26-0172-cv

United States Court of Appeals

for the

Second Circuit

MAPLEBEAR, INC., DBA Instacart, a Delaware Corporation,

Plaintiff-Appellant,

– v. –

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF CONSUMER AND WORKER PROTECTION, VILDA VERA MAYUGA, in her official capacity,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR *AMICUS CURIAE* THE MANHATTAN INSTITUTE IN SUPPORT OF APPELLANT AND REVERSAL

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* states that it has no parent corporation and that no publicly held corporation owns any part of it.

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STATEMENT OF INTEREST[1]

The Manhattan Institute for Policy Research ("MI") is a nonpartisan public-policy research foundation dedicated to advancing ideas that foster economic choice and individual responsibility. Its scholars have long examined federal deregulation, constitutional structure, and the intersection of local regulation and interstate commerce. MI has filed amicus briefs in cases addressing federal preemption and regulatory overreach. This case concerns MI because it presents an archetypal instance of local regulation that conflicts with Congress's regulatory design, here for motor carrier services.

SUMMARY OF THE ARGUMENT

The package of New York City laws regulating third-party grocery delivery platforms (the "Local Laws") is preempted by the Federal Aviation Administration Authorization Act ("FAAAA") because the Local Laws (1) relate to price, service, and route of grocery delivery workers, who (2) fall within the definition of a "motor carrier" as defined by the FAAAA. Indeed, the City's own research predicted service price increases and reduced demand (JA445-JA486), and the City's data collection confirmed those effects. (JA573-578.) Congress determined that price and demand

[1] All parties consented to the filing of this brief. No party or party's counsel authored this brief in whole or in part. Nobody but *amicus* contributed money intended to fund its preparation or submission.

for motor carriers, including Instacart shoppers, should be dictated by the market, not local regulations. Accordingly, this Court should reverse the decision below.

BACKGROUND

Following the Covid-19 pandemic, the City passed minimum-pay standards for workers delivering take-out orders from restaurants (the "Restaurant Delivery Standards"). (JA234-38.) Relying on that same research and purpose, the City extended the Restaurant Delivery Standards in 2025 to grocery delivery platforms and added additional regulations applicable to all delivery workers in forming the Local Laws. (JA239-279.) These Local Laws directly impact the delivery workers in a number of ways, including:

- Local Laws 107 and 108 regulate the presentation of tip options to consumers. Platforms, like Instacart, must present consumers with two predetermined tipping options, including an option of at least 10% of the purchase price, and must display these options conspicuously before or at checkout. (JA239-244.)
- Local Law 124 sets a minimum pay threshold and requires compensation not only for "trip time" but also for "on-call time." (SPA 045, 66-70.) On-call time would include, for example, periods where a delivery worker is logged into the app but not performing delivery services. *Id.*

These measures are limited to the regulation of delivery platforms and the delivery workers using them. The Local Laws are not generally applicable labor laws as they do not apply to businesses or labor not operating a delivery platform.

ARGUMENT

I. The FAAAA Preempts the Local Laws.

In the late 1970s, Congress determined that "maximum reliance on competitive market forces" would yield lower fares, innovation, and better service in the airline industry, and it enacted the Airline Deregulation Act ("ADA"). 49 U.S.C. § 40101; *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378-79 (1992). To prevent states from undoing federal deregulation, Congress enacted an express preemption clause barring state enforcement of any law "relating to rates, routes, or services" of air carriers. *Id.* Congress extended this deregulatory design to the trucking industry by passing the Motor Carrier Act of 1980. *See* Motor Carrier Act of 1980, 94 Stat. 793. When Congress found state governance of intrastate transportation had become "unreasonably burden[some]" to "free trade, interstate commerce, [and] American consumers," it passed the FAAAA in 1994. *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 256 (2013) (*quoting Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 440 (2002)); *see also Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 368 (2008). Congress's intent was unmistakable: "Service options will be dictated by the marketplace; and not by an

artificial regulatory structure." H.R. Conf. Rep. 103-677, at 88 (1994). The Conference Report emphasized that Congress sought to avoid "a patchwork" of local regulations that would impose unreasonable burdens on interstate commerce. *Id.* at 86-87.

