No. 03-55166; 03-55169
(Consolidated)

CALENDARED FOR ORAL ARGUMENT *EN BANC* MARCH 21, 2006

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHAMBER OF COMMERCE OF THE UNITED STATES, *et al.*,
*Plaintiffs/Appellants,*

vs.

BILL LOCKYER, *et al.*,
*Defendants/Appellants,*

and

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS and CALIFORNIA LABOR FEDERATION, AFL-CIO,
*Intervenors/Appellants.*

ON APPEAL FROM U.S. DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION,
CIV. NO. 02-00377-GTL
HON. GARY L. TAYLOR, U.S. DISTRICT JUDGE

# *AMICI CURIAE* BRIEF OF THE LOS ANGELES TAXI INDUSTRY IN SUPPORT OF NEITHER PARTY

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CALENDARED FOR ORAL ARGUMENT *EN BANC* MARCH 21, 2006

## IDENTITY AND INTEREST OF *AMICI CURIAE*

*Amici curiae* – the ten taxi companies listed in the appended Corporate Disclosure Statement (collectively, "Taxi *Amici*") – seek the Court's leave to file this brief for the reasons set forth in the accompanying motion. Taxi *Amici* are franchised by Los Angeles and Long Beach to offer taxi services to the public. Although it exempts taxis' towncar competitors, South Coast Air Quality Management District ("SCAQMD") Rule 1194(d)(4) compels taxi owner-drivers (who typically own a single taxicab) to purchase vehicles ill suited for taxi service. In tandem with decreased travel since 2001, Rule 1194(d)(4)'s burdens caused the value of taxi shares to drop from between $40,000 and $65,000 to under $12,000. In many instances, these burdens have driven owner-drivers out of business after severely reducing both their income and their asset's value. Taxis have borne these significant burdens for little, if any, environmental benefit. Unlike other SCAQMD-targeted fleets, taxis are not a source of toxic diesel emissions.

Through their national trade association, several *amici* participated in *Engine Mfrs. Ass'n v. SCAQMD*, 541 U.S. 246 (2004) ("*EMA*"), which rejected SCAQMD's authority to impose emission standards on vehicle purchasers. On remand, however, the *EMA* district court found SCAQMD's rules to fall within the "market-participant" exception. *EMA*, 2005 WL 1163437 (C.D. Cal. May 5, 2005).

On July 20, 2005, without notice or comment, SCAQMD posted on its internet site an "Advisory" that re-asserts authority over private fleets "under contract to" public, non-federal entities. On July 29, 2005, the Taxi *Amici* commenced a dialog with SCAQMD over whether that language applies to private taxi fleets, and that dialog is ongoing. SCAQMD apparently intends to after after *EMA* resolves.

The *EMA* plaintiffs (Engine Manufacturers Association and Western States Petroleum Association) appealed the district court's decision to this Court, No. 05-56654, and Taxi *Amici* filed an *amici curiae* brief in that litigation. After this Court commenced this *en banc* proceeding, however, the *EMA* parties jointly moved to stay pending the outcome of this proceeding. After the Court stayed the *EMA* litigation, SCAQMD moved to file an *amicus curiae* brief here, noting that this *en banc* panel's analysis will be highly relevant to the Ninth Circuit's disposition of *EMA.* For the same reason, Taxi *Amici* moved to file this *amici* brief to offer the Court an alternative to SCAQMD's perspective.

## INTRODUCTION

Federal law preempts state law when the two conflict. U.S. CONST. art. VI, cl. 2. "State action may be foreclosed by express [statutory] language…, by implication from the depth and breadth of a [statute] that occupies the legislative field, or by implication because of a conflict with a [statute]." *Lorillard Tobacco Co. v. Reilly,* 533 U.S. 525, 541 (2001) (citations omitted). In determining a

statute's preemptive scope, congressional intent is "the ultimate touchstone." *Wisconsin Dep't of Indus., Labor & Human Relations v. Gould*, 475 U.S. 282, 290 (1986) (citations omitted). That preemption analysis begins with a statute's text, "the best evidence of Congress' pre-emptive intent." *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993). Congressional intent also may be "implicitly contained in its structure and purpose." *Jones v. Rath Packing Co.,* 430 U.S. 519, 525 (1977). Where Congress states its preemptive intent explicitly, a court's only task is to determine the statute's preemptive scope. *Cipollone v. Liggett Group, Inc.,* 505 U.S. 504, 517 (1992).

