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2
3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF CALIFORNIA
5

6 CALIFORNIA TRUCKING
7 ASSOCIATION, et al., and OWNER-
8 OPERATOR INDEPENDENT DRIVERS
9 ASSOCIATION,

Plaintiffs,

10 v.

11 ATTORNEY GENERAL ROB BONTA,
12 et al., and INTERNATIONAL
13 BROTHERHOOD OF TEAMSTERS,

Defendants.
14

Case No.: 18cv2458-BEN-BLM

DECISION

15 Plaintiffs’ renewed motions for a preliminary injunction were combined with a trial
16 on the merits pursuant to Federal Rule of Civil Procedure 65(a)(2). The motions for a
17 preliminary injunction are denied and judgment on all claims is entered in favor of
18 Defendants. These are the findings of facts and conclusions of law.

19 **I. BACKGROUND**

20 Plaintiffs California Trucking Association (“CTA”), Ravinder Singh, and Thomas
21 Odom previously sought industry-wide relief from the operation of a new California state
22 law: Assembly Bill 5 (commonly known as AB5). Purportedly, AB5 was enacted to
23 address a widespread problem of the misclassification of employee workers, including
24 freight hauling drivers, classifying them instead as independent contractors. *Am. Soc’y of*
25 *Journalists & Authors, Inc. v. Bonta*, 15 F.4th 954, 957 (9th Cir. 2021) (“To confront the
26 misclassification of employees as independent contractors, California passed Assembly
27 Bill (AB) 5, then AB 2257, which codified a more expansive test for determining
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1 workers' statuses, albeit with certain occupational exemptions.”). In effect, the operation
2 of AB5 deems most, if not all, freight hauling drivers driving in or into California as
3 employees of a freight hauling business. This occurs by application of a test known as
4 the “ABC test.” AB5 was superseded by AB-2257 on January 1, 2021, without
5 significant changes. *See* Cal. Labor Code § 2775. AB5 as superseded by AB-2257 is
6 referred to as AB5 throughout for ease of understanding.

7 A preliminary injunction was entered based upon the preliminary conclusion that
8 AB5 was preempted by the Federal Aviation Administration Authorization Act
9 (“FAAAA”). Title 49 U.S.C. § 14501(c)(1). Because it appeared that the preemption
10 claim was sufficient to grant relief, the Court did not reach the alternate claim concerning
11 the dormant Commerce Clause doctrine. Defendants appealed. The Court of Appeals
12 concluded that AB5 was not preempted by the FAAAA and reversed. *See California*
13 *Trucking Assoc. v. Bonta*, 996 F.3d 644 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 2903
14 (2022). Following remand, Plaintiffs amended their Complaint, and Owner-Operator
15 Independent Drivers Association (“OOIDA”) was granted leave to intervene as a
16 Plaintiff. Renewed motions for a preliminary injunction were filed. Most of the salient
17 facts were set out in this Court’s prior Order and are re-adopted here.

18 The CTA Plaintiffs put forth four primary claims for relief in their Third Amended
19 Complaint (filed May 19, 2023). Dkt. 168. First, they re-allege express FAAAA
20 preemption of AB5. Second, they allege implied preemption of AB5. Third, they allege
21 AB5 runs afoul of the dormant Commerce Clause. Fourth, they allege AB5 violates the
22 Equal Protection Clause by creating irrational or animus-based classifications.¹

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25 ¹ Plaintiffs waived their Third claim for relief that the Supremacy Clause, together with
26 the express preemption provision of 49 U.S.C. § 31141, prohibits states from enforcing a
27 law or regulation on commercial motor vehicle safety that the Secretary of Transportation
28 has determined to be preempted. *See* Pltfs’ Mem. of Cont. of Facts and Law, Dkt. 189, at
33 (“At trial, Plaintiffs do not intend to seek any relief based upon their Third Claim for
Relief in the Third Amended Complaint, ECF No. 168, ¶¶ 87-94.”).

1 OOIDA’s Amended Complaint (filed May 19, 2023), *see* Dkt. 166, alleges four similar
2 claims for relief (albeit in a different order) and are considered together with CTA’s
3 claims. All Plaintiffs seek declaratory and injunctive relief on all claims.

4 CTA is an association of licensed motor-carrier companies that manage,
5 coordinate, and schedule the movement of property throughout California. Many of
6 CTA’s motor-carrier members contract with owner-operators as independent contractors.
7 Plaintiff Ravinder Singh is one example. He owns and operates his own truck, and he
8 contracts as an independent contractor with different motor carriers and brokers in
9 California to perform various trucking services. Plaintiff Thomas Odom also owns and
10 operates his own truck. He contracts as an independent contractor with a national motor
11 carrier to haul property within California and between California and Texas. OOIDA is
12 an association of 150,000 members located throughout the country. These members own
13 and operate more than 200,000 heavy-duty trucks. Many members own and drive their
14 own trucks and work as independent contractors. Among their truck driving members are
15 6,103 in California, with 7,050 more in Arizona, Nevada, Oregon and Washington.

16 For decades, the trucking industry has used an owner-operator model to provide for
17 the transportation of property in interstate commerce. That model generally involves a
18 licensed motor carrier contracting with an independent contractor driver to transport the
19 carrier-customer’s property. Individual owner-operators commonly use the independent
20 contractor business model in California and across the country. They typically buy or
21 lease their own trucks and may, in turn, lease both their trucks and contract for their
22 driving services to freight hauling businesses.

