laws on similar subjects *not* expressly addressed by Congress? Certainly, an inference can be drawn that an express preemption clause forecloses implied preemption. Yet, implied preemption might have a place.

"At best, *Cipollone v. Liggett Group, Inc*., 505 U.S. 504 (1992) supports an inference that an express pre-emption clause forecloses implied pre-emption; it does not establish a rule." *Freightliner Corp. v. Myrick*, 514 U.S. 280, 289 (1995). After all, "[i]mplied conflict preemption can exist even when Congress has chosen to include an express preemption clause in a statute." *Nathan Kimmel, Inc. v. DowElanco*, 275 F.3d 1199, 1204 (9th Cir. 2002) (citing *Freightliner*, 514 U.S. at 287). Although the field of implied preemption in such cases is very narrow, there are two trails: (1) impossibility; and (2) obstruction. "We have found implied conflict pre-emption where it is 'impossible for a private party to comply with both state and federal requirements,' or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Freightliner*, 514 U.S. at 287 (citations omitted).

1. Impossibility

AB5's employee classification scheme does not directly conflict with the FAAAA. First, it is not impossible for truck drivers to comply with both federal and state law because there is simply no federal standard of classification requiring compliance. The FAAAA does not dictate that truck drivers must be classified as independent contractors or that drivers are not subject to state wage and hour laws. Among the fifty states there are various methods used for classifying workers. Federal Truth-in-Leasing regulations contemplate some truck drivers will be independent contractors but do not prohibit drivers working as employees. *See* II(D)(2)(b), *infra*. In the end, California's scheme does not falter on the impossibility-of-compliance trail of implied preemption.

2. Obstacle

Second, it is not accurate to say that California's employee classification scheme when applied to truck drivers stands as an obstacle to "the accomplishment and execution of the full purposes and objectives of Congress." While the jury is out as to whether AB5 substantially affects carrier prices, routes, or services, it does not attempt to do so directly. The Supreme Court "ha[s] cautioned that § 14501(c)(1) [of the FAAAA] does not preempt state laws affecting carrier prices, routes, and services 'in only a tenuous, remote, or peripheral . . . manner.'" *Dan's City Used Cars*, 569 U.S. at 261 (citations omitted). Here, the evidence suggests AB5's effect is peripheral. If the effect of AB5 is peripheral, then the second trail of implied preemption is closed off.

3. Patchwork Quilt

Lastly, Plaintiffs' implied preemption argument is unavailing because it proceeds down a third trail with a dead end. Plaintiffs say that AB5 frustrates Congress' aim to avoid a patchwork quilt of national regulations. But the particular regulations about which Congress is concerned are those addressing carrier prices, routes, and services. Congress does not appear to be concerned with a patchwork quilt of truck driver classifications for purposes of wage and hour protection. The Plaintiff drivers' claims here "are far removed from Congress' driving concern." *Dan's City Used Cars*, 569 U.S. at 263. In the end, after

considering the three avenues of implied preemption, the Court concludes Plaintiffs' claim of FAAAA implied preemption remains unproven and unconvincing.

C. Second Claim for Relief: Dormant Commerce Clause

Next, Plaintiffs argue that AB5 runs afoul of Article 1, § 8, clause 3 of the Constitution, known as the dormant Commerce Clause. Article I, § 8, clause 3 of the Constitution, gives Congress the power "[t]o regulate commerce . . . among the several states." This affirmative grant of power to Congress includes a negative implication, which may restrict the ability of states to regulate and interfere with interstate commerce. *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449, 2459 (2019). That restriction upon the states prohibits economic protectionism. "[R]egulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors" are impermissible. *Fulton Corp. v. Faulkner*, 516 U.S. 325, 330 (1996) ("This reading effectuates the Framers' purpose to 'prevent a State from retreating into economic isolation or jeopardizing the welfare of the Nation as a whole, as it would do if it were free to place burdens on the flow of commerce across its borders that commerce wholly within those borders would not bear.'"). One example is the case of *Granholm v. Heald*, 544 U.S. 460, 465-66 (2005), which invalidated state laws preventing the sale of wine from out-of-state wineries to consumers in Michigan and New York. "[T]he object and effect of the laws are the same: to allow in-state wineries to sell wine directly to consumers in that State but to prohibit out-of-state wineries from doing so, or, at the least, to make direct sales impractical from an economic standpoint."[3] This antidiscrimination principle lies at the core of the dormant Commerce Clause cases.

