ORIGINAL

IN THE SUPREME COURT OF OHIO

CITY OF CLEVELAND,	:	Case No. 12-1616
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Cuyahoga County Court
v.	:	of Appeals, Eighth
	:	Appellate District
STATE OF OHIO,	:	
	:	Court of Appeals
Defendant-Appellant.	:	Case No. 97679

BRIEF *AMICUS CURIAE* OF TOWING & RECOVERY ASSOCIATION OF OHIO, INC. IN SUPPORT OF DEFENDANT-APPELLANT

DAVID A. FERRIS (0059804)
The Ferris Law Group LLC
6797 N. High Street, Suite 214
Worthington, Ohio 43085
Tel: (614) 844-4777
Fax: (614) 844-4778
dferris@ferrislawgroup.com

Counsel for Amicus Curiae, Towing & Recovery Association of Ohio

MICHAEL DEWINE (0009181)
Attorney General of Ohio

ALEXANDRA T. SCHIMMER* (0075732)
Solicitor General
**Counsel of Record*
MATTHEW HAMPTON (0088784)
Deputy Solicitor
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
Tel: (614) 466-8980
Fax: (614) 466-5087
alexandra.schimmer@ohioattorneygeneral.gov

Counsel for Defendant-Appellant, State of Ohio

BARBARA A. LANGHENRY
Interim Director of Law

GARY S. SINGLETARY* (0037329)
Assistant Director of Law
**Counsel of Record*
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
Tel: (216) 664-2737
Fax: (216) 664-2663

Counsel for Plaintiff-Appellee, City of Cleveland

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INTEREST OF *AMICUS CURIAE* TOWING & RECOVERY ASSOCIATION OF OHIO, INC.

Towing & Recovery Association of Ohio, Inc., which also operates under the acronym TRAO, is an Ohio non-profit corporation consisting of tow truck owners and operators throughout the State of Ohio and other states. Its members conduct towing operations throughout the State of Ohio and between different states, many of which originate within municipalities and incorporated areas. A principal purpose of TRAO is to support its motor carrier members by promoting the cost-effective delivery of motor carrier services and advocating common industry positions on important policy and legal issues. Since its inception in 1980, through both regulated and deregulated eras, TRAO has been involved in the development and interpretation of laws governing towing companies and operations.

A central feature of the laws governing the members of TRAO is the Interstate Commerce Act, as amended by the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), 108 Stat. 1606, and the ICC Termination Act of 1995 ("ICCTA"), 109 Stat. 899. Collectively, the foregoing legislation, which is at issue in this case, contains language generally preempting state and local regulation "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). In light of the foregoing, TRAO has an interest in this case, because this Court's decision will affect the preemptive scope of the ICA, as amended by the FAAAA and ICCTA, as to towing companies.

SUMMARY OF THE ARGUMENT

49 U.S.C. §14501 applies to motor carriers of property, including but not limited to towing companies, and preempts state and local governments from enacting laws and ordinances governing the economic aspects of the transportation of the property. The preemptive provisions

of §14501 were implemented as a means of ushering deregulation into the motor carrier transportation industry. Deregulation was the method chosen by Congress to promote its policy objectives of, among other things, increased competition and elimination of a patchwork of state and local ordinances. As deregulated entities, towing companies are permitted to tow vehicles from and to cities and towns within the State of Ohio, without the threat of encountering a different set of rules and regulations in each one.

Chapter 677A of the Cleveland City Ordinances serves to circumvent preemption, thereby creating a climate of re-regulation and frustrating the policy objectives of Congress in passing §14501 into law. Chapter 677A improperly limits the number of towing companies able to remove vehicles from within the city limits, thereby reducing competition. In addition, Chapter 677A creates rules, regulations and requirements unique to the City of Cleveland, thereby lending to a tangled web of state and local ordinances. Chapter 677A does not qualify for any of the exceptions as to preemption, as, among other things, the State of Ohio has not delegated authority over motor carrier safety regulations to local governments.

ARGUMENT

Proposition of Law No. I:

49 U.S.C. §14501(c)(1) applies to towing companies as motor carriers of property and preempts state and local regulation related to price, route or service.

This case involves the ICA, as amended by the FAAAA and ICCTA, and the application of preemptive language in 49 U.S.C. §14501 to laws, regulations and ordinances affecting towing companies, as motor carriers of property. For purposes of the statute and the preemption contained therein, towing companies are considered motor carriers of general commodities. *Petrey v. City of Toledo*, 246 F.3d 548, 556 (6th Cir. Ohio 2001), overruled on other grounds by

City of Columbus v. Ours Garage & Wrecker Serv., 563 U.S. 424 (2002). §14501(c)(1) provides, in pertinent part:

> Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more 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). Chapter 677A is a local ordinance, specifically targeted at towing companies and having the force and effect of law relating to and affecting the price, route, and service of towing companies transporting motor vehicles from the City of Cleveland. The preemptive provisions of §14501(c)(1), however, express a clear Congressional intent to occupy the entire field of price and services of motor carrier, to the exclusion of state and local laws and regulations. *Mudd-Lyman Sales & Serv. Corp. v. UPS*, 236 F. Supp. 2d 907, 909.