23 Whether certain laws and regulations in the California Labor Code apply to truck
24 drivers, generally depends on their status as employees or independent contractors. *S.G.*
25 *Borello & Sons, Inc. v. Dep’t of Indus. Relations*, 48 Cal. 3d 341, 350 (1989). In the past,
26 California courts have used a test based on the *Borello* decision to determine whether
27 workers are correctly classified as employees or independent contractors. *See id.* at 341.
28 The *Borello* standard considers the “right to control work,” as well as many other

1 factors.² *Id.* at 355. In April of 2018, the California Supreme Court replaced the *Borello*
2 classification test for California Wage Order No. 9 with the “ABC test” or the “*Dynamex*
3 test.” *Dynamex Operations West v. Superior Court*, 4 Cal. 5th 903 (2018). California’s
4 Assembly Bill 5 codified the ABC test adopted in *Dynamex* and expanded its reach to
5 contexts beyond Wage Order No. 9, to include workers’ compensation, unemployment
6 insurance, and disability insurance.

7 As applied to the motor carrier context, AB5 provides a mandatory test for
8 determining whether a person driving/hauling freight for another contracting person or
9 entity is an independent contractor or an employee for all purposes under the California
10 Labor Code, the Industrial Welfare Commission wage orders, and the Unemployment
11 Insurance Code. Under AB5’s new ABC test, an owner-operator is presumed to be an
12 employee *unless* the motor carrier can establish each of three requirements:

13 There is a rebuttable presumption . . . that a worker
14 performing services . . . is an employee rather than an
15 independent contractor. Proof of independent contractor status
includes satisfactory proof of these factors:

16 (a) That the individual has the right to control and
17 discretion as to the manner of performance of the contract for
18 services in that the result of the work and not the means by
19 which it is accomplished is the primary factor bargained for.

20 (b) That the individual is customarily engaged in an
independently established business.

21 (c) That the individual’s independent contractor status is
22 bona fide and not a subterfuge to avoid employee status. A
23 bona fide independent contractor status is further evidenced by
the presence of cumulative factors such as substantial
investment other than personal services in the business, holding

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25 ² These factors include: (a) whether the worker is engaged in a distinct occupation or
26 business; (b) the amount of supervision required; (c) the skill required; (d) whether the
27 worker supplies the tools required; (e) the length of time for which services are to be
28 performed; (f) the method of payment; (g) whether the work is part of the regular
business of the principal; and (h) whether the parties believe they are creating an
employer-employee relationship.

1 out to be in business for oneself, bargaining for a contract to
2 complete a specific project for compensation by project rather
3 than by time, control over the time and place the work is
4 performed, supplying the tools or instrumentalities used in the
5 work other than tools and instrumentalities normally and
6 customarily provided by employees, hiring employees,
7 performing work that is not ordinarily in the course of the
8 principal’s work, performing work that requires a particular
9 skill, holding a license pursuant to the Business and Professions
10 Code, the intent by the parties that the work relationship is of an
11 independent contractor status, or that the relationship is not
12 severable or terminable at will by the principal but gives rise to
13 an action for breach of contract.

14 *See* Cal. Labor Code §§ 2750.5 and 2775. AB5 includes an exception that was not part of
15 the *Dynamex* test, which is an exception for business-to-business contracting
16 relationships, also known as the B2B exemption. *See* Cal. Labor Code § 2776 (“Section
17 2775 and the holding in *Dynamex* do not apply to a bona fide business-to-business
18 contracting relationship, as defined below, under the following conditions . . .”).

19 **II. DISCUSSION**

20 **A. First Claim for Relief: Express Preemption**

21 Within the FAAAA, Congress included an express preemption provision providing
22 that states “may not enact or enforce a law, regulation, or other provision having the force
23 and effect of law related to a price, route, or service of any motor carrier . . . with respect
24 to the transportation of property.” 49 U.S.C. § 14501(c)(1). The preemption provision is
25 a broad one. “The phrase ‘related to’ embraces state laws ‘having a connection with or
26 reference to’ carrier ‘rates, routes, or services,’ whether directly or indirectly.” *Cal.*
27 *Trucking Ass’n v. Su*, 903 F.3d 953, 960 (9th Cir. 2018). As the Ninth Circuit has
28 explained, “[t]here can be no doubt that when Congress adopted the FAAAA, it intended
to broadly preempt state laws that were ‘related to a price, route or service’ of a motor
carrier.” *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1053 (9th Cir.
2009) (emphasis added); *see also Schwann v. FedEx Ground Pkg. System, Inc.*, 813 F.3d

1 429, 436 (1st Cir. 2016) (Congress had “dual objectives” for adopting a “broad reach” by
2 copying the language of the Airline Deregulation Act of 1978 into the FAAAA’s
3 preemption clause). However, “Congress did not intend to preempt laws that implement
4 California’s traditional labor protection powers, and which affect carriers’ rates, routes,
5 or services in only *tenuous* ways.” *Su*, 903 F.3d at 960-61 (emphasis added) (citing *Dilts*
6 *v. Penske Logistics, LLC*, 769 F.3d 637, 647-50 (9th Cir. 2014) (meal and rest break
7 laws) and *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152
8 F.3d 1184, 1189 (9th Cir. 1998) (prevailing wage law)); *see also Su*, 903 F.3d at 960
9 (“[T]he FAAAA does not preempt state laws that affect a carrier’s prices, routes, or
10 services in only a tenuous, remote or peripheral manner with no significant impact on
11 Congress’s deregulatory objectives.”) (internal quotation marks omitted). FAAAA
12 preemption is broad but not so broad that the sky is the limit: states retain the ability to
13 execute their police power with laws that do not significantly impact rates, routes, or
14 services. *Dan’s City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261 (2013).

15 That the FAAAA does not explicitly preempt AB5 was resolved earlier in this
16 case. *California Trucking Assoc.* held that,

17 Because AB-5 is a generally applicable law that impacts a
18 motor carrier’s business at the point where the motor carrier
19 interacts with its workers, and the law affects motor carriers’
20 relationship with their workers in a manner analogous to the
21 worker classification laws we have previously upheld in *Su*,
22 AB-5 is not significantly related to rates, routes, or services.
Therefore, we conclude that the F4A does not preempt AB-5 as
applied to motor carriers.

