American Trucking v. Port of Los Angeles: Is the Castle Doctrine a Ticking Time Bomb, Potentially Eliminating Ports’ Control of Cargo Trucking?

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Abstract: As the Port of Los Angeles and the shipping industry continue to expand, states struggle to regulate the heavy trucking businesses that support the shipping companies. In American Trucking Assn’s, Inc. v. City of Los Angeles, the Supreme Court struck down as preempted by the Federal Aviation Administration Authorization Act of 1994 parts of a Concession Agreement that sought to regulate the relationship between these trucking companies and the Port. The Court declined to decide a second question of whether the Port could punish trucking companies that routinely fail to comply with regulations. This Comment argues that the FAAAA’s broad preemption has left states unable to regulate the heavy trucking industry properly. Considering this deficiency, Congress or the EPA must step in to control the industry and prevent it from further polluting the environment.

Introduction

Established in 1907, the Port of Los Angeles Long Warf (“Port”) spans forty-three miles of waterfront and occupies 7,500 acres on the California coast.1 It is the busiest container port in the United States2 and the sixteenth busiest in the world.3 The Port processed 7.94 million twenty-foot equivalent units (TEUs)4 in 2011 and 8.1 million TEUs in 2012.5 This massive shipping volume comes at an environmental cost: the Los Angeles metropolitan area has

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3 Port of L.A., supra note 1, at 1.

4 No Net Increase Task Force, supra note 1, at 1-13. TEUs are the standard metric used in the container industry. Id. at 1-13 n.i.

5 Port of L.A., supra note 2, at 9.
the worst ozone pollution and fourth worst particulate pollution in the country. The cancer risk from diesel pollution is sixty percent higher in communities in the South Coast Air Basin, where the Port is located, than it is elsewhere in California.

Neighborhoods and businesses near the Port have long been concerned about the Port’s activities and the persistent traffic and noise. In an effort to address these concerns, the Board of Harbor Commissioners, the municipal division that runs the Port, attempted to require drayage trucking companies to adhere to a mandatory Concession Agreement as part of the Port’s Clean Air Action Plan (CAAP). From 2005 to 2010, there was a 92% reduction in sulfur oxides, an 89% reduction in diesel particulate matter, and a 77% reduc-


7 NO NET INCREASE TASK FORCE, supra note 1, at 2-1.


9 Meet the Los Angeles Board of Harbor Commissioners, PORT OF L.A., http://www.portoflosangeles.org/commission/harbor_commissioners.asp (last visited Jan. 25, 2014), available at http://perma.cc/KU6M-ERMH. The Board of Harbor Commissioners is a five-member board appointed by the mayor of Los Angeles and confirmed by the Los Angeles City Council. Id. The commissioners serve five-year terms. Id.

10 The Port defines drayage trucks in the following manner:

[A]ny in-use On-Road Vehicle with a Gross Vehicle Weight Rating greater than 14,000 pounds that pulls a trailer or chassis used for transporting cargo (such as containerized, bulk, or break-bulk goods), operating on or transgressing through Port Property for the purpose of loading, unloading or transporting cargo, empty containers or chassis that originated from or is destined for Port Property. Drayage Truck does not include Dedicated Use Vehicles, Authorized Emergency Vehicles, Military Tactical Support Vehicles, Yard Trucks or (A) vehicles transporting cargoes that originated from Port Property but have been off-loaded from the equipment (e.g., a trailer, chassis or container) that transported the cargo from Port Property; or (B) vehicles transporting cargoes destined for Port Property that are to be subsequently transferred into or onto different equipment (e.g., a trailer, chassis or container) before being delivered to Port Property.


11 A Concession Agreement, or a Concession, is “a written agreement between the Port of Los Angeles and a Licensed Motor Carrier to allow Drayage Truck access to a Port of Los Angeles Terminal for drayage services under terms and conditions set forth therein.” PORT OF L.A., TARIFF NO. 4, § 20, 183 (June 26, 2011).

