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# In A Blow To The Transportation Industry, Ninth Circuit Overturns AB 5 Injunction

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In early January 2020, the California Trucking Association (CTA) struck an early victory for the industry by successfully enjoining enforcement of California's AB 5, which codified the so-called "ABC Test" for determining whether workers are lawfully considered independent contractors. On April 28, 2021, however, the Ninth Circuit reversed the district court's injunction order, finding in a split decision that the court had abused its discretion. A request for en banc review and a petition for certiorari to the Supreme Court of the United States are likely, but for now, motor carriers operating in the Golden State face a sea change.

In *California Trucking Association, et al., v. Bonta et al.*, the majority found that because AB 5 is a law of general applicability affecting a businesses' interaction with its workforce, rather than with consumers, it is not preempted by the Federal Aviation Administration Authorization Act (F4A). In so holding, the majority found that AB 5 was not sufficiently "related to a price, route, or service of any motor carrier . . . with respect to the transportation of property," as required to be preempted by the F4A. According to the majority, "laws of general applicability that affect a motor carrier's relationship with its workforce, and compel a certain wage or preclude discrimination in hiring or firing decisions, are not significantly related to rates, routes or services." The majority found that because AB 5 "merely" affects the classification of workers, it does not result in a motor carrier "freezing into place a particular

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price, route or service that a carrier would otherwise not provide," and it is thus not preempted.

The dissent, in a detailed and thorough opinion, took the majority to task, finding that the majority ignored the possibility that a state law might affect a motor carrier's relationship with its workforce and thus have a significant impact on that motor carrier's prices, routes, or services. The dissent reasoned that the "all or nothing" approach proscribed by AB 5 would require motor carriers to reclassify all independent owner-operator drivers as employees, and would therefore "significantly impact motor carriers' services by mandating the means by which they are provided." At minimum, the dissent argued that the district court did not abuse its discretion, given the declarations in the record concerning AB 5's effect on services, not to mention the decision by the First Circuit, holding that a similar "all or nothing" classification test from Massachusetts was preempted by the F4A.

The split decision raises the possibility that the full Ninth Circuit may take the case en banc and the decisional split between the First and Ninth circuits raises the possibility of a Supreme Court review. In any event, the Ninth Circuit's decision will likely create even more issues for the transportation industry, which is already dealing with supply chain issues arising out of the COVID-19 pandemic. If the Ninth Circuit's panel decision stands, misclassification class action litigation against motor carriers operating in California is likely to follow. Barnes & Thornburg's transportation and logistics and wage and hour practice groups will continue to monitor developments as this litigation moves forward.

As always, stay tuned, and if you have questions on how this decision and AB 5 may affect your business, please reach out to the Barnes & Thornburg attorney with whom you work.