Recently, the Supreme Court decided *Nat'l Pork Producers Council v. Ross*, 143 S. Ct. 1142 (2023). It reinforces the notion that the antidiscrimination principle continues to occupy the core of the Supreme Court's dormant Commerce Clause

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[3] *See also Dean Milk Co. v. Madison*, 340 U.S. 349 (1950).

concerns. *Id.* at 1153 ("Today, this antidiscrimination principle lies at the 'very core' of our dormant Commerce Clause jurisprudence.") (citation omitted). The antidiscrimination principle prohibits state laws that are driven by economic protectionism, *i.e.*, "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *Id.*

Plaintiffs here do not try to make the case that AB5 was designed to benefit in-state freight drivers by burdening out-of-state freight drivers. Plaintiffs do not try to make the case that classifying independent contractor drivers as employees in California is designed to benefit those in-state drivers by burdening out-of-state independent contractor drivers. Rather, Plaintiffs object to the employee classification approach as burdening independent drivers everywhere. Yet, even Plaintiffs acknowledge that California has no interest in applying its labor laws to out-of-state workers and gains no benefit from classifying those workers. *See* OOIDA's Oppo. to Defs' Mem., Dkt. 196 at 10 ("California enjoys virtually no benefits from applying AB-5 to interstate truckers who are not based in California . . . ."). In other words, Plaintiffs are not contending that AB5 was designed to discriminate in favor of in-state workers and against out-of-state workers. While it may have other undesirable effects in Plaintiffs' view, AB5 is not an act of economic protectionism by legislative design. Thus, Plaintiffs' claim does not rest on the antidiscrimination principle.

Instead, it is the *effect* of AB5 that offends the dormant Commerce Clause, say the Plaintiffs. They argue that AB5's burdens on interstate commerce outweigh the local benefits, relying on *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), and its progeny. The same argument was made by plaintiffs in *Nat'l Pork*. There, the claim relied on *Pike* (rather than the antidiscrimination principle) arguing that a California ballot proposition about conditions for pigs on farms burdened interstate commerce and the burden outweighed the local California benefit. *Nat'l Pork*, 143 S. Ct. at 1157. The Supreme Court was unmoved. *Id.* ("We see problems with this theory too."). While a few cases

have invalidated state laws that are nondiscriminatory based on *Pike*, today's claim against AB5 is far from *Pike*'s heartland.

The Supreme Court reminds lower courts that the dormant Commerce Clause is not "a roving license for federal courts to decide what activities are appropriate for state and local government to undertake." *Id*. at 1159 (quoting *United Haulers*, 550 U.S. at 343). More to the point, the Supreme Court reminds lower courts that judges are not institutionally well-suited to draw reliable conclusions for applying the *Pike* test. *Id*. And the Supreme Court reminds all of us that in a functioning democracy policy choices usually belong to the elected representatives of a state. *Id*. at 1160. "Judges cannot displace the cost-benefit analyses embodied in democratically adopted legislation guided by nothing more than their own faith" in economics. *Id.* AB5 is democratically adopted legislation addressing the undesirable situation of worker-drivers in California who should be classified as employees being misclassified against their will or without their understanding as independent contractors. AB5 does not apply to out-of-state worker-drivers while they work and drive outside of California. So, AB5 does not run afoul of the extraterritoriality doctrine forbidding laws that control commerce outside the state. *Id*. at 1154. While AB5 may apply to the classification of worker-drivers who deliver freight into California, the burden on businesses using worker-drivers is similar for both in-state and out-of-state businesses. The state benefit of potentially overclassifying all independent contractor worker-drivers as employees may be debatable, maybe even illusory, but "the dormant Commerce Clause does not protect a 'particular structure or method of operation.'" *Id*. at 1162. That goes for pork production and for employee labor law classifications.