23 996 F.3d at 659. And *California Trucking Assoc.* reiterated its conclusion explaining,

24 Because AB-5 is a generally applicable labor law that impacts
25 the relationship between a motor carrier and its workforce, and
26 does not bind, compel, or otherwise freeze into place a
27 particular price, route, or service of a motor carrier at the level
28 of its customers, it is not preempted by the F4A.

1 *Id.* at 664. While Plaintiffs continue to advance arguments that the FAAAA explicitly
2 preempts AB5 and may preserve such arguments for appeal, the decision regarding
3 preemption in *California Trucking Assoc.* is binding on this Court. *See Ranchers*
4 *Cattlemen Action Legal Fund United Stockgrowers of America v. U.S. Dep’t of Agr.*, 499
5 F.3d 1108, 1114 (9th Cir. 2007) (“[T]he district court should abide by ‘the general rule’
6 that our decisions at the preliminary injunction phase do not constitute the law of the
7 case. Any of our conclusions on pure issues of law, however, are binding.”) (citations
8 omitted). The claim of FAAAA express preemption fails as a matter of law.

9 **B. Implied Preemption**

10 Plaintiffs make a related argument that the FAAAA implicitly preempts AB5. The
11 FAAAA contains an express preemption provision. Where Congress sets out in express
12 terms, as it did in the FAAAA, the type of state laws that are to be preempted, is there
13 any room left for preempting laws on similar subjects *not* expressly addressed by
14 Congress? Certainly, an inference can be drawn that an express preemption clause
15 forecloses implied preemption. Yet, implied preemption might have a place.

16 “At best, *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992) supports an
17 inference that an express pre-emption clause forecloses implied pre-emption; it does not
18 establish a rule.” *Freightliner Corp. v. Myrick*, 514 U.S. 280, 289 (1995). After all,
19 “[i]mplied conflict preemption can exist even when Congress has chosen to include an
20 express preemption clause in a statute.” *Nathan Kimmel, Inc. v. DowElanco*, 275 F.3d
21 1199, 1204 (9th Cir. 2002) (citing *Freightliner*, 514 U.S. at 287). Although the field of
22 implied preemption in such cases is very narrow, there are two trails: (1) impossibility;
23 and (2) obstruction. “We have found implied conflict pre-emption where it is ‘impossible
24 for a private party to comply with both state and federal requirements,’ or where state law
25 ‘stands as an obstacle to the accomplishment and execution of the full purposes and
26 objectives of Congress.’” *Freightliner*, 514 U.S. at 287 (citations omitted).

27 **1. Impossibility**

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1 AB5’s employee classification scheme does not directly conflict with the FAAAA.
2 First, it is not impossible for truck drivers to comply with both federal and state law
3 because there is simply no federal standard of classification requiring compliance. The
4 FAAAA does not dictate that truck drivers must be classified as independent contractors
5 or that drivers are not subject to state wage and hour laws. Among the fifty states there
6 are various methods used for classifying workers. Federal Truth-in-Leasing regulations
7 contemplate some truck drivers will be independent contractors but do not prohibit
8 drivers working as employees. *See* II(D)(2)(b), *infra*. In the end, California’s scheme
9 does not falter on the impossibility-of-compliance trail of implied preemption.

10 **2. Obstacle**

11 Second, it is not accurate to say that California’s employee classification scheme
12 when applied to truck drivers stands as an obstacle to “the accomplishment and execution
13 of the full purposes and objectives of Congress.” While the jury is out as to whether AB5
14 substantially affects carrier prices, routes, or services, it does not attempt to do so
15 directly. The Supreme Court “ha[s] cautioned that § 14501(c)(1) [of the FAAAA] does
16 not preempt state laws affecting carrier prices, routes, and services ‘in only a tenuous,
17 remote, or peripheral . . . manner.’” *Dan’s City Used Cars*, 569 U.S. at 261 (citations
18 omitted). Here, the evidence suggests AB5’s effect is peripheral. If the effect of AB5 is
19 peripheral, then the second trail of implied preemption is closed off.

20 **3. Patchwork Quilt**

21 Lastly, Plaintiffs’ implied preemption argument is unavailing because it proceeds
22 down a third trail with a dead end. Plaintiffs say that AB5 frustrates Congress’ aim to
23 avoid a patchwork quilt of national regulations. But the particular regulations about which
24 Congress is concerned are those addressing carrier prices, routes, and services. Congress
25 does not appear to be concerned with a patchwork quilt of truck driver classifications for
26 purposes of wage and hour protection. The Plaintiff drivers’ claims here “are far removed
27 from Congress’ driving concern.” *Dan’s City Used Cars*, 569 U.S. at 263. In the end, after
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1 considering the three avenues of implied preemption, the Court concludes Plaintiffs' claim
2 of FAAAA implied preemption remains unproven and unconvincing.

3 **C. Second Claim for Relief: Dormant Commerce Clause**

4 Next, Plaintiffs argue that AB5 runs afoul of Article 1, § 8, clause 3 of the
5 Constitution, known as the dormant Commerce Clause. Article I, § 8, clause 3 of the
6 Constitution, gives Congress the power “[t]o regulate commerce . . . among the several
7 states.” This affirmative grant of power to Congress includes a negative implication,
8 which may restrict the ability of states to regulate and interfere with interstate commerce.
9 *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 139 S. Ct. 2449, 2459 (2019). That
10 restriction upon the states prohibits economic protectionism. “[R]egulatory measures
11 designed to benefit in-state economic interests by burdening out-of-state competitors” are
12 impermissible. *Fulton Corp. v. Faulkner*, 516 U.S. 325, 330 (1996) (“This reading
13 effectuates the Framers’ purpose to ‘prevent a State from retreating into economic
14 isolation or jeopardizing the welfare of the Nation as a whole, as it would do if it were
15 free to place burdens on the flow of commerce across its borders that commerce wholly
16 within those borders would not bear.’”). One example is the case of *Granholm v. Heald*,
17 544 U.S. 460, 465-66 (2005), which invalidated state laws preventing the sale of wine
18 from out-of-state wineries to consumers in Michigan and New York. “[T]he object and
19 effect of the laws are the same: to allow in-state wineries to sell wine directly to
20 consumers in that State but to prohibit out-of-state wineries from doing so, or, at the least,
21 to make direct sales impractical from an economic standpoint.”³ This antidiscrimination
22 principle lies at the core of the dormant Commerce Clause cases.

