FLORIDA SUPREME COURT

CASE NO. SC08-2269

RAFAEL VARGAS,

Petitioner,

vs.

ENTERPRISE LEASING COMPANY,
ELIZABETH PRICE, and
JIMMY MIDDLETON,

Respondents.

On Appeal From The Fourth District Court Of Appeal
Case No. 4D07-3929

ANSWER BRIEF OF APPELLEE ENTERPRISE LEASING COMPANY

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STATEMENT OF THE CASE AND FACTS

Enterprise Leasing Company ("Enterprise") provides the following supplement to the Statement Of The Case And Facts set forth in the *Initial Brief*:

There are no disputes of fact. Enterprise leased a motor vehicle to Elizabeth Price for a period of less than one year. (R. I at 1-4). On February 12, 2006, the leased vehicle collided with a vehicle driven by Petitioner Rafael Vargas. (*Id.*). On June 2, 2006, Petitioner filed a complaint asserting vicarious liability against Enterprise. (*Id.*). That is, Petitioner sued Enterprise under the common-law dangerous instrumentality doctrine, as capped at Section 324.021(9)(b)(2), Florida Statutes, which states:

> (b) Owner/lessor.--Notwithstanding any other provision of the Florida Statutes or existing case law:
>
> 2. The lessor, under an agreement to rent or lease a motor vehicle for a period of less than 1 year, shall be deemed the owner of the motor vehicle for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith only up to $100,000 per person and up to $300,000 per incident for bodily injury and up to $50,000 for property damage. If the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than $500,000 combined property damage and bodily injury liability, the lessor shall be liable for up to an additional $500,000 in economic damages only arising out of the use of the motor vehicle. The additional specified liability of the lessor for economic damages shall be reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator. Nothing in this subparagraph shall be construed to affect the liability of the lessor for its own negligence.

(hereafter "the Florida Statute"). To be clear, there is no contention that Enterprise was negligent, that its lease of the motor vehicle was improper, or that Enterprise was in any way at fault for the accident. The sole premise of liability is vicarious liability, as set forth in Florida common law and Section 324.021(9)(b)(2).

Enterprise moved for summary judgment pursuant to the federal Graves Amendment at 49 U.S.C. § 30106. (R. II at 345-385). The circuit court granted summary judgment and the Fourth District Court of Appeal affirmed that decision, certifying the following question:

> DOES THE GRAVES AMENDMENT, 49 U.S.C. § 30106, PREEMPT SECTION 324.021(9)(b)2, FLORIDA STATUTES (2007)?"

Vargas v. Enterprise Leasing Co., 993 So. 2d 614, 624 (Fla. 4th DCA 2008) (*en banc*). This Court subsequently granted review to consider the certified question.

SUMMARY OF THE ARGUMENT

Congress enacted the Graves Amendment, 49 U.S.C. § 30106, to preempt the vicarious liability imposed by Florida common law, and capped at Section 324.021(9)(b)(2), on lessors of motor vehicles. That is the reasoned decision of the Eleventh Circuit, all of the federal district courts that have decided the question, and all five of Florida's District Courts of Appeal. There is good reason for this unanimity. This *Answer Brief* will explain, in four steps, why the Graves Amendment preempts the Florida Statute.

First, the Graves Amendment's plain language preempts "the law of any State" that imposes liability on lessors of motor vehicles "by reason of being the owner of the vehicle." 49 U.S.C. § 30106(a). This is precisely the type of vicarious liability – *i.e.*, liability based on mere ownership – imposed by Florida law. Contrary to Petitioner's argument, the Savings Clause of the Graves Amendment, 49 U.S.C. § 30106(b), does not save from preemption the same vicarious liability that this one-page, single-purpose federal statute was enacted to preempt. The Graves Amendment's exception cannot be interpreted to nullify its operative provision.

Second, Florida law is frequently and directly referenced in the federal legislative history. On *every* occasion where it is referenced, Congress made clear its intent to preempt Florida law. Congress specifically targeted the Florida Statute

for preemption. If the Court has any doubt regarding the scope of the Graves Amendment (*i.e.*, Congress' intent) that doubt is dispelled by the legislative history.

Third, while Congress' intention controls the issue, it is noteworthy that the Florida Statute is a vicarious liability statute, and not a "financial responsibility" law, even under Florida law. Financial responsibility refers to the insurance, or insurance equivalent, that certain operators and owners must obtain as condition of receiving a license or vehicle registration. "Financial responsibility" is distinct, in its origin and development, from the vicarious liability imposed by Section 324.021(9)(b)(2).

Fourth, the Graves Amendment is a valid exercise of Congress' Commerce Clause powers. There is no question that the Graves Amendment regulates activities that Congress reasonably believed have a substantial impact on interstate commerce.

ARGUMENT

I. STANDARD OF REVIEW

This Court applies a *de novo* standard of review to decisions that rest on questions of law. *See Operation Rescue v. Women's Health Center, Inc.*, 626 So. 2d 664 (Fla. 1993).

II. THE PETITIONER'S FOCUS ON FLORIDA LAW IS MISPLACED; THE GRAVES AMENDMENT IS A FEDERAL STATUTE AND CONGRESS' INTENT IS THE DISPOSITIVE QUESTION.