Undaunted, Plaintiffs highlight the new burdens on out-of-state freight hauling businesses. They say that these businesses will have to reclassify their contracted drivers as employees to continue delivering freight into California. Perhaps so. But such burdens from AB5 are also placed on wholly in-state freight hauling businesses and

reveal no discriminatory effect, much less a large enough unwelcome commercial effect to warrant *Pike* relief.

Defendants argue that the burdens on out-of-state businesses are not that heavy and that the in-state benefits are substantial. Defendants minimize the burdens on interstate commerce as "incidental," not significant, and far outweighed by the benefits of AB5. Some businesses would not describe the burdens of AB5 in such mild terms. For example, RDS is a freight hauling company operating in California, Nevada, and Arizona. When RDS tried to recruit its 85 independent contractor drivers to become employees, only two accepted. *See* Declaration of Greg P. Stefflre, Dkt. 172-5, at ¶ 12. The cost of recruiting employees to drive and lost business from conversion efforts resulted in a $4,000,000 loss of revenue for RDS. *Id*. at ¶ 13. There are, no doubt, other firms like RDS shouldering economic burdens that seem greater than what the Defendants call "incidental." Nevertheless, the Ninth Circuit has said laws that increase compliance costs, without more, do not qualify as a significant burden on interstate commerce. *Nat'l Pork Producers Council v. Ross*, 6 F.4th 1021, 1032 (9th Cir. 2021), *aff'd*, 143 S. Ct. 1142 (2023); *cf. Sierra Nevada Transportation, Inc. v. Nevada Transportation Authority*, No. 22-15823, 2023, WL 6871575 *3 (9th Cir. Oct. 18, 2023) ("But 'the mere fact that a firm engaged in interstate commerce will face increased costs as a result of complying with state regulations does not, on its own, suffice to establish a substantial burden on interstate commerce.'") (quoting *Ross*, 6 F.4th at 1032). Defendants contend, on the other side of the equation, that the state is enjoying manifold noneconomic benefits from AB5. "AB 5 serves the important interest of ensuring that employees receive benefits guaranteed by law, including minimum wage, unemployment insurance, workers' compensation, sick leave, and others and to level the playing field for compliant employers." *See* State Defs' Oppo., Dkt. 195 at 14 ("AB 5's benefits far outweigh any burden AB 5 may impose.").

The Supreme Court issued a reminder that federal judges are not well-equipped to assess and weigh these kinds of economic burdens with non-economic benefits. "This

Court has also recognized that judges often are 'not institutionally suited to draw reliable conclusions of the kind that would be necessary to satisfy the *Pike* test.'" *Nat'l Pork*, 143 S. Ct. at 1159 (quoting *Davis*, 553 U.S. at 535). "How is a court supposed to compare or weigh economic costs (to some) against noneconomic benefits (to others)?" *Id*. "Really, the task is like being asked to decide 'whether a particular line is longer than a particular rock is heavy.'" *Id.* at 1160 (quoting *Bendix Autolite Corp. v. Midwesco Enterprises, Inc.*, 486 U.S. 888, 897 (1988) (Scalia, J., concurring)). It is "a task no court is equipped to undertake." *Id*.

The burdens and the benefits of AB5 are incommensurable. California's interest in protecting in-state drivers from being misclassified as independent contractors and losing statutory entitlements under state labor laws cannot be weighed on a scale opposite the additional dollars spent on compliance by freight hauling businesses. As one Justice concluded in *Nat'l Pork*, "[n]one of our *Pike* precedents require us to attempt such a feat." *Id*. at 1167 (Barrett, J. concurring in part). Instead, if AB5 really does threaten to disrupt the interstate trucking industry, the Supreme Court teaches that Congress enjoys the power and the position to enact laws that explicitly preempt conflicting state laws like AB5. *Id*. at 1160-61. It has already come close to doing so with the FAAAA.