23 Recently, the Supreme Court decided *Nat’l Pork Producers Council v. Ross*, 143
24 S. Ct. 1142 (2023). It reinforces the notion that the antidiscrimination principle
25 continues to occupy the core of the Supreme Court’s dormant Commerce Clause
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28 ³ See also *Dean Milk Co. v. Madison*, 340 U.S. 349 (1950).

1 concerns. *Id.* at 1153 (“Today, this antidiscrimination principle lies at the ‘very core’ of
2 our dormant Commerce Clause jurisprudence.”) (citation omitted). The
3 antidiscrimination principle prohibits state laws that are driven by economic
4 protectionism, *i.e.*, “regulatory measures designed to benefit in-state economic interests
5 by burdening out-of-state competitors.” *Id.*

6 Plaintiffs here do not try to make the case that AB5 was designed to benefit in-state
7 freight drivers by burdening out-of-state freight drivers. Plaintiffs do not try to make the
8 case that classifying independent contractor drivers as employees in California is
9 designed to benefit those in-state drivers by burdening out-of-state independent
10 contractor drivers. Rather, Plaintiffs object to the employee classification approach as
11 burdening independent drivers everywhere. Yet, even Plaintiffs acknowledge that
12 California has no interest in applying its labor laws to out-of-state workers and gains no
13 benefit from classifying those workers. *See* OOIDA’s *Oppo. to Defs’ Mem.*, Dkt. 196 at
14 10 (“California enjoys virtually no benefits from applying AB-5 to interstate truckers
15 who are not based in California . . .”). In other words, Plaintiffs are not contending that
16 AB5 was designed to discriminate in favor of in-state workers and against out-of-state
17 workers. While it may have other undesirable effects in Plaintiffs’ view, AB5 is not an
18 act of economic protectionism by legislative design. Thus, Plaintiffs’ claim does not rest
19 on the antidiscrimination principle.

20 Instead, it is the *effect* of AB5 that offends the dormant Commerce Clause, say the
21 Plaintiffs. They argue that AB5’s burdens on interstate commerce outweigh the local
22 benefits, relying on *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), and its progeny.
23 The same argument was made by plaintiffs in *Nat’l Pork*. There, the claim relied on *Pike*
24 (rather than the antidiscrimination principle) arguing that a California ballot proposition
25 about conditions for pigs on farms burdened interstate commerce and the burden
26 outweighed the local California benefit. *Nat’l Pork*, 143 S. Ct. at 1157. The Supreme
27 Court was unmoved. *Id.* (“We see problems with this theory too.”). While a few cases
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1 have invalidated state laws that are nondiscriminatory based on *Pike*, today’s claim
2 against AB5 is far from *Pike*’s heartland.

3 The Supreme Court reminds lower courts that the dormant Commerce Clause is
4 not “a roving license for federal courts to decide what activities are appropriate for state
5 and local government to undertake.” *Id.* at 1159 (quoting *United Haulers*, 550 U.S. at
6 343). More to the point, the Supreme Court reminds lower courts that judges are not
7 institutionally well-suited to draw reliable conclusions for applying the *Pike* test. *Id.*
8 And the Supreme Court reminds all of us that in a functioning democracy policy choices
9 usually belong to the elected representatives of a state. *Id.* at 1160. “Judges cannot
10 displace the cost-benefit analyses embodied in democratically adopted legislation guided
11 by nothing more than their own faith” in economics. *Id.* AB5 is democratically adopted
12 legislation addressing the undesirable situation of worker-drivers in California who
13 should be classified as employees being misclassified against their will or without their
14 understanding as independent contractors. AB5 does not apply to out-of-state worker-
15 drivers while they work and drive outside of California. So, AB5 does not run afoul of
16 the extraterritoriality doctrine forbidding laws that control commerce outside the state.
17 *Id.* at 1154. While AB5 may apply to the classification of worker-drivers who deliver
18 freight into California, the burden on businesses using worker-drivers is similar for both
19 in-state and out-of-state businesses. The state benefit of potentially overclassifying all
20 independent contractor worker-drivers as employees may be debatable, maybe even
21 illusory, but “the dormant Commerce Clause does not protect a ‘particular structure or
22 method of operation.’” *Id.* at 1162. That goes for pork production and for employee
23 labor law classifications.

24 Undaunted, Plaintiffs highlight the new burdens on out-of-state freight hauling
25 businesses. They say that these businesses will have to reclassify their contracted drivers
26 as employees to continue delivering freight into California. Perhaps so. But such
27 burdens from AB5 are also placed on wholly in-state freight hauling businesses and
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1 reveal no discriminatory effect, much less a large enough unwelcome commercial effect
2 to warrant *Pike* relief.