When Congress legislates in a field traditionally occupied by the states, courts will not assume preemption "unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). As the Supreme Court recently recognized, however, this *Santa Fe Elevator* "presumption against preemption" applies only if "the field which Congress is said to have pre-empted has been traditionally occupied by the States" and not if there is a history of significant federal presence. *U.S. v. Locke*, 529 U.S. 89, 107-08 (2000) (*quoting Rath Packing,* 430 U.S. at 525); *accord Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 347 (2001).

The "market participant" doctrine began as a judicially created "exception" to the "judicially created dormant Commerce Clause" analysis, which restricts

states' using "custom duties, exclusionary trade regulations, and other exercises of governmental power (as opposed to the expenditure of state resources) to favor their own citizens." *Coll. Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 685 (1999). In that context, the market-participant exception "makes sense because the evil addressed by [the dormant Commerce Clause] is entirely absent where the States are buying and selling in the market." *Id.* More recently, the Supreme Court has applied market-participant rationales to preemption under various statutory regimes. *See, e.g., Bldg. & Constr. Trades Council v. Associated Builders & Contractors*, 507 U.S. 218 (1993) (labor relations) ("*Boston Harbor*"); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373-74 (2000) (foreign trade and relations); *Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. at 685 (states' sovereign immunity).

## SUMMARY OF ARGUMENT

Presumptions for or against preemption arise from the statutory construction of the specific federal statute at issue, not from the general presumption that SCAQMD invokes. Moreover, the particular type of preemption (*e.g.*, express, conflict, or dormant Commerce Clause) directly affects states' ability to assert a market-participant exception to otherwise-applicable preemption. Whatever test this Court adopts to analyze the market-participant exception should recognize bright-line factors that vitiate the exception where the state exerts regulatory or

sovereign (as opposed to proprietary) authority over the affected party in any form (*e.g.*, licensing, permits, punitive civil fines, or any criminal sanctions).

## ARGUMENT

### I. FEDERALISM AND STATUTORY CONSTRUCTION DEFINE THE PRESUMPTIONS ON FEDERAL PREEMPTION

#### A. No General Presumption Against Preemption

SCAQMD argues for a presumption that requires "a clear intention of congressional intent to the contrary" before a federal statute can interfere with states' market interactions. SCAQMD Br. at 4. That is not the law.

Like preemption itself, the availability of a market-participant exception to preemption requires a statute-specific inquiry.

> For when the question is whether a Federal act overrides a state law, the entire scheme of the [Federal act] must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the [Federal act] cannot otherwise be accomplished – if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect – the state law must yield to the regulation of Congress within the sphere of its delegated power.

*Crosby*, 530 U.S. at 373-74. (In *Crosby*, companies involved in foreign trade challenged a state law, which restricted the ability of Massachusetts and its agencies to purchase goods or services from companies that did business with Burma, which therefore conflicted with a later-enacted federal statute that imposed a set of mandatory and conditional sanctions on Burma. 530 U.S. at 367-68.)

After laying out the foregoing summary of preemption law, *Crosby* found the state statute preempted, without needing to decide whether there was a presumption against preemption. 530 U.S. at 373-74 & n.8 ("We leave for another day a consideration *in this context* of a presumption against preemption") (*citing U.S. v. Locke*, 529 U.S. 89, 108 (2000)) (emphasis added). Thus, *Crosby* directly rebuts SCAQMD's position that market interactions carry an automatic presumption, and *Locke* (the case *Crosby* cites) is critical to understanding why.