Ignoring that a federal statute is at issue, Petitioner erroneously focuses on Florida law to define the scope of the Graves Amendment. Indeed, Petitioner begins his *Initial Brief* with the argument:

> The Graves Amendment does not define the term financial responsibility. Because it is not defined, Congress must look to Florida law regarding the meaning of financial responsibility.

(*Initial Brief* at 3). Based on this unsupported premise, Petitioner focuses on the language of the Florida Statute (*Id.* at 6-7); the Florida Statute's public purpose and chapter title, (*Id.* at 7-8), and the purported intent of the Florida Legislature (*Id.* at 8-10). Consistent with this Florida-centered approach, Petitioner concludes:

> Because section 324.021(9)(b)2 is part of the chapter pertaining to Florida's financial responsibility plan, it is not preempted by the Graves Act [sic].

(*Id.* at 13). The is the label-based approach that the District Courts of Appeal, and the federal courts, have uniformly rejected. Also, as explained in Section VI, *infra*,

Petitioner's characterization of Florida law is wrong. Section 324.021(9)(b)(2) is a vicarious liability law, not a financial responsibility law.

More fundamentally, one cannot use the law of a particular state to define a key term in a federal statute.[1] Rather, this Court should begin its analysis with the language enacted by Congress; examine the common, ordinary meaning of the terms used in the federal statute; and, if necessary, look to the federal statute's legislative history. The purpose of that analysis, the overarching goal here, is to give effect to Congress' intent. *United States v. Grigsby*, 111 F.3d 806, 816 (11th Cir. 1997). As explained in this *Answer Brief*, Congress clearly intended to preempt the Florida Statute and similar vicarious liability laws across the country.

Notably, all of the issues raised by Petitioner here were resolved by the Eleventh Circuit in *Garcia v. Vanguard Car Rental U.S.A., Inc*., 540 F.3d 1242, 1247 (11th Cir. 2008). Given that this appeal concerns the interpretation of a federal statute, and that there is no conflicting federal authority, Enterprise respectfully submits that this Court should defer to the *Garcia* decision. *See Carnival Corp. v. Carlisle*, 953 So. 2d 461, 465 (Fla. 2007) (noting that the decisions of the federal courts "are persuasive and usually followed unless a conflict between the decisions of such courts makes it necessary to choose between one or more announced interpretations.") (citations omitted).

[1] Such an approach has serious implications for the primacy of federal law, as required by the Supremacy Clause of the U.S. Constitution. U.S. Const. art. VI.

III. THE GRAVES AMENDMENT PREEMPTS THE VICARIOUS LIABILITY IMPOSED BY SECTION 324.021(9)(b)(2).

To correctly interpret the Graves Amendment, we begin with the language enacted by Congress. *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 739 (1989). The Graves Amendment is a concise statute, one page in length. The statute's brevity is indicative of its single, focused purpose – the preemption of state laws that impose vicarious liability on lessors of automobiles. The two pertinent subsections of the federal statute are as follows:

> (a) In general.--An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if—
>
> > (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and
> >
> > (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).
>
> (b) Financial responsibility laws.--Nothing in this section supersedes the law of any State or political subdivision thereof--
>
> > (1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or
> >
> > (2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law.

49 U.S.C. § 30106.[2] In short, Congress preempted state laws imposing liability on lessors "by reason of being the owner of the vehicle" and excepts from preemption certain "financial responsibility" and "insurance" requirements. At its core, this appeal is about whether Section 324.021(9)(b)(2) falls within subsection (a) or subsection (b) of the Graves Amendment. The Eleventh Circuit, every federal District Court to examine the question, and all of Florida's District Courts of Appeal have answered this question in favor of preemption.[3] An analysis of these two subsections – described hereafter as "Graves (a)" and "Graves (b)" – follows.

A. The Plain Language Of 49 U.S.C. § 30106(a) Preempts State Laws Imposing Vicarious Liability

The operative language of Graves (a) preempts any state law that imposes liability on lessors "by reason of being the owner of the motor vehicle." This is exactly the type liability, *i.e.*, liability premised on ownership, imposed by Florida common law, as capped in Section 324.021(9)(b)(2). As we shall see in the

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[2] Rented or Leased Motor Vehicle Safety and Responsibility. Pub. L. No. 109-59, § 10208(a), 119 Stat. 1935 (August 10, 2005).

[3] *Garcia v. Vanguard Car Rental U.S.A., Inc.*, 540 F.3d 1242 (11th Cir. 2008); *Garcia v. Vanguard Car Rental U.S.A., Inc.*, 510 F.Supp.2d 821, 830 (M.D. Fla. 2007); *Vanguard Car Rental USA, Inc. v. Drouin*, 521 F.Supp.2d 1343, 1351 (S.D. Fla. 2007); *Dupuis v. Vanguard Car Rental, USA, Inc.*, 510 F.Supp.2d 980 (M.D. Fla. 2007); *Karling v. Budget Rental A Car Sys., Inc.*, 2 So. 3d 354 (Fla. 5th DCA 2008); *Vargas v. Enterprise Leasing Co.*, 993 So. 2d 614 (Fla. 4th DCA 2008) (*en banc*); *Bechina v. Enterprise Leasing Co.*, 972 So. 2d 925 (Fla. 3d DCA 2007); *West v. Enterprise Leasing Co.*, 997 So. 2d 1196 (Fla. 2d DCA 2008); *St. Onge v. White*, 988 So. 2d 59 (Fla. 1st DCA 2008).

discussion of the federal statute's legislative history (Section V, *infra*), Congress specifically targeted Florida law, and the Florida Statute, for preemption. Congress effected that intent through the plain language of Graves (a).