3 Defendants argue that the burdens on out-of-state businesses are not that heavy and
4 that the in-state benefits are substantial. Defendants minimize the burdens on interstate
5 commerce as “incidental,” not significant, and far outweighed by the benefits of AB5.
6 Some businesses would not describe the burdens of AB5 in such mild terms. For
7 example, RDS is a freight hauling company operating in California, Nevada, and
8 Arizona. When RDS tried to recruit its 85 independent contractor drivers to become
9 employees, only two accepted. *See* Declaration of Greg P. Stefflre, Dkt. 172-5, at ¶ 12.
10 The cost of recruiting employees to drive and lost business from conversion efforts
11 resulted in a \$4,000,000 loss of revenue for RDS. *Id.* at ¶ 13. There are, no doubt, other
12 firms like RDS shouldering economic burdens that seem greater than what the
13 Defendants call “incidental.” Nevertheless, the Ninth Circuit has said laws that increase
14 compliance costs, without more, do not qualify as a significant burden on interstate
15 commerce. *Nat’l Pork Producers Council v. Ross*, 6 F.4th 1021, 1032 (9th Cir. 2021),
16 *aff’d*, 143 S. Ct. 1142 (2023); *cf. Sierra Nevada Transportation, Inc. v. Nevada*
17 *Transportation Authority*, No. 22-15823, 2023, WL 6871575 *3 (9th Cir. Oct. 18, 2023)
18 (“But ‘the mere fact that a firm engaged in interstate commerce will face increased costs
19 as a result of complying with state regulations does not, on its own, suffice to establish a
20 substantial burden on interstate commerce.’”) (quoting *Ross*, 6 F.4th at 1032).
21 Defendants contend, on the other side of the equation, that the state is enjoying manifold
22 noneconomic benefits from AB5. “AB 5 serves the important interest of ensuring that
23 employees receive benefits guaranteed by law, including minimum wage, unemployment
24 insurance, workers’ compensation, sick leave, and others and to level the playing field for
25 compliant employers.” *See* State Defs’ Oppo., Dkt. 195 at 14 (“AB 5’s benefits far
26 outweigh any burden AB 5 may impose.”).

27 The Supreme Court issued a reminder that federal judges are not well-equipped to
28 assess and weigh these kinds of economic burdens with non-economic benefits. “This

1 Court has also recognized that judges often are ‘not institutionally suited to draw reliable
2 conclusions of the kind that would be necessary to satisfy the *Pike* test.’” *Nat’l Pork*, 143
3 S. Ct. at 1159 (quoting *Davis*, 553 U.S. at 535). “How is a court supposed to compare or
4 weigh economic costs (to some) against noneconomic benefits (to others)?” *Id.* “Really,
5 the task is like being asked to decide ‘whether a particular line is longer than a particular
6 rock is heavy.’” *Id.* at 1160 (quoting *Bendix Autolite Corp. v. Midwesco Enterprises,*
7 *Inc.*, 486 U.S. 888, 897 (1988) (Scalia, J., concurring)). It is “a task no court is equipped
8 to undertake.” *Id.*

9 The burdens and the benefits of AB5 are incommensurable. California’s interest in
10 protecting in-state drivers from being misclassified as independent contractors and losing
11 statutory entitlements under state labor laws cannot be weighed on a scale opposite the
12 additional dollars spent on compliance by freight hauling businesses. As one Justice
13 concluded in *Nat’l Pork*, “[n]one of our *Pike* precedents require us to attempt such a
14 feat.” *Id.* at 1167 (Barrett, J. concurring in part). Instead, if AB5 really does threaten to
15 disrupt the interstate trucking industry, the Supreme Court teaches that Congress enjoys
16 the power and the position to enact laws that explicitly preempt conflicting state laws like
17 AB5. *Id.* at 1160-61. It has already come close to doing so with the FAAAA.

18 In the end, AB5 does not offend the core constitutional principle of prohibiting
19 purposeful discrimination against interstate commerce. And while AB5 has economic
20 effects, the effects do not confirm purposeful discrimination against interstate commerce
21 in the design of AB5. Although courts are not well-equipped to do such weighing, when
22 it comes to weighing the burdens of AB5 against the salutary effects under *Pike*, it does
23 not appear that the pure economic burdens on out-of-state worker-drivers and freight
24 hauling firms substantially outweigh the in-state benefits of correctly classifying worker-
25 drivers as employees. *Nat’l Pork* reminds courts that “extreme caution” should be used
26 when considering dormant Commerce Clause claims. *Id.* at 1165. The Supreme Court
27 teaches, “[p]reventing state officials from enforcing a democratically adopted state law in
28 the name of the dormant Commerce Clause is a matter of ‘extreme delicacy,’ something

1 courts should do only ‘where the infraction is clear.’” *Id.* Today, the asserted AB5
 2 infraction is not clear, therefore, Plaintiffs’ request to enjoin AB5 is unavailing.

3 **D. Fourth and Fifth Claims for Relief: Equal Protection**

4 **1. Animus**

5 Lastly, Plaintiffs try to make the case that AB5 violates the Equal Protection
 6 Clauses of the U.S. Constitution and the California constitution.⁴ They contend that the
 7 employee classifications targeting motor carriers and owner-drivers were motivated by
 8 animus. The animus was expressed, in their view, by the legislative sponsor of AB5,
 9 Assemblywoman Lorena Gonzalez. Plaintiffs highlight her statement on the Assembly
 10 Floor on September 11, 2019, that one purpose of AB5 is to “get rid of an outdated
 11 broker model that allows companies to basically make money and set rates for people that
 12 they call independent contractors.” *See* Pltfs’ Mem. of Cont. of Facts and Law, Dkt. 189,
 13 at 26. Plaintiffs also underscore a tweet by Gonzalez on November 21, 2019, about how
 14 AB5 would permit a trucker to “work as an independent contractor for a construction
 15 firm” while requiring an owner-operator to “work as an employee for a trucking
 16 company.” *Id.* at 26-27. That refers to an exemption for construction industry drivers in
 17 AB5 which is set to expire at the end of this year.