12 Press Release, The Port of Los Angeles, New Year’s Day Marks End of Dirty Trucks for Port of Los Angeles Clean Truck Program: 100 Percent of Containers In and Out of Port Terminals Now Hauled by Clean Trucks (Dec. 20, 2011), available at http://www.portoflosangeles.org/newsroom/2011_releases/news_122011_clean_truck.asp and http://perma.cc/48W8-EWZ2. The CAAP has several components, including a Clean Truck Program. Id. The Concession Agreement is a part of the Clean Truck Program. Id.
tion in nitrogen oxides, which are the three primary pollutants associated with the development of smog. 13

In 2008, the American Trucking Associations (ATA), the largest national trade association representing the trucking industry, challenged the legality of the Concession Agreement and argued that it violated the Supremacy Clause of the U.S. Constitution and the Federal Aviation Administration Authorization Act of 1994 (FAAAA), and discriminated against the right of drayage companies to engage in interstate commerce.14 After five years of litigation, the U.S. Supreme Court left the Clean Truck Program mostly intact.15 In American Trucking Ass’ns, Inc. v. City of Los Angeles, the Court declared that the FAAA preemption two minor provisions of the Concession Agreement that would have required the drayage trucking companies operating at the Port to list off-site parking information for trucks and to display a safety placard on the back of every vehicle.16 The Court then deemed premature the question of whether the Court’s 1954 decision in Castle v. Hayes Freight Lines, Inc.17 barred the Port from banning trucking companies from its facilities entirely for violations of other provisions of the Concession Agreement.18

This Comment argues that the broad preemption provisions of the FAAA have created a regulatory void that only Congress can fill.19 With states and other municipal entities unable to prevent pollution-spewing trucks from travelling through their borders, the EPA must step in to create an enforcement scheme that severely punishes motor carriers that continually violate environmental regulations.20

I. FACTS AND PROCEDURAL HISTORY

The Port leases its facilities to Marine Terminal Operators.21 The Port is financed not by tax dollars but by revenues it earns in the marketplace.22

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14 See Am. Trucking Ass’ns, Inc. v. City of Los Angeles, 577 F. Supp. 2d 1110, 1115–16 (C.D. Cal. 2008), rev’d, 559 F.3d 1046 (9th Cir. 2009). The Clean Truck Program is a significant part of the CAAP, which targets major sources of air pollution and emissions at the Ports of Los Angeles and Long Beach. Id. at 1114–15. It includes a progressive ban on polluting trucks, facilitates the replacement of old trucks with low-emission vehicles, and requires adherence to a detailed Concession Agreement. Id.
16 Id. at 2099.
18 Am. Trucking Ass’n, 133 S. Ct. at 2099.
19 See infra notes 73–101 and accompanying text.
20 See infra notes 73–101 and accompanying text.
21 Terminal operators enter into contracts with short-haul trucks, also called “drayage trucks,” to transport cargo in and out of the Port. PORT OF L.A., TARIFF NO. 4, § 20, 184C (Jun. 26, 2011).
22 Operating revenue for fiscal year 2012 was $409.8 million. PORT OF L.A., supra note 2, at 10.
Around 1997, the Port created plans to enlarge its facilities to attract more international business. Supported by the National Environmental Defense Council, the surrounding neighborhood objected to the proposed expansion and sued in California state court. After an almost ten-year delay of the expansion, the Board of Harbor Commissioners implemented the CAAP in 2007 to address some of the concerns of the neighborhood and allow the project to move forward. The Clean Truck Program is a subprogram of the CAAP that is “designed to reduce emissions from the heavy duty trucks involved in port drayage to improve the health of the people living in the communities surrounding the [Port].” The Clean Truck Program contains the Concession Agreement that governs the relationship between the Port and any drayage trucking company that seeks to use the Port’s premises. Only trucking companies that agree to the various requirements in the Concession Agreement are allowed access to the Port.

To ensure that drayage companies would sign the Concession Agreement, the Board amended the Port’s Tariff to provide that “no Terminal Operator shall permit access into any Terminal in the Port of Los Angeles to any Drayage Truck unless such Drayage Truck is registered under a Concession Agreement.” Any operator entering the Port with an unregistered truck could be charged with a misdemeanor punishable by a fine of up to $500 or six months in prison. The Agreement detailed penalties for “Minor” and “Major” Defaults, though it did not define the difference between the two. If a company committed a Minor Default, the Port could issue a warning letter, require the company to take corrective action, require the completion of a course of training, or require the payment of the costs of the Port’s investigation. In the event of a Major Default, the Port could suspend or revoke the company’s right to provide drayage services at the Port.

As of March 2013, “the Port has nev-
er suspended or revoked a trucking company’s license to operate at the Port for a prior violation.”

In July 2008, the ATA sued in the U.S. District Court for the Central District of California and sought a preliminary injunction to block implementation of the Agreement. The ATA alleged that § 14501(c)(1) of the FAAAA preempted the Concession Agreement requirements. The District Court denied the preliminary injunction and held that the Port could implement the Agreement as a safety measure, an exemption to the FAAAA. On appeal, the U.S. Court of Appeals for the Ninth Circuit reversed and remanded. On remand, the District Court granted a preliminary injunction against the Agreement’s employee driver, parking, and financial capability provisions, but not the placard and maintenance provisions. The ATA appealed, but the Ninth Circuit reversed only regarding the placard provision. On remand, the District Court ruled that the provisions were not preempted by the FAAAA and entered an injunction in part pending appeal.