Likewise, preemption under §14501(c)(1) is not limited to local ordinances targeted at motor carriers *per se*, but will extend to any law affecting the price, route, or service of any motor carrier transporting property. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992). In *Morales*, the United States Supreme Court considered a preemption provision nearly identical to that at issue in these proceedings, contained in the Airline Deregulation Act of 1978 (the "ADA") and codified at 49 U.S.C. §41713(b)(1). In upholding the preemptive language of the ADA as broad and applicable to laws relating to air carriers, the Court held:

> [The Statute] expressly pre-empts the States from "enacting or enforcing any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier . . . ." For purposes of the present case, the key phrase, obviously, is "relating to." The ordinary meaning of these words is a broad one...

Morales v. Trans World Airlines, Inc., supra (504 U.S. 374 at 383). Congress specifically intended that the preemptive language of §14501(c)(1) be given the same expansive

interpretation applied to the ADA by the Court in *Morales*. *See,* H.R. Conf. Rep. 103-677, at 83 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1755 ("[T]he conferees do not intend to alter the broad preemption interpretation adopted by the United States Supreme Court in *Morales*. . . .").

The statute provides for exceptions in paragraphs (2) and (3), but none of the exceptions set forth therein apply to Chapter 677A. Although the City of Cleveland will argue that Chapter 677A is excepted from preemption, pursuant to paragraph (2)(A) [*see,* §14501(c)(2)(A)], this is not the case. To the contrary, the State of Ohio has expressly reserved the exclusive right to govern the safety of towing operations, pursuant to Ohio Revised Code Section 4921.25. This section provides:

> Any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, that is engaged in the towing of motor vehicles is subject to regulation by the public utilities commission as a for-hire motor carrier under this chapter. Such an entity is not subject to any ordinance, rule, or resolution of a municipal corporation, county, or township that provides for the licensing, registering, or regulation of entities that tow motor vehicles.

Ohio Revised Code §4921.25. The State of Ohio has, therefore, retained exclusive authority over safety regulations of the type described in §14501(c)(2)(A) and has not delegated this authority to local subdivisions of government.

Similarly, the exception in paragraph (2)(B) [*see,* §14501(c)(2)(B)] does not apply, as Chapter 677A does not affect household goods. The exception in paragraph (2)(C) [*see,* §14501(c)(2)(C)] is inapplicable, because it pertains only to the rates for nonconsensual towing, where the owner is unaware of the towing. Chapter 677A, on the other hand, applies to all towing occurring from the City of Cleveland and, in fact, requires drivers to be in possession of consent forms from the owners of vehicles being towed (*see,* §677A.12). Chapter 677A is, therefore, intended to cover consensual towing. Finally, the exception in paragraph (3) is

inapplicable, as it merely retains the exemption from certain antitrust statutes, upon a carrier's decision to opt in to the exemption. 49 U.S.C. §14501(c)(3)(B)(ii). Chapter 677A contains no provisions relating to antitrust provisions or collective rate making and is, thus, not excepted under paragraph (3). Given that no exceptions apply, Chapter 677A is preempted by §14501(c)(1).

Proposition of Law No. II:

Because Chapter 677A serves to circumvent the ICA, as amended by the FAAAA and the ICCTA, and creates an operating environment akin to that of the regulated motor carrier industry and of the type and nature expressly prohibited by §14501(c)(1), Chapter 677A is preempted and unenforceable.

Prior to the passage of §14501(c)(1), motor carriers wishing to transport property from and to points within the State of Ohio were required to first apply for and obtain authority from the Public Utilities Commission of Ohio (the "PUCO"). *Bob's Truck Service, Inc. v. Public Utilities Commission of Ohio*, 2 Ohio St. 3d 83 (1982). If granted, motor carriers were awarded a Certificate of Public Convenience and Necessity authorizing common carriage of general commodities from and to a particular commercial zone or municipality. *Id.* The award of certificates was premised on, among other things, economic factors and availability of services. *Id.* (2 Ohio St. 3d 83, at 83-84). In deregulating the transportation industry, Congress sought to protect against any economic roadblocks to providing service and, to that end, Congress described its policy objectives in its conference report accompanying the new legislation and stated:

> The conferees believe preemption legislation is in the public interest as well as necessary to facilitate interstate commerce. State economic regulation of motor carrier operations causes significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology and curtails the expansion of markets...The sheer diversity of these regulatory schemes is

> a huge problem for national and regional carriers attempting to conduct a standard way of doing business.