18 Yet, the statements of a single legislator do not necessarily represent the reasons
 19 motivating other legislators who vote to pass a bill into law. That was the case in New
 20 Hampshire. The Supreme Court cautioned about relying on the statement of a single
 21 legislator in a case alleging legislative animus. “Reliance on such isolated fragments of
 22 legislative history in divining the intent of Congress is an exercise fraught with hazards,
 23 and ‘a step to be taken cautiously.’” *New England Power Co. v. New Hampshire*, 455
 24 U.S. 331, 341–42 (1982) (“To support its argument to the contrary, New Hampshire
 25 relies on a single statement made on the floor of the House of Representatives during the
 26 _____

27 ⁴ Consideration of claims of equal protection violations under the federal and California
 28 constitutions proceed along the same lines.

1 debates preceding enactment of Part II.”) (citations omitted). The statements of
2 Assemblywoman Gonzalez alone are insufficient to prove legislative animus for an Equal
3 Protection violation. *Tingley v. Ferguson*, 47 F.4th 1055, 1087 (9th Cir. 2022), *cert.*
4 *denied*, 144 S. Ct. 33 (2023) (“Stray remarks of individual legislators are among the
5 weakest evidence of legislative intent. The Court has ‘long disfavored arguments based
6 on alleged legislative motives’ because such inquiries are a ‘hazardous matter.’ The
7 Court has ‘been reluctant to attribute those motives to the legislative body as a whole’
8 because ‘what motivates one legislator to make a speech about a statute is not necessarily
9 what motivates scores of others to enact it.”) (citations omitted). The Gonzalez
10 statements identified by Plaintiffs are open to interpretation and do not purport to declare
11 the intention of the entire Assembly.

12 Plaintiffs argue that this case is like *Olson v. California*, 62 F.4th 1206 (9th Cir.
13 2023). *Olson* determined that AB5 violated the Equal Protection Clause based on
14 statements by four legislators reflecting animus in the process of enacting AB5. The
15 *Olson* opinion, however, has been vacated. *See Olson v. California*, No. 21-55757, 88
16 F.4th 781 (Mem.) (9th Cir. Dec. 18, 2023) (vacating and rehearing en banc); Joint Notice
17 of Supp. Auth., Dkt. 205.

18 Without the benefit of *Olson*, Plaintiffs fall back on *Merrifield v. Lockyer*, 547
19 F.3d 978 (9th Cir. 2008) to argue their Equal Protection claim. *Merrifield* concerned pest
20 controller chemical licensing for non-chemical-using pest controllers and addressed an
21 extreme case of a statute that lacked rationality. *Merrifield* correctly teaches that rational
22 basis review applies in such cases and that a plaintiff’s claim will be rejected where
23 “‘there is any reasonably conceivable state of facts that could provide a rational basis’ for
24 the challenged law.” *Id.* at 989 (quoting *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307,
25 313 (1993)). Even *Merrifield* agreed that “[t]he government is not required to
26 substantiate its reasoning with facts. ‘In an equal protection case of this type those
27 challenging the legislative judgment must convince the court that the legislative facts on
28 which the classification is apparently based could not reasonably be conceived to be true

1 by the governmental decisionmaker.” *Id.* (quoting *Vance v. Bradley*, 440 U.S. 93, 111
2 (1979)). *Merrifield* continued “‘States are accorded wide latitude in the regulation of
3 their local economies under their police powers, and rational distinctions may be made
4 with substantially less than mathematical exactitude.’ Indeed, we must remember that
5 ‘the judiciary may not sit as a superlegislature to judge the wisdom or desirability of
6 legislative policy determinations made in areas that neither affect fundamental rights nor
7 proceed along suspect lines.’” *Id.* (quoting *City of New Orleans v. Dukes*, 427 U.S. 297,
8 303 (1976)). In essence, *Merrifield* stands for the proposition that an inconceivably
9 irrational law is prohibited by the Equal Protection Clause. Thus, with *Olson* vacated,
10 Plaintiffs assert that AB5 violates the Equal Protection Clause because the law is
11 irrational.

12 **2. Rational Basis**

13 **a. Construction Industry Exemption**

14 It has been reported that there are 100 exemptions built into AB5. Plaintiffs focus
15 on two exemptions to demonstrate the law is irrational. One is the exemption for truck
16 drivers in the construction industry. This exemption expires at the end of 2024. The
17 other exemption is the business-to-business exemption (known as “B2B”). *See* Cal.
18 Labor Code § 2776. Plaintiffs argue that neither exemption is rational.

19 For an equal protection inquiry on AB5, a court asks only whether the statute’s
20 occupational classifications are rationally-related to a legitimate governmental interest.
21 *Am. Soc’y of Journalists & Authors*, 15 F.4th at 964 (reviewing rational basis for AB5’s
22 occupational classifications). This is not a rigorous standard for a law to meet. “This is a
23 fairly forgiving standard, given the wide latitude afforded to states in managing their
24 economies.” *Id.* (citing *Dukes*, 427 U.S. at 303). Economic classifications are upheld “so
25 long as ‘there is any reasonably conceivable state of facts that could provide a rational
26 basis.’” *Id.* (quoting *FCC v. Beach Comm., Inc.*, 508 U.S. 307, 313, (1993)). Put
27 differently, in order for Plaintiffs to prevail on their Equal Protection Clause claim, they
28 must shoulder the burden to “negate every conceivable basis which might have supported

1 the distinctions drawn.” *Id.* (citations omitted). Plaintiffs’ arguments in this regard are
2 not fully convincing.