In the end, AB5 does not offend the core constitutional principle of prohibiting purposeful discrimination against interstate commerce. And while AB5 has economic effects, the effects do not confirm purposeful discrimination against interstate commerce in the design of AB5. Although courts are not well-equipped to do such weighing, when it comes to weighing the burdens of AB5 against the salutary effects under *Pike*, it does not appear that the pure economic burdens on out-of-state worker-drivers and freight hauling firms substantially outweigh the in-state benefits of correctly classifying worker-drivers as employees. *Nat'l Pork* reminds courts that "extreme caution" should be used when considering dormant Commerce Clause claims. *Id*. at 1165. The Supreme Court teaches, "[p]reventing state officials from enforcing a democratically adopted state law in the name of the dormant Commerce Clause is a matter of 'extreme delicacy,' something

courts should do only 'where the infraction is clear.'" *Id*. Today, the asserted AB5 infraction is not clear, therefore, Plaintiffs' request to enjoin AB5 is unavailing.

D. Fourth and Fifth Claims for Relief: Equal Protection

1. Animus

Lastly, Plaintiffs try to make the case that AB5 violates the Equal Protection Clauses of the U.S. Constitution and the California constitution.[4] They contend that the employee classifications targeting motor carriers and owner-drivers were motivated by animus. The animus was expressed, in their view, by the legislative sponsor of AB5, Assemblywoman Lorena Gonzalez. Plaintiffs highlight her statement on the Assembly Floor on September 11, 2019, that one purpose of AB5 is to "get rid of an outdated broker model that allows companies to basically make money and set rates for people that they call independent contractors." *See* Pltfs' Mem. of Cont. of Facts and Law, Dkt. 189, at 26. Plaintiffs also underscore a tweet by Gonzalez on November 21, 2019, about how AB5 would permit a trucker to "work as an independent contractor for a construction firm" while requiring an owner-operator to "work as an employee for a trucking company." *Id*. at 26-27. That refers to an exemption for construction industry drivers in AB5 which is set to expire at the end of this year.

Yet, the statements of a single legislator do not necessarily represent the reasons motivating other legislators who vote to pass a bill into law. That was the case in New Hampshire. The Supreme Court cautioned about relying on the statement of a single legislator in a case alleging legislative animus. "Reliance on such isolated fragments of legislative history in divining the intent of Congress is an exercise fraught with hazards, and 'a step to be taken cautiously.'" *New England Power Co. v. New Hampshire*, 455 U.S. 331, 341–42 (1982) ("To support its argument to the contrary, New Hampshire relies on a single statement made on the floor of the House of Representatives during the

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[4] Consideration of claims of equal protection violations under the federal and California constitutions proceed along the same lines.

debates preceding enactment of Part II.") (citations omitted). The statements of Assemblywoman Gonzalez alone are insufficient to prove legislative animus for an Equal Protection violation. *Tingley v. Ferguson*, 47 F.4th 1055, 1087 (9th Cir. 2022), *cert. denied*, 144 S. Ct. 33 (2023) ("Stray remarks of individual legislators are among the weakest evidence of legislative intent. The Court has 'long disfavored arguments based on alleged legislative motives' because such inquiries are a 'hazardous matter.' The Court has 'been reluctant to attribute those motives to the legislative body as a whole' because 'what motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it.'") (citations omitted). The Gonzalez statements identified by Plaintiffs are open to interpretation and do not purport to declare the intention of the entire Assembly.

Plaintiffs argue that this case is like *Olson v. California*, 62 F.4th 1206 (9th Cir. 2023). *Olson* determined that AB5 violated the Equal Protection Clause based on statements by four legislators reflecting animus in the process of enacting AB5. The *Olson* opinion, however, has been vacated. *See Olson v. California*, No. 21-55757, 88 F.4th 781 (Mem.) (9th Cir. Dec. 18, 2023) (vacating and rehearing en banc); Joint Notice of Supp. Auth., Dkt. 205.