The Ninth Circuit affirmed in part, reversed in part, and remanded for further consideration. The Ninth Circuit found that the Port “directly participated in the market,” and the Concession Agreement was simply an ordinary contract under which the Port “exchanges access to its property for a drayage carrier’s compliance with certain conditions.” The placard provision and employee driver provision were preempted, whereas the off-street parking provision, maintenance provision, and financial capability provision were saved.

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35 Id.
36 Am. Trucking Ass’ns, 577 F. Supp. 2d at 1116. Initially, there were five provisions of the Concession Agreement at issue: (1) Provision III(d), requiring trucking companies to use employee drivers rather than independent owner-operators; (2) Provision III(f), requiring companies to submit off-street parking locations for all permitted trucks; (3) Provision III(g), requiring companies to ensure that maintenance of all permitted trucks is in accordance with manufacturers’ instructions; (4) Provision III(l), requiring all permitted trucks to have safety placards with a phone number for reporting concerns while on the Port’s grounds; and (5) Provision III(n), requiring companies to demonstrate to the executive director of the Board that they are financially capable of complying with all Concession Agreement provisions. Am. Trucking Ass’ns, 660 F.3d at 394; Natural Res. Def. Council, 103 Cal. App. 4th at 268.
38 Am. Trucking Ass’ns, 660 F.3d at 390.
39 Id. at 394.
40 Am. Trucking Ass’ns, 559 F.2d at 1061.
41 Order Granting in Part and Denying in Part Plaintiff’s Motion on Remand for Entry of Preliminary Injunction of Counts I and II of Complaint, Am. Trucking Ass’ns, 577 F. Supp. 2d 1110 (No. CV 08-4920 CAS (Cox)), 2009 WL 1160212, at *20–22.
42 Am. Trucking Ass’ns, Inc. v. City of Los Angeles, 596 F.3d 602, 606–07 (9th Cir. 2010).
45 Am. Trucking Ass’ns, 660 F.3d at 400.
46 Id.
Additionally, the Ninth Circuit rejected the ATA’s claim that Castle barred the Port from applying the penalty clause to forbid a company from operating at the facility and instead found that limiting access to the Port would not restrict carriers from generally participating in interstate commerce.47

The ATA appealed the placard and off-street parking rulings to the Supreme Court.48 It also appealed the Ninth Circuit’s ruling that Castle did not bar the Port from applying the penalty parts of the Concession Agreement in their entirety.49 In American Trucking Assn’s, Inc. v. City of Los Angeles, the Supreme Court found that the placard and parking provisions were preempted by the FAAAA.50 The Supreme Court declined to decide whether the Port’s entire enforcement scheme, which could result in a drayage truck company’s complete exclusion, violated Castle.51

II. LEGAL BACKGROUND

Congress enacted the Federal Aviation Administration Authorization Act (FAAAA) in 1994 to prevent states from undermining federal deregulation of the interstate trucking industry.52 The FAAAA has been the subject of dozens of cases since that time.53 The FAAAA provides that as a general rule, “a State [or] political subdivision of a State . . . 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.”54

In 1954, the U.S. Supreme Court held in Castle v. Hayes Freight Lines, Inc. that Illinois could not suspend the right of an interstate motor carrier to use Illinois highways for interstate transportation of goods.55 An Illinois statute limited the weight of freight that could be carried by commercial trucks on Illinois highways.56 Repeated violations of the weight limits were punishable by total suspension of the carrier’s right to use Illinois state highways for a significant period of time.57 The Court was not persuaded that other enforce-

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47 See id. at 403. “While a denial of access to the Port may have more effect on motor carriers than a traditional fine, it does not rise to the level of the comprehensive ban at issue in Castle.” Id.
48 Am. Trucking Ass’ns, 133 S. Ct. at 2100–01.
49 See id. at 2099.
50 Id.
51 Id.
52 See Rowe v. N.H. Motor Transp. Ass’n, 552 U.S. 364, 368 (2008); Tocher v. City of Santa Ana, 219 F.3d 1040, 1048 (9th Cir. 2005).
56 Id. at 62.
57 Id.
ment mechanisms might not achieve the same goal of preventing overloaded trucks from traveling on Illinois highways, and it noted there were conventional forms of punishment available to Illinois. Additionally, the federal Interstate Commerce Commission could revoke the certificates of motor carriers that willfully refused to comply with any lawful regulation it set forth, or if a carrier repeatedly violated the laws of any of the states.