In *Locke*, the Supreme Court confronted the *Santa Fe Elevator* presumption against preemption in the context of Washington State's regulation of oil tankers in Puget Sound. *Locke*, 529 U.S. at 95. In essence, the *Santa Fe Elevator* presumption had become so familiar that it became an unexamined reflex. As originally stated, the presumption protects *state regulation*, not *dormant state police power* (*i.e.*, the states need to have *traditionally acted* in the intruding federal statute's precise field), and the presumption does not apply at all where there is a history of federal regulation. *Locke*, 529 U.S. at 108; *accord Buckman Co.*, 531 U.S. at 347.

Thus, in reviewing state regulation of "*public health*" in the form of water quality, the *Locke* Court analyzed the narrow *maritime-commerce* field of the preemptive federal statute. *Locke*, 529 U.S. at 108; *accord Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 910 (2000) (applying presumption to "common-law no-

airbag suits," not to all tort law).[1] In summary, contrary to SCAQMD, and under *Locke* and its progeny, courts determine the applicability of any presumption against preemption on a statute-specific basis.

### B. Federal Statute Affects Market-Participant Exception's Viability

The availability of a market-participant exception in a particular context depends in part on the type of preemption imposed by the federal statute. Preemption under the dormant Commerce Clause *always* includes a market-

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[1] In a case briefed before *Locke* but decided afterward without reference to *Locke*, this Court erroneously applied *Santa Fe Elevator* to environmental regulation based on states' historic regulation of public health, rather than their regulation of motor-vehicle fuel (*i.e.*, the field of the preemptive federal law). *Exxon Mobil Corp. v. EPA*, 217 F.3d 1246, 1255 (9th Cir. 2000). Because *Exxon* reviewed an Environmental Protection Agency ("EPA") rule approving Nevada's state implementation plan, the *Exxon* Court lacked jurisdiction to address preemption. 42 U.S.C. §7607(b) (authorizing review of *EPA* action); 64 Fed. Reg. 29,573, 29,576 (1999) ("EPA need not address [preemption] because EPA believes that [§211(m)] authorizes the [Nevada rule] and overrides any potential preemption under section 211(c)(4)"). Because *Exxon* upheld EPA's interpretation that §211(m) authorized the Nevada rule, *Exxon*, 217 F.3d at 1250, preemption and *Santa Fe Elevator* were unnecessary to the result (*i.e.*, *dicta*).

participant exemption. *E.g.*, *Wyoming v. Oklahoma*, 502 U.S. 437, 459 (1992). Preemption under the Supremacy Clause does not: "What the Commerce Clause would permit States to do in the absence of the [Act] is… an entirely different question from what States may do with the Act in place." *Gould*, 475 U.S. at 290.

In essence, the dormant Commerce Clause cases represent the Supreme Court's statutory construction of the Commerce Clause. *Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. at 685. By contrast, for *conflict preemption*, federalism requires that courts apply "conflict-pre-emption analysis… *sensitively*… to prevent the diminution of the role Congress reserved to the States while at the same time preserving the federal role." *Northwest Cent. Pipeline Corp. v. State Corp. Comm'n*, 489 U.S. 493, 515 (1989) (emphasis added). Finally, for *express preemption*, this Court has found the case for a market-participant exemption to range from weak to insupportable, and certainly incapable of displacing all other canons of statutory construction. *Hydrostorage, Inc. v. N. California Boilermakers Local Joint Apprenticeship Comm.*, 891 F.2d 719, 730 (9th Cir. 1989); *Dillingham Constr. N.A., Inc., v. County of Sonoma*, 57 F.3d 712, 721-22 (1995), *rev'd on other grounds*, 519 U.S. 316 (1997); *but see Associated Gen. Contractors v. Metro. Water Dist.*, 159 F.3d 1178, 1184 (9th Cir. 1998) ("*MWD*"). In addition to questioning the scope of the market-participant exception in express-preemption cases, the *Hydrostorage- MWD* pair highlights how easily market-

participant discussions become *dicta*. *See* Section I.C, *infra*.