H.R. Conf. Rep. 103-677, at 87 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1759. Clearly then, Congress sought to protect against any disturbance to the motor carrier industry caused by a patchwork of local ordinances and regulations.

Chapter 677A, if upheld, will create a patchwork of local ordinances and regulations and will serve to circumvent deregulation and frustrate the policy objectives of Congress in establishing §14501(c)(1). Among other things, §677A.02 requires towing companies to obtain licenses for each truck towing a vehicle ***from*** the City of Cleveland.[1] In comparison to an industry pre-dating deregulation, therefore, Chapter 677A seeks to re-implement regulatory requirements forcing motor carriers to obtain certification before hauling from a commercial zone or municipality. Many towing companies serve areas encompassing multiple counties and local subdivisions, or, in some cases, conduct statewide operations. Were all local subdivisions of government in Ohio to implement ordinances similar to Chapter 677A, the registration requirements facing towing companies could be staggering. As in the days of motor carrier regulation, towing companies would be faced with applying for certification, except this time, applications would be required for all municipalities and other incorporated places passing ordinances similar to Chapter 677A.

Certification requirements from any municipality or political subdivision serve to quell competition and increase costs and inefficiencies for companies conducting operations over virtually any area comprising multiple local subdivisions of government. For example, operating over an area of seven (7) contiguous counties with a total of 106 incorporated places could

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[1] Interestingly, towing companies towing a vehicle ***to*** the City of Cleveland are not subject to the licensing requirements in §677A.02. *See,* §677A.02(b).

subject a towing company to hundreds of ordinances regulating towing and tens of thousands of dollars in certification fees, should each municipality elect to implement its own requirements.[2] In addition, §677A.04 requires that each truck registered have affixed to its front bumper a tag with dimensions of 6 inches by 8 inches. Were each of the 106 incorporated places to require a tag of similar or even smaller dimensions, it would become not only inconvenient, but also impossible, to affix them all to the truck. §677A.12 requires towing companies to prepare a transport sheet with information unique to the City of Columbus. §677A.14 requires that each driver obtain a driver's license, in addition to that issued by the Ohio Bureau of Motor Vehicles.

The foregoing are just some of the requirements contained in Chapter 677A, which cause significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology and curtail the expansion of markets, all in contravention of the policy objectives expressed by Congress. Chapter 677A, if not preempted, will be the catalyst for municipalities and other local subdivisions across the state implementing separate ordinances, thereby creating the patchwork of regulatory requirements sought to be excluded by §14501(c)(1). Were Chapter 677A deemed to be excepted from preemption under §14501(c)(2)(A), local ordinances could be extended to motor carriers of general commodities. This propensity for a patchwork of regulations affecting the entire motor carrier industry is precisely what Congress sought to avoid in enacting §14501(c)(1).

CONCLUSION

The decision below is fundamentally wrong in its reasoning and threatens the very essence of deregulation in the motor carrier industry and the underlying policy objectives of

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[2] Applying fees similar to those imposed by §677A.03(b), registration of five (5) tow trucks in 106 municipalities would cost in excess of $25,000.00 every two (2) years, assuming all 106 municipalities required registration on a bi-annual basis. This figure excludes the additional cost for licensing drivers (*see,* §677A.21).

Congress. If allowed to stand, the decision would open the door for every local government in the State of Ohio to enact its own set of licensing and certification requirements for motor carriers, including without limitation towing companies. The increased competition, efficiencies, and cost-effectiveness contemplated through deregulation would be lost, and patchwork regulations would creep back into the motor carrier industry.

Accordingly, the decision below must be reversed. A reversal will promote the unequivocal purposes of the ICA, as amended by the FAAAA and ICCTA, and will preserve the deregulated, competitive motor carrier industry intended by Congress.

Respectfully submitted,

DAVID A. FERRIS (0059804)
The Ferris Law Group LLC
6797 N. High Street, Suite 214
Worthington, Ohio 43085
Tel: (614) 844-4777
Fax: (614) 844-4778
dferris@ferrislawgroup.com

Counsel for Amicus Curiae,
Towing & Recovery Association of Ohio, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Brief *Amicus Curiae* of Towing & Recovery Association of Ohio, Inc. in Support of Defendant-Appellant was served by ordinary U.S. Mail, postage prepaid, this 13th day of March, 2013 upon the following:

MICHAEL DEWINE
Attorney General of Ohio
ALEXANDRA T. SCHIMMER
Solicitor General
MATTHEW HAMPTON
Deputy Solicitor
PEARL M. CHIN
Associate Assistant Attorney General
30 E. Broad Street, 17th Floor
Columbus, Ohio 43215

BARBARA A. LANGHENRY
Interim Director of Law
GARY S. SINGLETARY
Assistant Director of Law
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077

David A. Ferris