In short, Petitioner's lawsuit is premised on vicarious liability. If Enterprise were not the owner of the motor vehicle, it would not be a party here. As the Eleventh Circuit aptly stated, "[t]he Graves Amendment takes aim at precisely these types of lawsuits." *Garcia v. Vanguard Car Rental U.S.A., Inc.*, 540 F.3d 1242, 1246 (11th Cir. 2008); *see also Garcia v. Vanguard Car Rental U.S.A., Inc.*, 510 F. Supp. 2d 821, 829 (M.D. Fla. 2007) ("By its express language, the Graves Amendment preempts all state statutory and common law to the extent those laws hold owners in the business of renting or leasing motor vehicles vicariously liable for the negligence of drivers . . .").

B. The Savings Clause Applies Only To Compulsory "Financial Responsibility" And "Insurance."

The question becomes what did Congress intend in Graves (b)(1) and (b)(2) where it excepts from preemption state laws:

> (b)(1) imposing *financial responsibility or insurance standards* on the owner of a motor vehicle *for the privilege of registering and operating a motor vehicle*; or
>
> (b)(2) *imposing liability* on business entities engaged in the trade or business of renting or leasing motor vehicles *for failure to meet the financial responsibility or liability insurance requirements* under State law.

49 U.S.C. § 30106(b)(1)-(2) (Emphasis added). The plain language indicates the Savings Clause is limited to compulsory financial responsibility and insurance.

More specifically, the Court will note that both subsections apply to "financial responsibility." In Graves (b)(1) the term "financial responsibility" is used as a noun and limited by the phrase "for registering and operating a motor vehicle." In Graves (b)(2) the term is part of an adjective phrase modifying the term "requirements": *i.e.,* " the financial responsibility . . . requirements under State law."[4] The same limitations apply to the term "insurance." That is, the Savings Clause is limited in (b)(1) to the insurance required as a condition of "registering and operating a motor vehicle"; and in (b)(2) to the "insurance *requirements* under State law." Thus, the Savings Clause applies only to the financial responsibility and insurance that lessors must obtain under state law.

The Definition Of The Term "Financial Responsibility"

The meaning of the term "financial responsibility" further supports the limited reach of the Savings Clause. Notably, the federal statute does not define

[4] Petitioner may, in reply, argue that the phrase "the financial responsibility . . ." as used in Graves (b)(2) stands alone and does not modify the term "requirements." The sentence structure of (b)(2), however, plainly indicates that the phrase ". . . the financial responsibility . . ." is an adjective phrase. If one attempts to read (b)(2) differently, without the noun "requirement," it makes no sense: "the law of any State. . . imposing liability . . . for failure to meet the financial responsibility . . . under State law." To be sure, there is no "the financial responsibility." One can ascertain, however, "the financial responsibility . . . requirements under State law" which is precisely how the statute reads.

the term. Therefore, the Court must assume that Congress used the term "financial responsibility" according to its ordinary and common meaning. *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1266 (11th Cir. 2006).

Courts often look to legal dictionaries to supply common meanings of legal terms. *Black's Law Dictionary* defines the term "financial responsibility" as follows:

> *Financial responsibility*. Term commonly used in connection with motor vehicle insurance equivalents. *See Financial responsibility acts.*
>
> *Financial responsibility acts*. State statutes which require owners of motor vehicles to produce proof of financial accountability as a condition to acquiring a license and registration so that judgments rendered against them arising out of the operation of the vehicles may be satisfied.

Black's Law Dictionary, p. 631 (6th ed.).[5]

In other words, "financial responsibility" is an "insurance equivalent" (*i.e.*, an insurance policy, a bond, or a certificate of self-insurance) that must be obtained as a condition of owning or registering a vehicle. These state requirements are imposed on motor vehicle owners *prior* to an accident, if any, to pay damages in the event of an adverse judgment, and as a condition of the registration or

[5] *See also Ballentine's Law Dictionary*, p. 474 (3rd Ed.) ("**financial responsibility laws.** Statutes requiring proof of financial responsibility as a condition of the granting of a driver's license or certificate of registration; statutes providing for the suspension or revocation of a driver's license or certificate of registration for failure to satisfy a final judgment or furnish proof of responsibility after an accident or a violation of a motor vehicle statute.").

operation of a motor vehicle.[6] Notably absent from this definition is the vicarious liability that a handful of states, like Florida, impose on motor vehicle owners *after* an accident.

The Historical Meaning Of The Term Financial Responsibility

More broadly, "financial responsibility" was a legislative movement that began in the early 20th century to mitigate the effects of motor vehicle accidents. In *Kesler v. Department of Public Safety*, 369 U.S. 153 (1962), the Supreme Court describes the early development of these laws and described "financial responsibility" as those state laws requiring compulsory insurance of all operators and owners of motor vehicles or, in many states, of those operators deemed irresponsible, or "careless," in that they have been involved in an accident or failed to satisfy a judgment. *Id.* at 158-161 (citations omitted).