*Hydrostrorage* indicates that the market-participant exemption applies only to cases under the dormant Commerce Clause. 891 F.2d at 730 ("'market participant' doctrine reflects the particular concerns underlying the Commerce Clause, not any general notion regarding the necessary extent of state power in areas where Congress has acted") (*quoting Gould,* 475 U.S. at 289); *accord Dillingham*, 57 F.3d at 721-22. Because *Hydrostorage* also held the challenged action to constitute regulation rather than mere market participation, however, this Court later treated the *Hydrostorage* statement as *dicta*. *MWD*, 159 F.3d at 1184. But the *MWD* statement falls to the same analysis that *MWD* applied to *Hydrostorage*. Specifically, because *MWD* held that the challenged project labor agreements ("PLAs") did not constitute the types of "rules, regulations, or other... action having the effect of law" expressly preempted by the statute at issue, the *MWD* analysis of the market-participant issue is *dicta* every bit as much as the *Hydrostorage* analysis. *Id.* With PLAs held outside the express preemption, anything else in *MWD* was unnecessary to the result (*i.e.*, *dicta*). Contrary to the *MWD dicta*, moreover, the Supreme Court's *Boston Harbor* decision did not undermine *Hydrostorage*. *Boston Harbor* did not involve express preemption. *See Boston Harbor,* 507 U.S. at 230-31; *accord Dillingham*, 57 F.3d at 721-22 (noting absence of express preemption in *Boston Harbor* and rejecting argument that

*Boston Harbor* undercut *Hydrostorage*).

### C. Market-Participant Issues Lend Themselves to *Dicta*

If nothing else, the *Hydrostorage-MWD* pair create a somewhat circular difficulty: either a state action constitutes "regulation" (*i.e.*, the market-participant exception does not apply), or it constitutes participation unregulated by the federal statute (*i.e.*, the market-participant *exception* is not even needed). *See* SCAQMD Br. at 5-6 n.2 (Court need not reach regulatory-proprietary distinction if challenged action falls outside statute's preemptive scope). As another example of market-participant *dicta*, *Tocher v. City of Santa Ana* upheld the city's *rotational-towing list* of city-approved contractors, but struck down its *towing regulation*, even as applied to the city-approved contractors on the rotational towing list.[2] *Tocher v. City of Santa Ana*, 219 F.3d 1040, 1047-50 (9th Cir. 2000), *abrogated on other*

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[2] SCAQMD erroneously suggests that *Tocher* upheld the city's towing regulations. *Compare Tocher*, 219 F.3d at 1048 *with* SCAQMD Br. at 8.

*grounds, City of Columbus v. Our Garage & Wrecker Serv., Inc.,* 536 U.S. 424 (2002). Unlike the preempted towing regulations, the rotational-towing list fell outside the federal statute's preemption of local provisions *with legal force and effect, id.* at 1050, and therefore did not require the market-participant exception to escape otherwise-applicable preemption.

Given this circularity, only broad statutes like the one at issue in *Dillingham* (or the dormant Commerce Clause) even present the opportunity for a market-participant exception to otherwise-applicable preemption. In *Dillingham,* this Court held the state action preempted and held the market-participant exception inapplicable to express preemption. *Dillingham,* 57 F.3d at 721-22. Because the Supreme Court reversed the first holding, *see Dillingham Constr. N.A., Inc., v. County of Sonoma,* 109 F.3d 1034, 1036-37 (1999), it did not reach the second.

## II. MARKET-PARTICIPANT ANALYSIS INCLUDES "BRIGHT-LINE" FACTORS

Market-participant cases present "a single inquiry: whether the challenged program constitute[s] *direct* state participation in the market." *White v. Massachusetts Council of Constr. Employers,* 460 U.S. 204, 208 (1983). To guide that inquiry outside the area of the dormant Commerce Clause, *Gould* and *Boston Harbor* provide two points on a continuum:

- In *Gould,* the state legislation covered conduct with third parties; applied across the board to all contracting, as opposed to a single job that required

labor peace during the project; and was motivated by a goal to compel compliance with labor laws. Although enacted under the state's spending power, the state action nonetheless was "tantamount to regulation." 475 U.S. at 289.