This concern about regulatory patchwork is particularly apt here. If New York City can impose minimum pay standards and operational requirements on grocery delivery workers, so can every other state and local government—each with different standards, different definitions, and different compliance requirements. The result would be precisely the web of local regulations that Congress enacted the FAAAA to prevent. *See Rowe*, 552 U.S. at 373. Platform operators would face a patchwork of conflicting obligations; delivery workers would encounter different rules in different jurisdictions; and consumers would bear the costs of regulatory complexity through higher prices and reduced service options.

By adopting the ADA's express preemption provision, the FAAAA prohibits enforcement of state or local 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); *see also Rowe*, 552 U.S. at 370. While the FAAAA "exempts certain measures from its preemptive scope [of motor carriers], including state laws regulating motor vehicle safety, size and weight; motor carrier insurance; and the intrastate transportation of household goods[,]" none of the exemptions found in Section 14501 were relied

upon by the lower court. *See Dan's City Used Cars, Inc.*, 569 U.S. at 256 (*citing* 49 U.S.C. § 14501(c)(2)(A)-(B)).

A fair reading of the statute requires the answer to only two questions to determine whether preemption applies: (a) whether the actors are "motor carrier[s]" and (b) whether the challenged laws are "related to a price, route, or service … with respect to the transportation of property." *See Dan's City Used Cars, Inc.*, 569 U.S. at 260. When "a federal law contains an express preemption clause," courts "focus on the plain wording of the clause, which necessarily contains the best evidence of Congress'[s] preemptive intent." SPA009 (*citing Buono v. Tyco Fire Prods., LP*, 78 F.4th 490, 495 (2d Cir. 2023)).

A. Grocery Delivery Workers Like Instacart Shoppers Are Motor Carriers under the FAAAA.

Section 13102(14) defines a "motor carrier" as a "person providing motor vehicle transportation for compensation." The definition of motor carrier depends on the defined terms "person," "motor vehicle," and "transportation." *See* 49 U.S.C. § 13102(16), (18), (23). None of these provisions identify or reference exceptions to the definition. A plain reading of Section 13102(14) would thus include grocery delivery workers like Instacart shoppers as motor carriers. As the record reflects, these workers accept orders, gather and pack goods, and deliver them—overwhelmingly using motor vehicles in New York City—and are compensated for this transportation. (*See* JA36-40.) Instacart is correct that this plain reading of the

statute should end the analysis of whether its shoppers are motor carriers under Section 13102(14). (Appellant's Brief, p. 34.)

The court below erroneously created a new exception to the definition of a motor carrier by invoking 49 U.S.C. § 13506(b)(2), a provision addressing when an agency has regulatory jurisdiction. (SPA0111.) Neither § 14501 nor § 13102(14) incorporates § 13506 or otherwise references the jurisdiction of the Secretary of Transportation or the Surface Transportation Board. Instead, § 14501 says preemption applies to "*any* motor carrier," not just motor carriers that are subject to the jurisdiction of the Secretary of Transportation or the Surface Transportation Board (emphasis added). Congress knows how to link preemption to jurisdiction when it wishes to do so, as it did elsewhere in § 14501 and § 13504; it did not do so here. Courts have therefore held—correctly—that "a plain reading of section 14501 does not condition preemption under subsection (c) on the motor carrier being subject to jurisdiction" under § 13506. *See, e.g., Greyhound Lines, Inc. v. City of New Orleans ex rel. Dep't of Pub. Utils.*, 29 F. Supp. 2d 339, 345 (E.D. La. 1998).

Instacart correctly argues that the district court erred by finding that shoppers cannot be motor carriers because they are not federally regulated as such. (Appellant's Brief, p. 13, 34-39.) For this reason alone, this Court should reverse the decision below.