The U.S. Supreme Court then describes the subsequent development of the uniform legislation, and here with direct relevance to Florida's financial responsibility law:

> It was against this background that the Uniform Act of 1932 was withdrawn for further study in light of the States' extensive experience. . . . The new Uniform Code reflects most of the changes wrought in New York's law from 1929 to 1941. It requires persons involved in certain accidents to deposit security to cover the past if they were not insured. It requires proof of future responsibility from

[6] Vicarious liability, of course, is different. This is the liability that a handful of states imposed on lessors of motor vehicles *after* a lessee is adjudicated negligent in an accident.

> those convicted of certain violations and from those owing judgments unsatisfied after thirty days. In addition, unless insured, the judgment debtor must satisfy the obligation, to the extent of the minimum amounts of financial responsibility required, before his privileges are restored. . . .
>
> The material provisions of the new Uniform Code with respect to financial responsibility are currently in effect in twenty-one States . . .

Id. at 164-65. Here, among the referenced twenty-one states, the Supreme Court cites to "Florida, Laws 1957, c. 57-147, Fla. Stat., 1959." *Id.* at 165 n.29. This is Florida's financial responsibility law. To be clear, Florida's financial responsibility law, in 1947, in 1957, and today, is a distinct body of law that requires that operators and owners involved in an accident (regardless of fault) to obtain insurance, or its equivalent, to satisfy future judgments as a condition of operating or registering a motor vehicle.[7] Florida law is examined in more detail in the Section VI of this *Answer Brief*. Suffice it to say, Florida's financial responsibility law is typical of many states and it fits the historical and commonly understood definition of the term.[8]

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[7] §§ 324.011; 324.021(7); and 324.051, Fla. Stat. (2006). *See also Bankers & Shippers Ins. Co. of New York v. Phoenix Assur. Co. of New York,* 210 So. 2d 715, 718 (Fla. 1968) ("The [Financial Responsibility] Act does not contemplate or require compliance with the Act by an owner or operator of a motor vehicle, so long as he has never had an accident resulting in injuries for which such owner or operator is legally responsible. The sanctions of the Act are invoked only after such an accident . . . ").

[8] *See* 7A Lee R. Russ et al., *Couch On Insurance* 3D, at § 109:43, pgs. 109-63 to 109-64. (Thompson West 2005) ("A Financial Responsibility Act which does not apply until the person in question has been involved in an accident is, by

In sum, financial responsibility is compulsory insurance or its equivalent, which in some states is triggered by an accident, *i.e.*, the "one free accident" described by this Court,[9] or by an adverse judgment, and which is a condition of licensure and registration. This is distinct from the vicarious liability imposed by a few states on lessors of motor vehicles which is preempted by the federal statute.

IV. THE PETITIONER CONSTRUES THE SAVINGS CLAUSE SO BROADLY THAT IT IMPERMISSIBLY SUBSUMES THE VICARIOUS LIABILITY THAT CONGRESS INTENDED TO PREEMPT.

A. The Petitioner Relies On A Overly Broad Construction Of The Term "Financial Responsibility."

The Petitioner focuses on the term "financial responsibility" when construing the Savings Clause. The gist of his argument is that "financial responsibility" should be construed broadly to include vicarious liability. That is, the Petitioner cites to Florida law, and then to three off-topic federal statutes that employ the term, to conclude "that a 'financial responsibility law' is any law that

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definition, only applicable when a person has been so involved and must procure insurance in the future; it does not, therefore, require insurance where there has not been an accident.").

[9] *Lynch-Davidson Motors v. Griffin*, 182 So. 2d 7, 8 (Fla. 1966) ("our Financial Responsibility Law, like that of many other states, does not provide for compulsory liability insurance as a condition precedent to owning or operating a motor vehicle. Every owner or operator of a motor vehicle is allowed one 'free' accident (that is, one *uninsured* accident--although he must, of course, respond in damages, from what assets he owns, for injuries to persons or property for which he is legally liable).").

insures that a person pay for damages caused by him." (*Initial Brief* at 12). This argument is confusing, but it may be said with confidence that Petitioner's interpretation has no support in the language of the Graves Amendment itself.

First, Petitioner's argument is not supported by the diverse statutes cited in the *Initial Brief*. For example, the fact that an owner of a 300 ton sea-faring vessel must obtain financial responsibility, *prior* to an allision or mishap, which may take the form of "evidence of insurance, surety bond, guarantee, letter of credit, qualification as self-insurer, *or other evidence of financial responsibility*" does not support the conclusion drawn by Petitioner. (*Id.* at 12) (quoting 33 U.S.C. § 2716 -- Emphasis supplied in *Initial Brief*).[10] If anything, this language supports the conclusion that "financial responsibility" refers to insurance or its equivalent that must be obtained for the privilege of operating a vessel, or a vehicle. Thus, it is fully consistent with the Eleventh Circuit's construction of the Graves Amendment.[11] Notably absent in any of these diverse federal statutes is the indication that vicarious liability is a form of financial responsibility.

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[10] A vessel that does not possess evidence of having obtained financial responsibility is subject to seizure. 33 U.S.C. § 2716(b). Here, again, financial responsibility is simply the insurance, or its equivalent, that must be obtained for the privilege of operation and/or registration. This refutes, rather than supports, Petitioner's argument.