Similarly, in *Railroad Transfer Service, Inc. v. City of Chicago*, the Supreme Court struck down a Chicago licensing scheme for transfer car operators and held that the scheme constituted an illegal “veto power” over the exercise of interstate commerce. Similar in some aspects to the Port of Los Angeles, Chicago required operators to pay a licensing fee, hire only Chicago residents as drivers, maintain the financial ability to render an enjoyable and safe service, and to replace and maintain all equipment. The City sought to enforce the requirements by denial of an operating license and then criminal sanctions for operation without a license. Finding a violation of the Interstate Commerce Act because of the “veto power” held by Chicago, the Supreme Court declared the entire scheme void.

Contrastingly, in *Bradley v. Public Utilities Commission of Ohio*, the Supreme Court in 1933 held that Ohio’s denial of a certificate of public convenience and necessity to a motor carrier to operate on one state highway did not exclude the motor carrier from operation in interstate commerce. The Court acknowledged that states may exclude motor carriers engaged in interstate commerce from public highways if necessary to promote public safety. Noting that there were adequate alternative routes available to the motor carriers, the Court declared that the denial was not a violation of the carrier’s right to engage in interstate commerce.

In *Rowe v. New Hampshire Motor Transport Ass’n*, the Supreme Court in 2008 explicitly rejected the premise that there was a public health exception to the FAAAA. Noting that the FAAAA lists a set of explicit exceptions and that public health was not one of them, the Court struck down certain provi-

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58 Id. at 64.
59 Id. at 65.
61 Id. at 353–54.
62 Id. at 360.
63 See id. at 358–60 (quoting Atchison, 357 U.S. at 85).
64 289 U.S. 92, 94 (1933).
65 Id. at 96.
66 Id. at 94.
ions of Maine’s Tobacco Delivery Law as preempted.68 The Court emphasized it is difficult to define “public health” because there are many products that create “public health risks” of varying kinds and degrees, and there are differing opinions about what constitutes risk.69 Allowing Maine to regulate motor carriers directly could have resulted in a patchwork system of state motor carrier regulations made in the name of public health.70 The Court then indicated that Congress was unlikely to have intended an “implicit general public health exception” to the FAAAA.71

III. ANALYSIS

In American Trucking Ass’ns v. City of Los Angeles, the U.S. Supreme Court granted certiorari to answer two questions: (1) whether § 14501(c)(1) of the Federal Aviation Administration Authorization Act (FAAAA) preempted the Port of Los Angeles’s (“Port”) Concession Agreement’s (“Agreement”) placard and parking provisions, and (2) whether Castle v. Hayes Freight Lines, Inc. precluded reliance on the Agreement’s penalty clause to suspend or revoke a trucking company’s privileges after a violation of the Agreement had been cured.72

Recognizing that § 14501(c)(1) draws a “rough line” between the exercise of regulatory authority and contract-based market participation, the Court emphasized that the Port could act both as a private party and as a market regulator.73 Nonetheless, the Court found the placard and parking provisions were preempted and held that the Port was not acting in a way that any owner of an ordinary business could mimic.74 According to the Court, by forcing terminal operators to sign the Agreement under threat of criminal penalties, the Port was performing its “prototypical regulatory role.”75 It exerted “classic regulatory authority” in imposing the placard and parking requirements and created a government program that included criminal sanctions and had “coercive power” over private enterprises.76 The Court held that the Port may not force any

68 Id. at 374, 377. Maine adopted “An Act to Regulate the Delivery and Sales of Tobacco Products and to Prevent the Sale of Tobacco Products to Minors” in 2003. Id at 368. One portion of the Act prevented anyone other than a Maine-licensed tobacco retailer to accept an order of tobacco. 22 Me. REV. STAT. ANN. tit. 22, § 1555-C (2013). Another part forbade any person “knowingly” to “transport” a “tobacco product” to “a person” in Maine unless either the sender or the receiver has a Maine license. Id. § 1555-D; see also Rowe, 552 U.S. at 369.
69 Rowe, 552 U.S. at 375.
70 See id.
71 Id.
72 133 S. Ct. 2096, 2101 (2013).
73 Id. at 2102–03.
74 Id. at 2099, 2103.
75 Id. at 2103.
76 Id.
private party to alter its behavior through criminal sanctions punishable by time in prison.77