B. The Local Laws Relate to Price, Route, and Service.

By adopting ADA-style language, Congress incorporated the Supreme Court's "expansive" understanding of "related to," which reaches state and local measures that have a connection with or reference to motor carrier prices, routes, or services, "whether directly or indirectly." *Dan's City Used Cars, Inc.*, 569 U.S. at 260 (*citing Rowe*, 552 U.S. at 370). As *Rowe* observed, if the "effect of the regulation is that [motor] carriers will have to offer . . . delivery services that differ significantly from those that, in the absence of the regulation, the market might dictate," the state regulation is related to price, route, and service, and therefore preempted. *Id.* at 372. Critically, Congress did not limit preemption to laws that "specifically address[] the [transportation] industry"—preemption equally applies to "the particularized application of a general statute" to motor carriers, and applies "even if 'the effect [on the preempted subject] is only indirect.'" *Morales*, 504 U.S. at 386; *Dan's City Used Cars, Inc.*, 569 U.S. at 260.

The court below erred by characterizing the Local Laws as "generally applicable background regulations" analogous to labor and wage laws that merely regulate motor carriers' "inputs." *See* SPA012-15. This analysis is flawed for three independent reasons.

First, shopper compensation is not a carrier's "input" cost—shoppers *are* the motor carriers. Shopper compensation is thus their "price" for providing services,

not a cost that some other motor carrier must absorb. The district court's framing implicitly treats Instacart as the relevant motor carrier, but Instacart is not a motor carrier and the City does not dispute this. (Appellant's Brief, pp. 41-44.) When properly viewed, Local Law 124 directly dictates what shoppers—the motor carriers—must charge for their transportation services.

Second, the Local Laws are not "generally applicable." They apply exclusively to "third-party grocery delivery services" and "third-party courier services," an industry composed almost entirely of motor carriers. *See* N.Y.C. Admin. Code §§ 20-1501, 20-1521. Laws targeting a specific industry where virtually all participants are motor carriers cannot escape preemption by arguing the law is "generally applicable." *See Morales*, 504 U.S. at 386 ("the sweep of the 'relating to' language" equally encompasses "laws of general applicability"—allowing such laws to escape preemption would be "utterly irrational").

Third, and most fundamentally, the Supreme Court has made clear that FAAAA preemption turns on a law's effects, not its purpose. *See Morales*, 504 U.S. at 386; *Rowe*, 552 U.S. at 371. Whatever the City's stated intentions, the relevant inquiry is whether the Local Laws have a "significant impact" on motor-carrier prices, routes, or services—and the City's own data demonstrates they will do so.

1. The published data from the Restaurant Delivery Standards confirms their relation to price, service, and route.

The City collected and tracked the regulatory impact of the Restaurant Delivery Standards in 2024 and 2025, publishing such data at https://tinyurl.com/j23nfrpy (last visited May 12, 2026). (JA575.) The City's data confirms the Restaurant Delivery Standards caused the market to change due to higher consumer and merchant costs and lower participation on the platform. In fact, in the City's study published before finalizing the Restaurant Delivery Standards, the City concedes the regulations change the market, acknowledging the study "assumes that in response to their 15.6% cost increase per delivery, consumers will make 15.6% fewer orders than they otherwise would." (JA483.) The City underestimated the regulatory impact, as the actual increase to the cost per delivery more than doubled their modeling. A simple comparison of quarterly year-over-year data demonstrates rising costs and lower participation.

Metric (YoY)	Q1 2024	Q2 2024	Q3 2024	Q4 2024
Average consumer fees per order	+46%	+60%	+49%	+36%
Total consumer fees	+58%	+67%	+51%	+39%
Merchant fee per delivery	N/A	+9%	+9%	+11%
Total consumer spending	+10%	+9%	+4%	+5%
Total Workers	-9%	-21%	-30%	-35%
Workers performing trips	-4%	-21%	-27%	-23%
Total Trips	+6%	+1%	-4%	-2%

The City downplays these consequences, focusing instead on higher delivery-worker pay and perceived delivery order growth. But these arguments obscure more than they illuminate. Pre-regulation, deliveries were growing at an annual pace of 17%. (JA483.) Post-regulation, even by the City's own optimistic accounting, delivery growth slowed to approximately 8%—meaning the regulations shaved nearly nine percentage points off the growth rate. And that stagnation came alongside dramatically higher costs for both consumers and merchants. In Q1 2024 alone, average consumer fees per order increased 46% year-over-year, while total consumer fees increased 58%. *Id.* These are not the hallmarks of a thriving market—they are signs of regulatory impact.