3 Concerning the construction industry exemption, the reasons set forth by the State
4 for the exemption are not irrational. To the extent they appear to treat the same groups of
5 worker-drivers differently for the present time, even *Merrifield* acknowledges that a state
6 may implement its legislative solution in stages. 547 F.3d at 989 (“The Supreme Court
7 has stated that ‘legislatures may implement their program step by step, in economic areas,
8 adopting regulations that only partially ameliorate a perceived evil and deferring
9 complete elimination of the evil to future regulations.’”) (citations omitted). Here, the
10 State has put forward a rationale for delaying implementation of AB5 for construction
11 industry drivers working as independent contractors. *See* State Defs’ Mem. of Cont. of
12 Facts and Law, Dkt.190, at 34-36; Declaration of Cesar Borjas in Supp. of Intervenor-
13 Def, Dkt. 186-1, at ¶¶ 4-5 (construction industry driving needs and equipment are
14 different than typical freight driving). The reasons for the temporary construction
15 industry exemption are not irrational and, in any event, the issue will soon be moot.

16 ***b. B2B Exemption***

17 Plaintiffs also point to the B2B exemption which provides that AB5’s ABC test
18 does not apply to bona fide business-to-business contracting relationships. Under the
19 B2B exemption, a driver-worker need not be classified as an employee if he or she
20 contracts as a sole proprietor or a business entity. *Bowerman v. Field Asset Servs., Inc.*,
21 60 F.4th 459, 478 (9th Cir. 2023) (“California Labor Code § 2776 recently enacted a
22 retroactive business-to-business exception to the ABC test. Under that exception, ‘the
23 holding in *Dynamex* does not apply to a bona fide business-to-business contracting
24 relationship if an individual acting as a sole proprietor, or a business entity formed as a
25 partnership, limited liability company, limited liability partnership, or corporation
26 (business service provider) contracts to provide services to another such business.’
27 Instead, ‘the determination of employee or independent contractor status of the business
28 services provider shall be governed by *Borello*, if the contracting business demonstrates

1 that each of twelve criteria is satisfied.”). A truck owner-operator may contract with
2 another business to provide freight hauling services without being classified as an
3 employee. *Id.* at 478; State Defs’ Mem. of Cont. of Facts and Law, Dkt.190, at 18-20
4 (chart). Plaintiffs agree but assert that while intrastate worker-drivers can qualify for the
5 B2B exemption, interstate worker-drivers cannot satisfy the B2B requirements. Plaintiffs
6 say that is because interstate worker-drivers are bound by federal Truth-in-Leasing
7 regulations. *See* Intervenor-Pltf OOIDA’s Mem. of Cont. of Facts and Law, Dkt. 193, at
8 6-8 (citing 49 C.F.R. § 376.12(c)(1)). Consequently, Plaintiffs argue that the B2B
9 exemption is irrational and thus denies them equal protection.

10 It is not entirely clear how federal Truth-in-Leasing rules directly conflict with the
11 B2B exemption. In the freight trucking industry, many drivers own their heavy-duty
12 trucks. These owner-operators may decide to lease their trucks to freight carrier
13 companies. The owner-operator may at the same time agree to provide driving services
14 to the freight carrier company by driving their (now leased to the carrier) truck. In 1979,
15 the ICC promulgated the Truth-in-Leasing regulations. Title 49 C.F.R. §§ 376.1 *et seq.*
16 “The main purpose of the Truth-in-Leasing regulations is to ensure truth-in-leasing by
17 fostering disclosure—meaning a full disclosure between the carrier and the owner-
18 operator of the elements, obligations, and benefits of leasing contracts . . . in order to
19 eliminate or reduce opportunities for skimming and other illegal or inequitable practices
20 by motor carriers and to promote the stability and economic welfare of the independent
21 trucker segment of the motor carrier industry.” *Construction and Application of Truth-*
22 *in-Leasing Regulations*, 74 A.L.R. Fed. 2d 521 (2013); *see also id.* (“The regulatory
23 provisions also serve the goal of preventing motor carriers from taking advantage of the
24 owner-operators’ weak bargaining position and allow the owner-operators to better assess
25 their rights and responsibilities under the lease. The method Congress chose to achieve
26 its stated purpose was to require that all leases between motor carriers and owner-
27 operators be in writing, that certain terms be included in every lease between carriers and
28 owner-operators, and that motor carriers return escrow deposits within 45 days after

1 termination of the leasing arrangement.”). At their core, the Truth-in-Leasing rules are
2 full disclosure requirements. The rules do not, however, dictate whether owner/drivers
3 drive as employees or as independent contractors.

4 Nevertheless, Plaintiffs point to 49 C.F.R. § 376.12(c)(1) from the Truth-in-
5 Leasing regulations as the obstacle to using AB5’s B2B exemption. Section 376.12(c)(1)
6 states, “[t]he lease shall provide that the authorized carrier lessee shall have exclusive
7 possession, control, and use of the equipment for the duration of the lease. The lease
8 shall further provide that the authorized carrier lessee shall assume complete
9 responsibility for the operation of the equipment for the duration of the lease.” However,
10 three subsections later, § 376.12(c)(4) also states, “[n]othing in the provisions required
11 by paragraph (c)(1) of this section is intended to affect whether the lessor or driver
12 provided by the lessor is an independent contractor or an employee of the authorized
13 carrier lessee.” (emphasis added). Plaintiffs do not address the effect of subsection
14 (c)(4), but it is clear that § 376.12(c) does not prevent an owner-operator from acting in
15 either capacity.

16 At best, Plaintiffs’ contention seems to be an argument that if a motor carrier must
17 exercise exclusive possession and control of a leased truck, then *by implication*, it must
18 also exercise exclusive control over the owner-operator who may drive the truck. *See*
19 Intervenor-Pltf OOIDA’s Mem. of Cont. of Facts and Law, Dkt. 193, at 10. For this
20 proposition, Plaintiffs cite only ¶ 50 of the declaration of Todd Spencer, President of the
21 Owner-Operator Independent Drivers Association, Inc. Dkt. 193-1. But Spencer’s
22 declaration simply does not explain how 49 C.F.R. § 376.12(c)(1) erects an obstacle to
23 using the B2B exemption. Whatever the effect of the federal Truth-in-Leasing
24 regulations are on the ability of interstate owner-operators to take advantage of the B2B
25 exemption (when hauling freight into or inside of California), it is not at all clear that
26 AB5 treats interstate owner-operators in an irrational manner. It is too far of a drive to go
27 from saying that federal leasing disclosure regulations reveal that California’s B2B
28

1 exemption is irrational, and because the B2B exemption as applicable to out-of-state
2 drivers is irrational, AB5 violates the Equal Protection Clause and should be enjoined.