- In *Boston Harbor,* the state entered a PLA in exchange for a no-strike guarantee because the state needed to complete the job by a court-ordered deadline. Because the state "act[ed] just like a private contractor would act," the states' action "exemplifies" proprietary action. 507 U.S. at 233.

*See Cardinal Towing & Auto Repair, Inc. v. City of Bedford,* 180 F.3d 686, 691-93 (5th Cir. 1999) (contrasting *Gould* and *Boston Harbor*).

*Cardinal Towing* formulates *Gould* and *Boston Harbor* into a two-part test that a challenged action must meet to qualify for the market-participant exception: (1) does the challenged action essentially reflect a private party's typical behavior in efficient procurement, and (2) does its narrow scope suggest the goal to address a specific proprietary problem, rather than to encourage a general policy? *Id.* at 693; *accord Olympic Pipe Line Co. v. City of Seattle*, 437 F.3d 872, 881 (9th Cir. 2006). Whether it adopts *White*'s "single inquiry," *Cardinal Towing*'s two-part test, or SCAQMD's multi-factor, contextual analysis, Taxi *Amici* urge this Court to recognize that the applicable test includes at least two bright-line, dispositive factors that vitiate the market-participant exception:

- If the state involves inherently sovereign regulatory controls (*e.g.*, requiring or revoking a permit or license) that apply beyond the specific transaction, the state's action is regulatory and sovereign; and
- If the state includes punitive civil fines or any criminal sanctions, the state's action is regulatory and sovereign.

### A. Form and Scope of State Action

As indicated in the foregoing comparison of *Gould* and *Boston Harbor,* project-specific contracts are more likely to qualify as market participation than across-the-board legislation. Nonetheless, neither the form of state action – *e.g.*, legislation vs. contract or license – nor its scope – *e.g.*, project-specific vs. across-the-board coverage – are dispositive of preemption.

### B. Impact on Plaintiff

The substance of the state action is far more important than its form. States cannot use privity of contract, the denial of a license, or the requirement of an otherwise-inapplicable license as conditions that interfere within a preempted sphere. *Shell Oil Co. v. City of Santa Monica,* 830 F.2d 1052, 1062 (9th Cir. 1987) ("city may not use the guise of privity of contract to conduct otherwise forbidden regulatory activity"); *Tocher,* 219 F.3d at 1049 (same); *Olympic Pipe Line Co.*, 437 F.3d at 881 (same); *Golden State Transit Corp. v. City of Los Angeles,* 475 U.S. 608, 617-19 (1986) (municipal function of issuing taxi franchises does not enable

city to condition franchise renewal on federally preempted criteria); *Frost v. Railroad Comm'n of State of California*, 271 U.S. 583, 593-94 (1926)[3] ("It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold").

### C. State's Objective

Under *Gould,* the state's objective or motive is a factor to consider in determining whether to classify an action as regulatory. 475 U.S. at 289. Similarly, the *Cardinal Towing* two-part test limits the range of state actions that potentially qualify for market-participant status to those that reflect a private party's typical,

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[3] *Frost* prohibited states' conditioning use of public roads on private carriers' voluntarily submitting to otherwise-inapplicable regulation. 271 U.S. at 592-94.

efficiency-motivated behavior. 180 F.3d at 693.

### D. Impact on Unrelated Conduct

Consistent with *Gould,* SCAQMD suggests that state action that affect conduct unrelated to the state's proprietary interest "are most likely regulatory," SCAQMD Br. at 10, but also suggests that state "action… limited to conduct related to the… proprietary interest[] should be held to be proprietary." *Id.* Given the open-ended meaning of "relates to" in preemption litigation, Taxi *Amici* submit that SCAQMD's proposed standard merely would invite more litigation.

