

THE STATE OF SOUTH CAROLINA
Supreme Court

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S.C. SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
The Honorable Maite Murphy

Appellate Case No. 2019-002086

Cortland James Eggleston, Petitioner,

v.

United Parcel Service, Inc., and Rick Fogle,..... Defendants,

Of Whom United Parcel Service, Inc., is theRespondent,

and

Rebecca McCutcheon, Petitioner,

v.

United Parcel Service, Inc., and John Doe,Defendants,

Of Whom United Parcel Service, Inc., is theRespondent.

PETITIONERS' REPLY TO RESPONDENT'S RETURN TO PETITION FOR A WRIT OF
CERTIORARI

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ARGUMENT

The Petition for Writ of Certiorari and Appendix adequately convey the applicable law. Petitioners respond briefly to a few arguments in UPS's Return.

I. The Court of Appeals Erred in Finding Petitioners' Claims Affect Delivery Services

UPS misconstrues Petitioners' argument on this point. UPS alleged that Petitioners' claims affect its delivery services but did not actually articulate any particular service or aspect of its business that may be affected by a judgment in Petitioners' favor. The point of Petitioners' argument is that there is no proof or finding of how their cases against UPS could bind, change, or affect their delivery services, much less interfere with competitive market forces. UPS cannot just vaguely say the claims relate to delivery and, therefore, affect a service without articulating and proving that point. That a claim may "implicate" a service only brings a defendant "halfway home." *Tobin v. Fed. Express Corp.*, 775 F.3d 448, 454 (1st Cir. 2014). Preemption requires that "the challenged law must have a forbidden significant effect on prices, routes, or services." *Id.* at 454 (internal quotation marks omitted). One way Petitioners may prove their case is by simply showing that UPS's employees carried out their duties or procedures in a negligent manner. Such a finding would not have the effect of binding or changing a UPS service. The Court of Appeals erred in failing to analyze this critical point of proof and, as a result, effectively insulated carriers from liability for their negligence.

II. The Court of Appeals Should Have Ruled on Petitioners' Argument that Congress did Not Intend to Preempt Claims with no Economic or Other Affect on Services or Competition

The Court of Appeals should have addressed and ruled on Petitioners' argument that their claims are not the type Congress intended the FAAAA to preempt because the claims have no economic regulatory effect on UPS. In response, UPS argues only that the Court "effectively" ruled on the issue and that a ruling in Petitioners' favors would substitute the state's policies for

competitive market forces. This is incorrect for the reasons stated above and because UPS fails to articulate what competitive market force may suffer harm from a finding that it should have timely delivered a package.

UPS relies heavily on the *Tobin* opinion but misreads it. *Tobin* expressly provided for claims such as those brought by Petitioners. After noting that numerous courts have found common-law personal injury claims not preempted, the court stated: “Although claims arising out of careless driving or infelicitously placed packages *may not impose any greater duty* on an airline than that which exists for any other firm, *the common-law claims here are of a different genre.*” *Tobin*, 775 F.3d at 455-56 (emphasis added). It further explained that, in the *Tobin* case, “[a] damages award could result in fundamental changes to FedEx’s services – much more so than a damages award for a driving mishap or a slip-and-fall.” *Id.* at 456. In *Tobin*, the plaintiff alleged FedEx misdelivered and mislabeled the package sent to her and wrongfully disclosed her address. *Id.* at 450. This case does not involve allegations of misdelivery, mislabeling, or wrongful disclosure of the plaintiff’s personal information. Rather, Petitioners allege UPS withheld a package when it should have delivered it. A jury finding that UPS should have delivered the package would not affect its competitive market forces or alter how UPS operates its business.

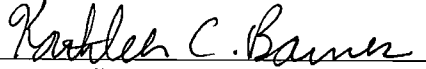
III. The Court of Appeals Erred in Holding the Household Goods Exception Does Not Apply

The argument as to the interpretation of the exception is adequately stated in the petition. Petitioners respond only that they are not placing an interpretation on the statute but rather reading its plain language. To interpret the statute as the Court of Appeals and UPS would like is to place a meaning that is simply not there. Congress could have easily drafted it as UPS argues but chose not to do so. 49 U.S.C. § 14501(c)(2)(B).

CONCLUSION

The Court should grant the petition for writ of certiorari and reverse the Court of Appeals' opinion.

Respectfully submitted,



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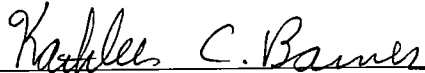
PROOF OF SERVICE

The undersigned certifies that a copy of *Petitioners' Reply to Respondent's Return to Petition for a Writ of Certiorari* is served upon the following counsel of record by mailing one copy by United States Mail, addressed as shown below on January 22, 2020.

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