3 **E. Evidentiary Objections**

4 Both parties assert evidentiary objections to their supporting declarations. Plaintiff
5 OOIDA filed 65 individual evidentiary objections. *See* Dkt. 201. State Defendants filed
6 87 separate evidentiary objections. *See* Dkt. 200. Intervenor-Defendant filed 25 pages of
7 unnumbered evidentiary objections. *See* Dkt. 199. The objections are primarily based on
8 FRE 401 and 403, and 701 and 702. Concerns over the admissibility of evidence are
9 heightened in jury trials. Evidence rules protect juries from time-wasting irrelevant
10 evidence and misleading expert evidence. Rules of evidence guard against witnesses
11 offering to tell jurors what the law is, and reserve that task for the judge alone. These
12 concerns fade in the context of a bench trial.⁵ With this in mind, the evidentiary
13 objections are overruled.

14
15 ⁵ *See, e.g., Kassel v. United States*, 319 Fed. Appx. 558, 560-61 (9th Cir. Mar. 12, 2009)
16 (“His testimony in this regard was as an expert witness, rather than a percipient witness,
17 and the testimony should have been excluded. Fed. R. Evid. 701, 702. But even though
18 the testimony should have been excluded, its admission was harmless as there was no
19 jury which could have been misled.”); *E.E.O.C. v. Farmer Bros. Co.*, 31 F.3d 891, 898
20 (9th Cir. 1994) (recognizing reduced risk of prejudice in bench trial compared to jury
21 trials); *Van Alen v. Dominick & Dominick, Inc.*, 560 F.2d 547, 552 (2d Cir. 1977) (“It
22 may be the more prudent course in a bench trial to admit into evidence doubtfully
23 admissible records, and testimony based on them.”); *Kirsch v. United States*, 2024 U.S.
24 Dist. LEXIS 24787, *5 (D. Haw. Feb. 13, 2024) (“Motions in Limine filed pursuant to
25 Federal Rule of Evidence 403 regarding prejudicial evidence, however, are generally
26 inapplicable in a bench trial. In a bench trial, there is no jury from which to shield
27 prejudicial evidence. The Court is able to exclude any improper inferences from relevant
28 evidence in reaching its decision.”); *Food & Water Watch, Inc. v. United States EPA*,
2024 U.S. Dist. LEXIS 9638, *31, n.10 (N.D. Cal. Jan. 18, 2024) (“Plaintiffs correctly
note that Federal Rule of Evidence 403 is of lesser import in the context of a bench trial
rather than a jury trial, particularly as it relates to potential for prejudice, but it is not to be
ignored entirely.”); *Schilder Dairy, LLC v. DeLaval, Inc.*, 2011 U.S. Dist. LEXIS 71952,
*7-8 (D. Idaho July 5, 2011) (“Although *Daubert*’s reliability and relevancy requirements
continue to apply in a bench trial (as is the case here), the customary concerns

1 **III. CONCLUSION**

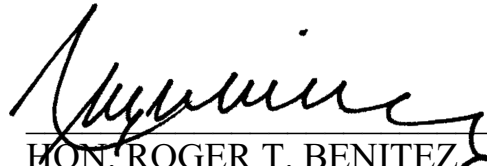
2 For Plaintiffs’ First Claim for Relief that AB5 is expressly preempted by the
3 FAAAA, this Court finds in favor of the Defendants based on controlling authority.
4 *California Trucking Assoc.*, 996 F.3d at 659 (“Therefore, we conclude that the F4A does
5 not preempt AB-5 as applied to motor carriers.”). Likewise, the Court finds in favor of
6 the Defendants on Plaintiffs’ related claim that AB5 is impliedly preempted by the
7 FAAAA. On Plaintiffs’ Second Claim for Relief that AB5 is prohibited by the dormant
8 Commerce Clause, the Court finds in favor of the Defendants. Plaintiffs waived their
9 Third Claim for Relief.⁶ Finally, the Court finds in favor of the Defendants on Plaintiffs’
10 Fourth and Fifth Claims for Relief that AB5 violates the Equal Protection Clause of the
11 U.S. Constitution and the California constitution.

12 Remediating complexities and perceived deficiencies in AB5 are the kind of work
13 better left to the soap box and the ballot box than to the jury box. If sufficient political or
14 economic pressure can be brought to bear by Plaintiffs and their supporters, the more
15 onerous provisions of the statute can be amended. The courts, on the other hand, are not
16 the proper bodies for imposing legislative amendments.

17 Judgment shall be entered in favor of the Defendants.

18 **IT IS SO ORDERED.**

19 Date: March 15, 2024

20 
HON. ROGER T. BENITEZ
United States District Judge

21
22
23 surrounding FRE 702’s precautions in a jury setting – that of keeping unreliable expert
24 testimony from the jury – are understandably not present in the bench trial.”); *Joseph S. v.*
25 *Hogan*, 2011 U.S. Dist. LEXIS 76762, *9-10 (E.D.N.Y. July 15, 2011) (“It follows then
26 that in a bench trial, the risk is with exclusion of expert testimony rather than with its
27 admission — it is exclusion that has the potential for an indelible impact on the record; if
28 the appellate court disagrees that the expert’s testimony was unreliable, a review for
harmless error will be thwarted.”).

⁶ See n.1, *supra*.