Although it generally argues that the regulatory-proprietary distinction "is not susceptible to… bright-line test[s] in which a single factor… is determinative," SCAQMD Br. at 4, SCAQMD would accept a bright-line test from the D.C. Circuit. *Id.* at 15 ("a project is regulatory *only* when it addresses conduct unrelated to the project in which the government has a proprietary interest") (*citing Building & Construction Trades Department, AFL-CIO v. Allbaugh,* 295 F.3d 28, 36 (D.C. Cir. 2002)) (SCAQMD's emphasis).

In *Allbaugh,* 295 F.3d at 36, the D.C. Circuit premised SCAQMD's cited proposition on the following language from *Boston Harbor:*

> The conduct at issue in *Gould* was a state agency's attempt to compel conformity with the NLRA. Because the statute at issue in *Gould* addressed employer conduct unrelated to the employer's performance of contractual obligations to the State, and because the State's reason

> for such conduct was to deter NLRA violations, we concluded: "Wisconsin 'simply is not functioning as a private purchaser of services,' ... [and therefore,] for all practical purposes, Wisconsin's debarment scheme is tantamount to regulation."

507 U.S. 228-29 (citations omitted, alterations in original). In the foregoing *Boston Harbor* discussion of *Gould*, the Supreme Court merely indicates that a state regulates when it imposes an effect on unrelated conduct with the intent to affect unrelated conduct. That is hardly controversial, and it in no way supports the D.C. Circuit's extension to a general principle that states can regulate *only* when the state action (*e.g.*, contract, statute, order) addresses unrelated conduct.

### E. Penalties

In its judicially excepted capacity as a proprietor, the state has only proprietary concerns, not regulatory concerns. Where a state contractor's activity within a preempted sphere (*e.g.*, a labor dispute) conflicts with the contractors' ability to perform on its state contract, the state is "*not necessarily*… pre-empted from advising [the contractor] that it [will] hire another company if the labor dispute [is] not resolved and services resumed by a specific deadline." *Boston Harbor*, 507 U.S. at 227-28 (emphasis added).

If, instead of taking its business elsewhere, the state seeks to impose penalties, then those penalties must be defensible as liquidated damages for the states' conduct to remain proprietary. *Priebe & Sons v. U.S.*, 332 U.S. 407, 411

(1947) (consider "principles of general contract law" including "enforceability of 'liquidated damages' provisions in government contracts"); *In re Bubble Up Delaware, Inc.*, 684 F.2d 1259, 1262 (9th Cir. 1982) ("[u]nder the principles of general contract law that apply to the construction of government contracts,… a basic requirement for a valid liquidated damages clause is that the liquidated amount be reasonable"). Otherwise, the challenged action becomes regulatory and sovereign. *Washington State Bldg. and Const. Trades Council, AFL-CIO v. Spellman*, 684 F.2d 627, 631 (9th Cir. 1982) (finding market-participant exception inapposite because "measure establishes civil and criminal penalties which only a state and not a mere proprietor can enforce").

At issue in this litigation is whether Assembly Bill 1889's penalties qualify under the liquidated-damages cases. What is "undisputed," however, is that "[the environmental statutes' penalty] provisions authorize fines of the punitive sort." *U.S. Dept. of Energy v. Ohio*, 503 U.S. 607, 617 (1992). Similarly, because the market-participant exception does not allow states to condition license renewal on preempted criteria, *Golden State Transit*, 475 U.S. at 617-19; *cf. Frost*, 271 U.S. at 593-94, the state *a fortiori* cannot criminally sanction contractors for federally permissible activity and yet remain within the judge-made exception for market participation. *Spellman*, 684 F.2d at 631; *cf. Olympic Pipe Line Co.*, 437 F.3d at 881 (acting as sovereign incompatible with acting as market participant).