[11] *See Garcia v. Vanguard Car Rental U.S.A., Inc.*, 540 F.3d 1242, 1247 (11th Cir. 2008) ("[W]e conclude that Congress used the term "financial responsibility law" to denote state laws which impose insurance-like requirements on owners or

Second, Petitioner ignores that the Graves Amendment, in its Savings Clause, excepts from preemption only certain types of financial responsibility. Again, Graves (b)(1) applies only to state laws "imposing financial responsibility . . . for the privilege of registering and operating a motor vehicle." And Graves (b)(2) applies only to "the financial responsibility and liability insurance *requirements* under State law." Even if the term "financial responsibility" had a broader meaning in these diverse statutes (a point that Petitioner has not established) the term's meaning, and thus the scope of the Savings Clause, is expressly circumscribed in the Graves Amendment.

Third, the Petitioner's argument ignores the common, historical meaning of the term "financial responsibility" as used in the context of motor vehicles (*i.e.*, insurance-like requirements). *See* Section III-B, *supra*. References to the term "financial responsibility" as used in the context of sea-faring vessels, the production of atomic fuel, and the transport of hazardous materials adds very little to the analysis.

B. The Vargas Dissent, Likewise, Relies On An Overly Broad Construction Of The Savings Clause Which Nullifies Congress' Intent.

Without discussion, Petitioner asserts that this Court should adopt the dissent in *Vargas*. (*Initial Brief* at 13). But the *Vargas* dissent, likewise, construes

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operators of motor vehicles, but permit them to carry, in lieu of liability insurance per se, its financial equivalent, such as a bond or self-insurance.").

the Savings Clause so broadly that it subsumes the vicarious liability that Congress intended to preempt. This conclusion is boldly stated as "the dangerous instrumentality doctrine is itself a form of financial responsibility law . . ." *Vargas*, at 635 (dissent). The dissent describes the basis for this conclusion as follows:

> Congress composed Graves § (b)(2) to save State laws entailing *either* a financial responsibility *or* a minimum insurance requirement. Graves § (b)(2) foreswears any specification as to how the *requirement* is to function, directly or indirectly. The text of Graves § (b)(2) applies to all State financial responsibility laws imposing a minimum insurance without limit. We are simply left to divine why it would be necessary to include the text of Graves § (b)(2) if Congress intended to save only those laws described in Graves § (b)(1). Graves § (b)(2) is superfluous.

Vargas, at 626 (Underlined emphasis added). Enterprise respectfully submits that the *Vargas* dissent misapprehends the following points.

First, in the quote above, the dissent correctly notes that Graves (b)(2) uses the term "requirement": *i.e.*, it applies only to "the financial responsibility or liability insurance *requirements* under State law." 49 U.S.C. § 30106(b)(2) (Emphasis added). But the dissent creates a distinction between "direct" and "indirect" requirements where none exists.[12]

That is, in order to bring the Florida Statute within Graves (b)(2), the dissent

[12] The *Vargas* dissent later contends: "In Graves § (b)(2) Congress explicitly declared that it had laid no hand on minimum liability insurance requirements in such laws. And this whether or not such laws *directly or only indirectly* impose some responsibility on Companies for failing to meet these insurance requirements." *Id.* at 632 (Emphasis added).

construes the Florida Statute as creating an "indirect" requirement where it provides that a lessor may avoid "an additional $500,000 in economic damages" if the lessee (the driver) is insured by certain amounts. *Vargas*, at 626 (dissent). This is a variation of the same argument, however, that all of the District Courts of Appeal, every federal District Court, and the Eleventh Circuit have rejected. Looking at the Florida Statute, the Middle District aptly states:

> The Plaintiffs are simply wrong. First, this provision does not impose any liability on lessors for failing to meet Florida's insurance requirements, it simply states that the most a motor vehicle lessor can potentially be held vicariously liable for may increase by another $500,000 in certain circumstances. It is a contingency provision, effectively creating a cost-benefit risk analysis for motor vehicle lessors. A lessor could choose to rent to operators who have lower levels of insurance without any consequences or penalties by the state. In such a situation, the lessor would merely assume the risk of possibly being liable for a higher level of damages should an accident and lawsuit ensue.
>
> A careful reading of § 324.021(9)(b)(2) shows that it does not impose any insurance requirements on anyone or even mention the term "financial responsibility." This section speaks solely in terms of "liability." A lessor of motor vehicles in the state of Florida could operate without any insurance whatsoever, and would never fall within the scope of § 324.021(9)(b)(2)."

Garcia, 510 F. Supp. 2d at 831; *see also Garcia*, 540 F.3d at 1248 ("financial responsibility laws are legal requirements, not mere financial inducements imposed by law."). In short, the Florida Statute does not require anything. Instead, it creates an incentive to lease vehicles only to lessors with the stated insurance coverage. The *Vargas* dissent concedes this point and, to overcome it, posits the

vague and ill-defined notion of an "indirect" requirement. *Vargas*, 993 So. 2d at 626, 632. The problem, however, is that Graves (b) does not reference "indirect" requirements nor does it qualify its use of the word "requirement." As the federal courts have determined, Graves (b) applies only to requirements, not to incentives. There is no basis for inserting the uncertain term "indirect requirement" in Graves (b)(2) where it does not exist.