The impact on delivery workers themselves has been equally stark. In Q4 2024, the total number of workers on the platform declined 35% year-over-year.

While it is true that remaining workers' compensation increased—which, as Instacart correctly points out, relates to the price of the shopper who is the motor carrier and thus confirms preemption (Appellant's Brief, pp. 41-44)—that increase came at the cost of thousands of lost work opportunities. The City's regulations did not create prosperity for delivery workers; they redistributed a shrinking pie among fewer participants.

Empirical experience from Seattle, Washington, confirms this dynamic. In January 2024, Seattle adopted a task-level minimum pay ordinance similar to the standard the City has adopted here. Researchers using cross-platform, trip-level data found that the aggregate number of delivery tasks in Seattle declined persistently relative to the rest of Washington. *See* Yuan An, Andrew Grain & Brian K. Kovak, *Delivering Higher Pay? The Impacts of a Task-Level Pay Standard in the Gig Economy* (Nat'l Bureau of Econ. Research, Working Paper No. 34545, 2025) (available at http://www.nber.org/papers/w34545 (last visited May 12, 2026)).

The Seattle study's findings are particularly instructive. After the ordinance took effect, base pay per delivery task approximately doubled in Seattle, while pay rates remained constant in the rest of Washington. But this apparent gain was illusory as tips for workers declined sharply. *Id.* Platform operators imposed new fees for Seattle orders to offset compliance costs. *Id.* Consumers responded predictably, as consumer orders dropped in response to the increased cost. *Id.* Both New York City

and Seattle data show how prices, services, and routes are impacted by the local regulation.

2. Higher Costs Contract the Market by Diminishing Access in Lower-Income Areas.

Before enacting the Restaurant Delivery Standards, the City completed a study called *A Minimum Pay Rate for App-Based Restaurant Delivery Workers in NYC*. JA445-JA486. Within that study, the City found that "consumer expenditures on app delivery are greatest in the highest-income areas" of New York City. (JA458.) Residents in the 20 highest-income zip codes had "approximately one order per person every 20 days," while residents in the 20 lowest-income zip codes had "approximately one order per person every 33 days"—a usage rate significantly lower. *Id.* This disparity existed when the average order cost was $23.35. Post-regulation, the City reported the average total order cost as $40.15 in Q4 2024 and $42.08 by the end of Q4 2025—an increase of more than 70% from the pre-regulation baseline. *See* Minimum Pay Rate for Delivery Workers, available at https://tinyurl.com/j23nfrpy (last visited May 12, 2026).

As the Restaurant Delivery Standards and the Local Laws increase costs, they systematically exclude lower-income and price-sensitive customers from the delivery service market. Consumers with less disposable income cannot absorb a 70% increase in order costs. The predictable result is that delivery services contract to the affluent areas of New York City while becoming economically inaccessible

elsewhere. This is not speculation; it is what the City's own modeling predicted, and what the data now confirms. (JA458, JA483.)

This is particularly meaningful with the extension of the Restaurant Delivery Standards to grocery delivery. Grocery delivery services are a critical tool for New York residents in food deserts—areas of the city with lower rates of supermarkets per resident where access to fresh food is already limited. *See* N.Y. STATE COMPTROLLER, REPORT 2-2026, THE COST OF LIVING IN NEW YORK CITY: FOOD (2025), available at https://www.osc.ny.gov/files/reports/osdc/pdf/report-2-2026.pdf (last visited May 12, 2026). For residents of these underserved communities, app-based grocery delivery can provide access to products that would otherwise require significant travel to obtain. In these food deserts, the Local Laws' regulatory burdens will bite first and hardest, only exacerbating the City's existing food access problems.