The Court did not answer the second question, namely whether the Port’s entire enforcement scheme involves curtailing drayage trucks’ operations in a way that Castle prohibits.78 Justice Kagan noted that Castle places limits on how a state or locality can punish interstate motor carriers for prior violations of trucking regulations, but a state may take a vehicle off the road that is presently out of compliance with the same regulations.79 The Port emphasized that it did not claim the authority to punish past violations and that it has never used its suspension or revocation power to penalize a past violation.80 Given the pre-enforcement posture of the issue, the Court declined to issue a ruling.81

Congress intended the FAAAA to prevent the states from imposing their own regulations on motor carriers engaged in interstate commerce.82 The FAAAA’s preemption language, in conjunction with Castle and its progeny, prevents states from enacting certain kinds of environmental and public health regulations.83 A safety regulation that targets interstate motor carriers, such as one that deals with hazardous cargo, may also have a positive effect on the environment.84 By its nature as a safety regulation, it would likely be saved from preemption under the FAAAA.85 In contrast, an environmental regulation of motor carriers that is designed to protect the public health that cannot otherwise be classified as a safety regulation would most likely be struck down as preempted by the FAAAA.86

Barring access to the Port is analogous to barring a motor carrier from the highways of an entire state.87 There are only 200 private ports and 150 public

77 Id.
78 Id. at 2105.
79 Id.
80 Id.
81 Id.
83 See 49 U.S.C. § 14501(c)(1) (2006) (“[A] State [or] political subdivision of a State . . . 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.”); Am. Trucking Ass’ns, 133 S. Ct. at 2096.
85 See 49 U.S.C. § 14501(c)(2)(A) (stating that the preemption provisions in the Act “shall not restrict the safety regulatory authority of a State with respect to motor vehicles . . .”).
86 See Rowe, 552 U.S. at 374.
87 See Am. Trucking Ass’ns, 133 S. Ct. at 2105.
ports in the United States. Because the Port is the largest container port in the United States by container volume and the sixteenth busiest internationally, preventing a drayage trucking company from accessing the Port has the same devastating effect as preventing access to an entire state. In this way, the Port’s enforcement scheme is distinguishable from the scheme in Bradley v. Public Utilities Commission of Ohio. Banning a motor carrier from one route when there are a variety available is not the same as banning a company from the largest Port in the nation.

The ban in Castle did not completely prohibit incompliant motor carriers from participating in interstate commerce or eliminate all access to connecting links. Instead, the ban merely “partially suspended” the motor carrier’s federally-granted permit to travel interstate and “seriously disrupted” rather than eliminated entirely the motor carriers’ ability to carry goods through Illinois. Barring access to the Port would “seriously disrupt” a drayage carrier’s ability to transport goods in interstate commerce. The regulatory scheme initially established through the Motor Carrier Act of 1935 has been altered through multiple trucking deregulation statutes, including the FAAAA, but the basic premise that states do not have veto power over interstate commerce service providers remains. There exists a regulatory scheme governing interstate transport, and the federal government continues to issue registrations or permits enabling trucking companies to transport cargo interstate, provided that they are in compliance with federal safety and insurance regulations.

Similarly, Railroad Transfer Service, Inc. v. City of Chicago deprives states and localities of the right to have “veto power” over the exercise of interstate commerce. The licensing scheme at issue in Railroad Transfer is extremely similar to the Concession Agreement in American Trucking.
the Port in *American Trucking* claimed that “something egregious would have to happen” for it to ban a drayage trucking company from its premises for past violations, allowing the Port to have this power at all is the kind of veto power that *Railroad Transfer* is designed to prevent. In the face of this broad preemption scheme, the EPA should step in to regulate the trucking industry more heavily.

**CONCLUSION**

In passing the Federal Aviation Administration Authorization Act (FAAAA), Congress sought a uniform regulation of the trucking industry instead of a piecemeal system that could interfere with interstate commerce. Although the U.S. Supreme Court declined to issue a ruling on the *Castle v. Hayes Freight Lines, Inc.* question in *American Trucking Ass’n, Inc. v. City of Los Angeles*, there are limits on how a state or local entity can punish an interstate motor carrier for violations of trucking regulations. There is nothing that can prevent a state or local entity such as the Port of Los Angeles from taking off the road a vehicle that is contemporaneously out of compliance with Port regulations, but it may not ban a truck for any period longer than it takes to cure the violation. With states restricted in their ability to prevent pollution by trucking companies as a result of *Castle* and *American Trucking*, the federal government should step in to pursue an aggressive regulatory agenda to ensure compliance with environmental regulations.

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99 See *Am. Trucking Ass’ns*, 133 S. Ct. at 2105; *R.R. Transfer Serv.*, 368 U.S. at 360.
100 See *Am. Trucking Ass’ns*, 133 S. Ct. at 2105; *R.R. Transfer Serv.*, 368 U.S. at 360.