To put a finer point on it, the *Vargas* dissent substantially changes the plain language of Graves (b). The common definition of the word "requirement" denotes something obligatory:

> **Requirement**. (1) Something that is required; a necessity;
> (2) Something obligatory; a prerequisite.

The American Heritage Dictionary, (4th Ed.). An incentive (and if the term "indirect requirement" has any meaning, it is merely an incentive) is not a requirement. Construing Graves (b)(2) in such a fashion is equivalent to erasing the distinction between "shall" and "may" in a statute. Here this misapprehension of a key term in the federal statute -- the insertion of an uncertain term where it does not exist -- effectively nullifies the statute's operative provision.

Second, the dissent contends that if Graves (b)(2) is limited to just direct requirements then it duplicates the exemption in Graves (b)(1) and is "superfluous." This is not accurate. Graves (b)(1) applies to state laws "imposing financial responsibility or insurance standards . . . for the privilege of registering

and operating a motor vehicle." Graves (b)(2) applies to state laws "imposing liability . . . for failure to meet the financial responsibility or liability insurance requirements." The notion that the phrase "imposing liability" in Graves (b)(2) must necessarily mean "vicarious liability," or else it is "superfluous," ignores the multiple ways in which state financial responsibility laws impose "liability."

For example, many states, including Florida, impose fines and criminal liability for failure to comply with the financial responsibility requirements.[13] These fines and criminal penalties are a type of "liability" and they fall within Graves (b)(2) but not Graves (b)(1). As another example, many states require non-resident owners (*i.e.*, owners who are neither registering nor personally operating a vehicle within that state) to obtain insurance coverage, or to prove financial responsibility by other methods.[14] Thus, here are financial responsibility and

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[13] Fla. Stat. 324.221; N.C. Gen. Stat. § 20-279.31; Mo. Rev. Stat. § 303.025(3), 303.370; Miss. Stat. § 63-15-4, 63-15-69; Ga. Code Ann. § 40-9-9, 40-9-12; Del Code Ann. Tit. 21 § 2971; Colo. Rev. Stat. § 42-7-507.

[14] *See, e.g.*, Minn. Stat. § 65B.48 ("The nonresident owner of a motor vehicle which is not required to be registered or licensed, or which is not principally garaged in this state, shall maintain security in effect continuously throughout the period of the operation, maintenance or use of such motor vehicle within this state . . ."); Ind. Code § 9-25-1-6 ("This article applies to a person who is not a resident of Indiana under the same conditions as this article applies to a resident of Indiana."); Alaska Stat. § 32-7-6 ("The director shall . . . suspend the license of each operator and all registrations of each owner . . . and if the owner is a nonresident the privilege of the uses within this state of any motor vehicle personally owned, unless the operator or owner or both shall deposit security in the sum so determined by the director."); *see also* Ariz. Stat. § 28-4078 ("A nonresident owner of a motor vehicle not registered in this state may give proof of financial

insurance "requirements" that are not necessarily tied to the owner's registration or personal operation of the motor vehicle. Also, states invariably suspend the registration of an owner's motor vehicles where financial responsibility requirements are not met.[15] This suspension is, itself, is a type of liability (*i.e.*, a penalty) that complements, but arguably falls outside of the language of Graves (b)(1). Finally, it is reasonable, whether by statute or regulation, that a state "political subdivision" could revoke a lessor's business-license for the failure to comply with insurance requirements. This is yet another type of penalty that would fall within Graves (b)(2) but not Graves (b)(1). In sum, Graves (b)(2) and (b)(1) may overlap in some respects, but they are not "superfluous."

Third, the interpretations urged by Petitioner and the *Vargas* dissent violate the principle that the "objective in interpreting a statute is to determine the drafter's intent" and that "absurd" results must be avoided. *United States v. Grigsby*, 111

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responsibility by filing with the director a written certificate of an insurance carrier authorized to transact business in the state in which the motor vehicle described in the certificate is registered . . ."); 625 Ill. Comp. Stat. 5/7-316 (same); N.C. Gen. Stat. § 20-279.20(a) (same); Miss. Stat. § 63-15-41 (same); Ind. Code § 9-25-5-10, 9-25-6-13 (same); Del Code Ann. Tit. 21 § 2949 (same); Colo. Rev. Stat. § 42-7-412 (same); Mo. Rev. Stat. § 303.180 (same); N.J. Stat. Ann. § 39-6-25 (distinguishing between the privilege to register, operate, and the use of a motor vehicle: "if such owner is a nonresident the privilege of the use within this State of any motor vehicle owned by him" is suspended).

[15] *See, e.g.*, § 324.051, Fla. Stat.; Mo. Rev. Stat. § 303.030, 303.041; Ga. Code Ann. § 40-9-33; Del Code Ann. Tit. 21 § 2942; Colo. Rev. Stat. § 42-7-303, 42-7-401.