When the mayor of New York vetoed the Local Laws, he acknowledged this reality, stating that the Local Laws "would increase the cost of groceries for many New Yorkers." (JA273, 279, 351.) The City Council overrode that veto, but the Mayor's concern was well-founded and the City's own data validates it.

By raising consumer costs, the Local Laws will limit the geographic areas where delivery services remain economically viable and reduce the number of consumers who can afford to use grocery delivery platforms. This contraction of the

market necessarily limits the service and route opportunities available to grocery delivery workers—the very motor carriers the FAAAA protects. In effect, the Local Laws make grocery delivery a luxury product—available only to the fortunate few. Section 14501 thus preempts the Local Laws.

3. Local Law 124 is designed to remove the flexibility available to delivery workers.

As the district court recognized, pre-Local Laws, Instacart's shoppers could access its digital platform at their convenience, "browse" order opportunities, and "cho[o]se to accept as many or as few [order] opportunities as they wish." SPA0002. The City affirmatively stated it intends to change that flexibility with the passage of Local Law 124. In the 2022 New York study, in opposition to the on-call time compensation requirement, the study concludes: "Apps are well positioned to address this concern by making operational changes that limit on-call time." (JA481.) Then, in explaining the reason for Local Law 124, the City says "[t]he rule will also incentivize apps to increase the amount of time workers spend engaged in trips and reduce the amount of time workers spend waiting for trip offers." (JA492.) And in explaining why the City's data shows a decrease in worker participation, the City points to a "concerted effort by apps to reduce on-call time." (JA576.)

By expanding what is compensable to cover a delivery service worker's browsing time, the Local Laws have fundamentally changed how delivery service workers can search for and accept delivery opportunities. Instead of having the

freedom to browse available orders at their convenience, the Local Laws require "operational change[s] that limit on-call time." (JA481.) This changes how shoppers complete their services in a manner not dictated by the market, but rather dictated by the Local Laws. This is a prime example of the type of local regulation that the FAAAA is designed to preempt. *Rowe*, 552 U.S. at 373.

CONCLUSION

The Local Laws represent exactly the type of local re-regulation that Congress enacted the FAAAA to prevent. By setting minimum compensation standards, dictating how tips must be presented, and mandating compensation for "on-call time," the Local Laws directly regulate the prices that grocery delivery workers—who are motor carriers—can charge for their transportation services. The City's own data, and the empirical experience from Seattle, confirm what economic theory predicts: these regulations increase consumer costs, reduce demand, contract the market to affluent areas, and ultimately harm the very workers they purport to protect by eliminating work opportunities.

The district court committed two basic errors. First, it conflated the jurisdictional exemption in § 13506(b)(2) with the definition of "motor carrier" in § 13102(14), erroneously concluding that Instacart shoppers cannot be motor carriers because they are not subject to federal regulatory oversight. But preemption under § 14501(c) is keyed to motor carrier status, not federal regulatory jurisdiction—and

shoppers plainly meet the statutory definition of persons providing motor vehicle transportation for compensation. Second, the lower court erroneously characterized the Local Laws as "generally applicable background regulations" that merely affect motor carriers' "inputs." But shoppers are the motor carriers, so their compensation is their price for transportation services. And the Local Laws are not generally applicable, but target a specific industry composed almost entirely of motor carriers.

Congress enacted the FAAAA to ensure that "service options will be dictated by the marketplace; and not by an artificial regulatory structure." H.R. Conf. Rep. 103-677, at 88 (1994). The Local Laws substitute the City's judgment for competitive market forces, precisely what Congress sought to prevent. If New York City can impose these requirements on grocery delivery workers, so can every other jurisdiction in the country, creating the regulatory patchwork Congress enacted the FAAAA to eliminate. Because the Local Laws are "related to" motor-carrier prices, routes, and services, they are preempted. This Court should reverse.

May 15, 2026

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CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a)

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 3,493 words.

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Dated: May 15, 2026