Without the benefit of *Olson*, Plaintiffs fall back on *Merrifield v. Lockyer*, 547 F.3d 978 (9th Cir. 2008) to argue their Equal Protection claim. *Merrifield* concerned pest controller chemical licensing for non-chemical-using pest controllers and addressed an extreme case of a statute that lacked rationality. *Merrifield* correctly teaches that rational basis review applies in such cases and that a plaintiff's claim will be rejected where "'there is any reasonably conceivable state of facts that could provide a rational basis' for the challenged law." *Id*. at 989 (quoting *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993)). Even *Merrifield* agreed that "[t]he government is not required to substantiate its reasoning with facts. 'In an equal protection case of this type those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true

by the governmental decisionmaker.'" *Id*. (quoting *Vance v. Bradley*, 440 U.S. 93, 111 (1979)). *Merrifield* continued "'States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude.' Indeed, we must remember that 'the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines.'" *Id*. (quoting *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976)). In essence, *Merrifield* stands for the proposition that an inconceivably irrational law is prohibited by the Equal Protection Clause. Thus, with *Olson* vacated, Plaintiffs assert that AB5 violates the Equal Protection Clause because the law is irrational.

2. Rational Basis

a. Construction Industry Exemption

It has been reported that there are 100 exemptions built into AB5. Plaintiffs focus on two exemptions to demonstrate the law is irrational. One is the exemption for truck drivers in the construction industry. This exemption expires at the end of 2024. The other exemption is the business-to-business exemption (known as "B2B"). *See* Cal. Labor Code § 2776. Plaintiffs argue that neither exemption is rational.

For an equal protection inquiry on AB5, a court asks only whether the statute's occupational classifications are rationally-related to a legitimate governmental interest. *Am. Soc'y of Journalists & Authors*,15 F.4th at 964 (reviewing rational basis for AB5's occupational classifications). This is not a rigorous standard for a law to meet. "This is a fairly forgiving standard, given the wide latitude afforded to states in managing their economies." *Id*. (citing *Dukes*, 427 U.S. at 303). Economic classifications are upheld "so long as 'there is any reasonably conceivable state of facts that could provide a rational basis.'" *Id*. (quoting *FCC v. Beach Comm., Inc.*, 508 U.S. 307, 313, (1993)). Put differently, in order for Plaintiffs to prevail on their Equal Protection Clause claim, they must shoulder the burden to "negate every conceivable basis which might have supported

the distinctions drawn." *Id*. (citations omitted). Plaintiffs' arguments in this regard are not fully convincing.

Concerning the construction industry exemption, the reasons set forth by the State for the exemption are not irrational. To the extent they appear to treat the same groups of worker-drivers differently for the present time, even *Merrifield* acknowledges that a state may implement its legislative solution in stages. 547 F.3d at 989 ("The Supreme Court has stated that 'legislatures may implement their program step by step, in economic areas, adopting regulations that only partially ameliorate a perceived evil and deferring complete elimination of the evil to future regulations.'") (citations omitted). Here, the State has put forward a rationale for delaying implementation of AB5 for construction industry drivers working as independent contractors. *See* State Defs' Mem. of Cont. of Facts and Law, Dkt.190, at 34-36; Declaration of Cesar Borjas in Supp. of Intervenor-Def, Dkt. 186-1, at ¶¶ 4-5 (construction industry driving needs and equipment are different than typical freight driving). The reasons for the temporary construction industry exemption are not irrational and, in any event, the issue will soon be moot.

b. B2B Exemption

Plaintiffs also point to the B2B exemption which provides that AB5's ABC test does not apply to bona fide business-to-business contracting relationships. Under the B2B exemption, a driver-worker need not be classified as an employee if he or she contracts as a sole proprietor or a business entity. *Bowerman v. Field Asset Servs., Inc.*, 60 F.4th 459, 478 (9th Cir. 2023) ("California Labor Code § 2776 recently enacted a retroactive business-to-business exception to the ABC test. Under that exception, 'the holding in *Dynamex* does not apply to a bona fide business-to-business contracting relationship if an individual acting as a sole proprietor, or a business entity formed as a partnership, limited liability company, limited liability partnership, or corporation (business service provider) contracts to provide services to another such business.' Instead, 'the determination of employee or independent contractor status of the business services provider shall be governed by *Borello*, if the contracting business demonstrates

that each of twelve criteria is satisfied.'"). A truck owner-operator may contract with another business to provide freight hauling services without being classified as an employee. *Id*. at 478; State Defs' Mem. of Cont. of Facts and Law, Dkt.190, at 18-20 (chart). Plaintiffs agree but assert that while intrastate worker-drivers can qualify for the B2B exemption, interstate worker-drivers cannot satisfy the B2B requirements. Plaintiffs say that is because interstate worker-drivers are bound by federal Truth-in-Leasing regulations. *See* Intervenor-Pltf OOIDA's Mem. of Cont. of Facts and Law, Dkt. 193, at 6-8 (citing 49 C.F.R. § 376.12(c)(1)). Consequently, Plaintiffs argue that the B2B exemption is irrational and thus denies them equal protection.