F.3d 806, 816 (11th Cir. 1997); *United States v. Ballinger*, 395 F.3d 1218, 1237 (11th Cir. 2005). The only sensible interpretation of the Graves Amendment is to maintain the distinction between "vicarious liability" and "financial responsibility" that Congress intended. This distinction is clear from the ordinary and common meaning of the terms used by Congress (discussed above). Indeed, the very structure of the Graves Amendment – the divide between Graves (a) and Graves (b) in this one-page, single-purpose statute – compels the distinction. Here Petitioner posits the absurd result of having Congress preempt in Graves (a) what it then saves from exception in Graves (b). The Eleventh Circuit rejected such a broad construction of the federal statute stating:

> If we construe the Graves Amendment's savings clause as appellants wish, it would render the preemption clause a nullity. Every vicarious liability suit would be rescued because it could result in a judgment in favor of an accident victim, even though the judgment is premised on the very vicarious liability the Amendment seeks to eliminate.

Garcia, 540 F.3d at 1248. *See also Vargas*, 993 So. 2d at 623 ("The purpose of Congress is the ultimate touchstone in every preemption case. . . The dissent construes the Graves Amendment so broadly that vicarious liability disappears into “financial responsibility”; the exception thus swallows the rule."); *TRW, Inc. v. Andrews*, 534 U.S. 19, 28-29 (2001) (rejecting an interpretation that would "distort [the statute's] text by converting the exception into the rule."). For these reasons,

any contention that the Florida statute is a "financial responsibility" law, as Congress intended the term, must be rejected.

V. THE LEGISLATIVE HISTORY OF THE GRAVES AMENDMENT EXPRESSLY AND UNAMBIGUOUSLY EVINCES CONGRESS' INTENT TO PREEMPT THE FLORIDA STATUTE.

If this Court has any doubt whether the Graves Amendment preempts the Florida Statute, and what Congress intended, the legislative history resolves that doubt. Therein, Florida law is frequently and explicitly referenced. On every occasion where it is referenced, by either a proponent or opponent, Congress made clear that this federal legislation, if passed, would preempt Florida law.[16]

A. The History Of The Federal Legislation.

On August 10, 2005, President Bush signed into law the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users*. This federal statute was the culmination of long effort to preempt state laws imposing vicarious liability on lessors of motor vehicles. A bill identical in substance to the Graves Amendment – *The Rental Fairness Act of 1999* (the "RFA") – was proposed in the

[16] Importantly, under federal interpretive principles, this Court may review the legislative history even if it determines that the language of the Graves Amendment is unambiguous. *See APA Excelsior III L.P. v. Premiere Tech., Inc.*, 476 F.3d 1261, 1269 (11th Cir. 2007); *Train v. Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976) (holding that legislative history may be considered to determine congressional intent even if a statute is unambiguous on its face).

106th Congress, but failed to pass. H.R. 1954, 106th Cong. (2002).[17] An examination of this legislative history, which follows, compels the conclusion that Congress intended to preempt Section 324.021(9)(b)(2) based on a substantive record demonstrating the need to achieve a national, uniform standard. Notably, Petitioner cited and discussed this legislative history in her *Initial Brief* to the Fourth District Court of Appeal; thus, its relevance is not disputed.

B. Congress' Intent To Preempt Section 324.021(9)(b)(2) Is Explicit And Uncontradicted In The Legislative History.

The most compelling indications of congressional intent are the direct references to Florida law in the legislative history. Again, on *every* occasion where Florida law is referenced, the legislative history indicates that Congress intended preemption. Consider, for example, the following direct indication, in the principal House Report, that the federal statute would preempt Florida's Section 324.021:

> To provide appropriate levels of protection for people injured by motor vehicles, every State has established minimum financial responsibility laws. These laws establish a minimum level of insurance coverage that must be obtained on every vehicle. In most states the financial responsibility laws operate to cover the liability of any driver who operates a car. Some states have broader no-fault

[17] It is appropriate that this Court examine the legislative history of the Graves Amendment and the RFA given that they employ similar, nearly identical, language and express an identical purpose. *See Landgraf v. USI Film Prod.*, 511 U.S. 244, 255-257, 259-260, 261-262, 263, 286 (1994) (repeatedly looking to a prior, similar version of the act that passed Congress but which was vetoed by the President to interpret the Civil Rights Act of 1991). *See also Dawson Chem. Co. v. Rohm & Haas Co.*, 448 U.S. 176, 204 (1980); *Don't Tear It Down, Inc. v. Pennsylvania Ave. Development Co.*, 579 F.Supp. 1382, 1389 (D.D.C. 1984).

> insurance laws which do not require liability on the part of the driver to trigger coverage. Only five States and the District of Columbia have not yet replaced their unlimited vicarious liability laws. (See, Conn. Gen. Stat. Ann. 14 154a; D.C. Code Ann. 40 408; Iowa Code 321.493; Me. Rev. Stat. Ann. 29 A 1652 53; N.Y. Veh. & Traf. 388; R.I. Gen. Laws 31 33 6, 31 33 7). A few States have restricted the application of their vicarious liability laws only to those cases when the rental or leasing company does not maintain the required insurance coverage under the State's minimum financial responsibility laws, (See, Nev. Rev. Stat. 482.305; Ariz. Rev. Stat. 28 324; Neb. Stat. 25 21,239 (applying only to trucks)), or have capped the liability of their companies at the same level as the financial responsibility laws (See, Cal. Veh. Code 17150 51; Idaho Code 49 2417; Mich. Comp. Laws Ann. 257.401). *These latter two groups of States would not be affected by the Rental Fairness Act, as it similarly conditions the protection against vicarious liability on maintenance of the required insurance coverages and allows recovery up to the level of such minimum financial responsibility levels. Two States have recently enacted laws which begin to limit the application of vicarious liability, but with liability exposures set at a higher level than the preexisting financial responsibility requirements (See, Minn. Stat. 170.54; Fla. Stat. 324.021).*