### F. *De Minimis* Exemption

In *Alameda Newspapers, Inc. v. City of Oakland,* 95 F.3d 1406, 1417, 1420 (9th Cir. 1996), this Court appears to recognize a *de minimis* exception to federal preemption. For the reasons discussed in Section I.C, *supra, Alameda Newspaper*'s *de minimis* discussion may be *dicta.* In general, the magnitude of injury should go to justiciability (*e.g.*, standing) or establishing the irreparable harm necessary for discretionary equitable relief. *See also Crosby,* 530 U.S. at 373-74 (preempting state's boycott of companies doing business with Burma because the state action interferes with a federal action). At the very least, for the reasons set forth in Sections I.A-I.B, *supra,* any *de minimis* exemption can apply only if consistent with the otherwise-preemptive federal act.

## CONCLUSION

Taxi *Amici* do not support either party, but respectfully request that this Court consider the foregoing arguments in preparing its decision. In addition to the important principles directly at issue in this litigation, the manner in which the Court decides this litigation could have profound impacts on the lives and livelihoods of people throughout this Circuit.

Dated: March 17, 2006

Respectfully submitted,

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## BRIEF FORM CERTIFICATE

Pursuant to Rules 29(c)(5) and 32(a)(7)(C) of the FEDERAL RULES OF APPELLATE PROCEDURE and Circuit Rule 32-1 of the U.S. Court of Appeals for the Ninth Circuit, I certify that the attached *Amici Curiae* Brief of the Los Angeles Taxi Industry in Support of Neither Party is proportionately spaced, has a typeface of Times New Roman, 14 points, and contains 3,867 words, including footnotes, but excluding this Brief Form Certificate, the Table of Authorities, the Table of Contents, the Corporate Disclosure Statement, and the Certificate of Service. I have relied on Microsoft Word 2002's word calculation feature for the calculation.

Dated: March 17, 2006

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the FEDERAL RULES OF APPELLATE PROCEDURE, *Amici Curiae* Bell Cab Company, Inc., San Gabriel Transit, Inc., Independent Taxi Owners Association, Los Angeles Checker Cab Cooperative, Inc., L.A. Taxi Cooperative, Inc. d.b.a. Yellow Cab Co., United Independent Taxi Drivers, Inc., Beverly Hills Transit Cooperative, Inc., United Taxi of San Fernando Valley, South Bay Cooperative, Inc. d.b.a. United Checker Cab, and Long Beach Yellow Cab Cooperative, Inc. make the following corporate disclosure statement:

1. No publicly held company owns 10% or more of Bell Cab Company, Inc.'s stock, and it has no parent company.

2. No publicly held company owns 10% or more of San Gabriel Transit, Inc.'s stock, and it has no parent company.

3. No publicly held company owns 10% or more of Independent Taxi Owners Association's stock, and it has no parent company.

4. No publicly held company owns 10% or more of Los Angeles Checker Cab Cooperative, Inc.'s stock, and it has no parent company.

5. No publicly held company owns 10% or more of L.A. Taxi Cooperative, Inc. d.b.a. Yellow Cab Co.'s stock, and it has no parent company.

6. No publicly held company owns 10% or more of United Independent Taxi Drivers, Inc.'s stock, and it has no parent company.

7. No publicly held company owns 10% or more of Beverly Hills Transit Cooperative, Inc.'s stock, and it has no parent company.

8. No publicly held company owns 10% or more of United Taxi of San Fernando Valley's stock, and it has no parent company.

9. No publicly held company owns 10% or more of South Bay Cooperative, Inc. d.b.a. United Checker Cab's stock, and it has no parent company.

10. No publicly held company owns 10% or more of Long Beach Yellow Cab Cooperative, Inc.'s stock, and it has no parent company.

Dated: March 17, 2006

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## CERTIFICATE OF SERVICE

The undersigned certifies on this 17th day of March 2006, that two true and correct copies of the *Amici Curiae* Brief of the Los Angeles Taxi Industry in Support of Neither Party were served by U.S. mail, postage prepaid, and (where indicated) by electronic mail, on

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