It is not entirely clear how federal Truth-in-Leasing rules directly conflict with the B2B exemption. In the freight trucking industry, many drivers own their heavy-duty trucks. These owner-operators may decide to lease their trucks to freight carrier companies. The owner-operator may at the same time agree to provide driving services to the freight carrier company by driving their (now leased to the carrier) truck. In 1979, the ICC promulgated the Truth-in-Leasing regulations. Title 49 C.F.R. §§ 376.1 *et seq*. "The main purpose of the Truth-in-Leasing regulations is to ensure truth-in-leasing by fostering disclosure—meaning a full disclosure between the carrier and the owner-operator of the elements, obligations, and benefits of leasing contracts . . . in order to eliminate or reduce opportunities for skimming and other illegal or inequitable practices by motor carriers and to promote the stability and economic welfare of the independent trucker segment of the motor carrier industry." *Construction and Application of Truth-in-Leasing Regulations*, 74 A.L.R. Fed. 2d 521 (2013); *see also id.* ("The regulatory provisions also serve the goal of preventing motor carriers from taking advantage of the owner-operators' weak bargaining position and allow the owner-operators to better assess their rights and responsibilities under the lease. The method Congress chose to achieve its stated purpose was to require that all leases between motor carriers and owner-operators be in writing, that certain terms be included in every lease between carriers and owner-operators, and that motor carriers return escrow deposits within 45 days after

termination of the leasing arrangement."). At their core, the Truth-in-Leasing rules are full disclosure requirements. The rules do not, however, dictate whether owner/drivers drive as employees or as independent contractors.

Nevertheless, Plaintiffs point to 49 C.F.R. § 376.12(c)(1) from the Truth-in-Leasing regulations as the obstacle to using AB5's B2B exemption. Section 376.12(c)(1) states, "[t]he lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease." However, three subsections later, § 376.12(c)(4) also states, "*[n]othing in the provisions required by paragraph (c)(1) of this section is intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the authorized carrier lessee.*" (emphasis added). Plaintiffs do not address the effect of subsection (c)(4), but it is clear that § 376.12(c) does not prevent an owner-operator from acting in either capacity.

At best, Plaintiffs' contention seems to be an argument that if a motor carrier must exercise exclusive possession and control of a leased truck, then *by implication*, it must also exercise exclusive control over the owner-operator who may drive the truck. *See* Intervenor-Pltf OOIDA's Mem. of Cont. of Facts and Law, Dkt. 193, at 10. For this proposition, Plaintiffs cite only ¶ 50 of the declaration of Todd Spencer, President of the Owner-Operator Independent Drivers Association, Inc. Dkt. 193-1. But Spencer's declaration simply does not explain how 49 C.F.R. § 376.12(c)(1) erects an obstacle to using the B2B exemption. Whatever the effect of the federal Truth-in-Leasing regulations are on the ability of interstate owner-operators to take advantage of the B2B exemption (when hauling freight into or inside of California), it is not at all clear that AB5 treats interstate owner-operators in an irrational manner. It is too far of a drive to go from saying that federal leasing disclosure regulations reveal that California's B2B

exemption is irrational, and because the B2B exemption as applicable to out-of-state drivers is irrational, AB5 violates the Equal Protection Clause and should be enjoined.

E. Evidentiary Objections

Both parties assert evidentiary objections to their supporting declarations. Plaintiff OOIDA filed 65 individual evidentiary objections. *See* Dkt. 201. State Defendants filed 87 separate evidentiary objections. *See* Dkt. 200. Intervenor-Defendant filed 25 pages of unnumbered evidentiary objections. *See* Dkt. 199. The objections are primarily based on FRE 401 and 403, and 701 and 702. Concerns over the admissibility of evidence are heightened in jury trials. Evidence rules protect juries from time-wasting irrelevant evidence and misleading expert evidence. Rules of evidence guard against witnesses offering to tell jurors what the law is, and reserve that task for the judge alone. These concerns fade in the context of a bench trial.[5] With this in mind, the evidentiary objections are overruled.

