Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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Dear Democratic Colleague:

We urge you to join us in opposing Section 611 of H.R. 4441, the "the Aviation Innovation, Reform, and Reauthorization Act of 2016" (AIRR Act).

Section 611 is an attack on States' rights and is an affront to the men and women trying to make a decent living in the trucking industry. Section 611 is strongly opposed by the Teamsters, safety advocates, and the American Association for Justice. The trucking industry is split on Section 611. Smaller owner operators – which represent more than 90 percent of the companies in the industry – strongly oppose Section 611.

Section 611 is being pursued by a coalition of large trucking companies following a recent Ninth Circuit Court of Appeals decision which upheld the State of California's meal and rest break laws for all workers, including truck drivers. *See Dilts v. Penske Logistics.* These companies claim that this language is needed to prevent a patchwork of State hours of service laws. In reality, Section 611 goes far beyond this stated purpose.

Section 611 pre-empts existing State meal or rest break laws, many of which have been on the books for decades, in 21 States and territories. If enacted, Section 611 will prevent truck drivers who work exclusively within a single State from being protected by that State's wage and hour laws. We agree that if a truck driver is operating long haul, through several States, having to comply with new rest or meal break requirements every time the driver crosses a State line is confusing and impedes interstate commerce. However, the case on which the Ninth Circuit ruled affected local appliance delivery drivers who never left California. This was not a case that affected drivers moving goods from coast to coast.

Further, these trucking companies argue that a driver would have to pull off the road at inconvenient times or in potentially unsafe situations to take a break. That is simply not true. In fact, case law has specifically established that employers do not have to require employees to take a break – they simply must permit it by relieving employees of duties or pay employees for the time.

But Section 611 does not simply pre-empt State meal or rest break laws, it goes even further. It restricts the ability of States to improve truck driver working conditions and pay. The language dictates that the "piece rate" (or pay-by-the-load) a trucking company offers as compensation to a driver trumps State laws that require compensation for time when a truck's wheels are not turning. For example, California recently enacted a law that requires truck drivers to be paid at least minimum wage for time that drivers spend waiting to load or unload their goods. If Section 611 is enacted, interstate and intrastate truck drivers in California will be stripped of protections that specifically track pay for time detained. Congress should be looking at ways to help the men and women in the trucking industry to earn living wages, not passing laws that further put the squeeze on drivers as they fight gridlock to deliver loads.

Section 611 also makes the legislative change retroactive to 1994. This retroactivity language will wipe out at least 50 pending lawsuits regarding wage and hour laws, including a $100 million lawsuit against Wal-Mart.

It is disingenuous to imply that Section 611 is simply a restoration of Congress' intent in 1994, when it enacted the law to pre-empt States laws that directly affect a motor carrier's price, route, or service. In fact, Section 611 represents a sweeping expansion of Federal pre-emption. The 1994 Conference Report (H. Rept. 103-677) very clearly lays out the situation Congress was intending to address – direct economic regulation of intrastate trucking by States, through actions such as "entry controls, tariff filing and price regulation, and types of commodities carried." Congress was reacting to States directly dictating the rates and prices that motor carriers could charge for movement of goods through a particular State. Congress never contemplated meal and rest breaks when enacting the 1994 FAAAA law (P.L. 103-305).

As the Ninth Circuit stated in the *Dilts v. Penske Logistics* decision: "Although we have in the past confronted close cases that have required us to struggle with the 'related to' test, and refine our principles of FAAAA preemption, we do not think that this is one of them. In light of the FAAAA preemption principles outlined above, California's meal and rest break laws plainly are not the sorts of laws 'related to' prices, routes, or services that Congress intended to preempt." When the American Trucking Associations appealed, the Supreme Court denied to hear the case. Having lost time and again in the courts, the large trucking companies frantically seek a legislative rider to wipe out State laws and block the pending lawsuits.

Finally, Section 611 has no place in a Federal Aviation Administration reauthorization bill. This is a trucking issue. **Last year, the Conference Committee on the FAST Act rejected this identical language.** We, together with Committee on Transportation and Infrastructure Ranking Member DeFazio, opposed this provision in the FAST Act and continue to strongly oppose it in this bill.

If the intent is really to solve an interstate commerce problem, this language completely – and purposefully – misses the mark. It is an expansive hacking away at the ability of a State to promote healthy working conditions for truck drivers that stay within its borders.

We urge you to join us in opposing Section 611of H.R. 4441.

Sincerely,

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