



AMERICAN TRUCKING ASSOCIATIONS

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Bill Graves
President and Chief Executive Officer

February 29, 2016

Senator John Thune
Chairman
Senate Committee on Commerce,
Science and Transportation
United States Senate
Washington, D.C. 20510

Senator Bill Nelson
Ranking Member
Senate Committee on Commerce,
Science and Transportation
United States Senate
Washington, D.C. 20510

Dear Chairman Thune and Ranking Member Nelson:

On behalf of the American Trucking Associations (ATA), I am writing to respond to claims made by Senator Barbara Boxer regarding Section 611 of the Aviation Innovation, Reform and Reauthorization Act of 2016 (H.R.4441), in her recent press conference, release, and letter to the Commerce Committee. Respectfully, we believe that Senator Boxer's comments radically mischaracterize what Section 611 does, and included a number of fundamental errors.

Although brief, the letter starts with fundamental errors about what the laws at issue provide and thus what effect Section 611 would have. Section 611 does not allow carriers to "dock ... employees when they take a meal or bathroom break", or for "'non-driving' responsibilities, such as loading the truck". For one thing, meal breaks are not compensable under federal law or the law of any state that we are aware of (certainly not under California law). But to the broader point, nothing in Section 611 would allow motor carriers to dock employees for bathroom breaks or time spent on non-driving tasks. Indeed, Section 611 expressly provides that if a motor carrier pays a driver by the load (rather than by the hour), it must ensure that employees receive at least as much as they would have been entitled to if they were paid by the hour for all hours worked—including bathroom breaks and non-driving time.

Contrary to Senator Boxer's assertions, Section 611 is not "dangerous," nor is it "anti-safety". The state-imposed break rules at issue are not truck safety rules: they are rules aimed at workers in general, and were not designed by safety regulators of any kind, much less truck safety regulators. In fact, the Federal Motor Carrier Safety Administration—the agency charged by Congress to develop the expertise necessary to promulgate commercial motor vehicle safety regulations—has unequivocally held that California's meal and rest break rules do not relate to truck safety. Federal law already allows drivers to take breaks whenever they feel they need them, and provides stiff penalties for carriers that try to interfere with that right. These state break rules offer nothing above and beyond the federal rules in terms of safety. Indeed, California's meal and rest break rules do not apply to drivers working under a collective bargaining agreement. Is it really plausible that that California would have provided such an exemption, if those rules were truly important to the safety of the motoring public? In reality, all that break requirements like California's accomplish is to force drivers to divert from the highway and look for scarce parking at arbitrary times, and to either lengthen their work days to make up the lost time, or reduce their productivity. Those arbitrary diversions would result in otherwise unnecessary emissions that, by conservative estimates, would be the equivalent of putting at least another 96,000 cars on the road every year in California alone.

In addition, Section 611 does not “overturn” court decisions reaching all the way to the Supreme Court.” On the contrary, Section 611’s clarification is necessary because the Ninth Circuit’s interpretation of the 1994 law cannot be squared with the text of that law, with Congress’s intent in enacting it, or with Supreme Court precedent interpreting it. The Supreme Court’s decision not to grant review of a particular Ninth Circuit decision does not constitute an endorsement of that decision.

In 1994, Congress prohibited states from regulating the trucking industry, in order to prevent a patchwork of state-level rules that would burden interstate commerce by preventing motor carriers from conducting a standard way of doing business. That preemption provision was included in the Federal Aviation Administration Authorization Act of 1994, which passed by an overwhelming majority of Congress, with strong bipartisan support, including that of Senator Boxer. Section 611 is necessary to clarify that 1994 enactment, because the U.S. Court of Appeals for the Ninth Circuit has failed to interpret and apply it faithfully. Without a clarification, the national uniformity that Congress established in 1994 will disintegrate, leaving states free to impose their own regulations on the interstate trucking industry. And because the provision originated in an FAA bill in 1994, Senator Boxer’s contention that Section 611 “has no place in the FAA bill” ignores its history.

In short, Section 611 isn’t anti-safety, and it doesn’t allow carriers to cheat drivers out of a single dime. Unsurprising, then, that when an independent polling organization recently surveyed truck drivers to see what they think about these issues, the drivers overwhelmingly favored national uniformity for the trucking industry, and supported Section 611’s efforts to clarify that federal law preempts states from imposing their own break requirements and forcing carriers to move away from paying drivers by the load. And Section 611’s benefits aren’t limited to truck drivers and motor carriers: by arbitrarily reducing truck productivity without any countervailing benefits to safety or driver pay, these state-level laws will ultimately hurt shippers and consumers by making it more costly to move the freight that keeps the nation’s economy moving. The only constituency that stands to lose under Section 611 are the trial lawyers, because Section 611 will make crystal clear that federal law preempts a variety of opportunistic class actions against motor carriers—such as lawsuits that purport to vindicate the “minimum wage rights” of drivers earning \$80,000 or more a year.

We urge you to do what’s right for interstate commerce: protect the national uniformity that Congress established 1994 by supporting Section 611 of the Aviation Innovation, Reform and Reauthorization Act of 2016 (H.R.4441).

Sincerely,

A handwritten signature in blue ink, appearing to read "Bill Graves", with a stylized, cursive script.

Bill Graves

cc: Members, Senate Committee on Commerce, Science and Transportation