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[5] *See, e.g.*, *Kassel v. United States*, 319 Fed. Appx. 558, 560-61 (9th Cir. Mar. 12, 2009) ("His testimony in this regard was as an expert witness, rather than a percipient witness, and the testimony should have been excluded. Fed. R. Evid. 701, 702. But even though the testimony should have been excluded, its admission was harmless as there was no jury which could have been misled."); *E.E.O.C. v. Farmer Bros. Co.*, 31 F.3d 891, 898 (9th Cir. 1994) (recognizing reduced risk of prejudice in bench trial compared to jury trials); *Van Alen v. Dominick & Dominick, Inc.*, 560 F.2d 547, 552 (2d Cir. 1977) ("It may be the more prudent course in a bench trial to admit into evidence doubtfully admissible records, and testimony based on them."); *Kirsch v. United States*, 2024 U.S. Dist. LEXIS 24787, *5 (D. Haw. Feb. 13, 2024) ("Motions in Limine filed pursuant to Federal Rule of Evidence 403 regarding prejudicial evidence, however, are generally inapplicable in a bench trial. In a bench trial, there is no jury from which to shield prejudicial evidence. The Court is able to exclude any improper inferences from relevant evidence in reaching its decision."); *Food & Water Watch, Inc. v. United States EPA*, 2024 U.S. Dist. LEXIS 9638, *31, n.10 (N.D. Cal. Jan. 18, 2024) ("Plaintiffs correctly note that Federal Rule of Evidence 403 is of lesser import in the context of a bench trial rather than a jury trial, particularly as it relates to potential for prejudice, but it is not to be ignored entirely."); *Schilder Dairy, LLC v. DeLaval, Inc.*, 2011 U.S. Dist. LEXIS 71952, *7-8 (D. Idaho July 5, 2011) ("Although *Daubert*'s reliability and relevancy requirements continue to apply in a bench trial (as is the case here), the customary concerns

III. CONCLUSION

For Plaintiffs' First Claim for Relief that AB5 is expressly preempted by the FAAAA, this Court finds in favor of the Defendants based on controlling authority. *California Trucking Assoc.,* 996 F.3d at 659 ("Therefore, we conclude that the F4A does not preempt AB-5 as applied to motor carriers."). Likewise, the Court finds in favor of the Defendants on Plaintiffs' related claim that AB5 is impliedly preempted by the FAAAA. On Plaintiffs' Second Claim for Relief that AB5 is prohibited by the dormant Commerce Clause, the Court finds in favor of the Defendants. Plaintiffs waived their Third Claim for Relief.[6] Finally, the Court finds in favor of the Defendants on Plaintiffs' Fourth and Fifth Claims for Relief that AB5 violates the Equal Protection Clause of the U.S. Constitution and the California constitution.

Remedying complexities and perceived deficiencies in AB5 are the kind of work better left to the soap box and the ballot box than to the jury box. If sufficient political or economic pressure can be brought to bear by Plaintiffs and their supporters, the more onerous provisions of the statute can be amended. The courts, on the other hand, are not the proper bodies for imposing legislative amendments.

Judgment shall be entered in favor of the Defendants.

IT IS SO ORDERED.

Date: March 15, 2024

HON. ROGER T. BENITEZ
United States District Judge

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surrounding FRE 702's precautions in a jury setting – that of keeping unreliable expert testimony from the jury – are understandably not present in the bench trial."); *Joseph S. v. Hogan*, 2011 U.S. Dist. LEXIS 76762, *9-10 (E.D.N.Y. July 15, 2011) ("It follows then that in a bench trial, the risk is with exclusion of expert testimony rather than with its admission — it is exclusion that has the potential for an indelible impact on the record; if the appellate court disagrees that the expert's testimony was unreliable, a review for harmless error will be thwarted.").

[6] *See* n.1, *supra*.