Committee on Commerce, Rental Fairness Act of 2000, H.R. Rep. 106-774, pt. 1, at 4-5 (July 20, 2000) (Emphasis added). This House Report was written just six months after the enactment of Section 324.021(9)(b)(2), and the Florida statute is directly referenced in the federal legislative history. As the House Report states, the Florida statute will be preempted because it imposes vicarious liability above Florida's financial responsibility requirements. Furthermore, in this House Report, Congress equates "financial responsibility" with "laws establish[ing] a minimum

level of insurance coverage that must be obtained on every vehicle." H.R. Rep. 106-774, pt. 1 at 4.[18]

Likewise, the "minority view" portion of the same House Report lists Florida among the states with a vicarious liability law that would be preempted by the federal statute.[19] Thus, this is not an instance where legislators make partisan statements to influence a court's subsequent statutory interpretation. Both the proponents and opponents agreed that the statute would preempt Florida law.

Other portions of the legislative history dispel any doubt that Congress intended to preempt Florida law. Witnesses testified that Florida law would be preempted by the proposed legislation.[20] Congress heard testimony concerning Florida lawsuits where vicarious liability had been imposed on short term-lessors

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[18] *See also* H.R. Rep. 106-774, pt. 1, at 11 (again equating financial responsibility with "minimum insurance coverages"); 151 Cong. Rec. H11202 (daily ed. March 9, 2005) (Representative Graves) (noting that with respect to "minimum requirements for insurance . . . [t]hat is to the States.").

[19] The Minority Views section of the house report clearly and expressly states that the RFA, if enacted, would preempt Florida law: "The proponents of H.R. 1954 intend that the legislation preempt "vicarious liability" laws in 11 states (Florida, New York, California, Iowa, Michigan, Minnesota, Nevada, Idaho, Maine, Connecticut, and Rhode Island) and the District of Columbia . . ." H.R. Rep. 106-774, pt. 1, at 13.

[20] *See, e.g., Prepared Statement of Mr. Richard H. Middleton Jr., Rental Fairness Act of 1999*, 1999 W.L. 959131, at 2-3 (October 20, 1999).

of motor vehicles.[21] Also telling are the statements of the opponents of the federal legislation that directly reference Florida law. For example, Representative John D. Dingell, of the Fifteenth District of Michigan, stated in opposition to the RFA:

> The Committee never asked a single Governor from these states to explain why they had adopted their law, and what their view was on preemption. Within the last six months, Governor Jeb Bush of Florida signed a law, written by a Republican legislature, that more than doubles that state's cap on 'vicarious liability.' Now their Republican brethren in the Congress want to second guess them.

Prepared Statement of the Honorable John D. Dingell, Rental Fairness Act of 1999, 1999 W.L. 1005519, at 2 (March 15, 1999). Here, Representative Dingell is referring to the then recent enactment of Section 324.021(9)(b)(2) and opposing the federal statute, in part, because the Florida Statute would be preempted.[22]

In sum, *every* reference to Florida law within the legislative history indicates that Congress intended to preempt Florida law.

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[21] *See Prepared Statement of Mr. Raymond T. Wagner Jr., Rental Fairness Act of 1999*, 1999 W.L. 959130, at 4-5 (October 20, 1999) (listing Florida vicarious liability lawsuits against short-term lessors of motor vehicles).

[22] Likewise, in opposition to the Graves Amendment, Representative Jerry Nadler, of the Eighth District of New York, listed Florida among the states with laws that would be preempted. 151 Cong. Rec. H1200 (daily ed. March 9, 2005) (Representative Nadler).

C. The Policy Goals Of The Graves Amendment Indicate That Congress Intended To Preempt Vicarious Liability While Leaving States Free To Set The Amounts Of Required Financial Responsibility.

The legislative history of the Graves Amendment indicates it serves at least three distinct goals. First, the overarching purpose of the Graves Amendment is grounded on basic fairness. The proponents of the Graves Amendment viewed the imposition of vicarious liability on lessors of motor vehicles as antiquated.[23] Specifically, they deemed it unfair to impose liability on those who were not at fault for the underlying injury.[24] Simply put, "[w]hat we are doing is eliminating vicarious liability simply because they owned a vehicle." 151 Cong. Rec. H11201 (daily ed. March 9, 2005) (Representative Graves).

Second, Congress viewed the vicarious liability imposed by states as a detriment to competition within this national industry. Witnesses testified that the financial impact of vicarious liability on short-term lessors eliminated smaller

[23] H.R. Rep. 106-774, pt. 1, at 4; 151 Cong. Rec. H1201 (daily ed. March 9, 2005) (Statements of Representative Boucher).

[24] *See, e.g.*, H.R. Rep. 106-774, pt. 1, at 3 (July 20, 2000) ("Vicarious liability is liability for the tort or wrong of another person). It is an exception to the general legal rule that each person is accountable for his own legal fault, but in the absence of such fault is not responsible for the actions of others. . . . The Rental Fairness Act establishes the simple legal rule for rental vehicles that the party at fault should bear the responsibility for any liability incurred. Where a party is not negligent, or not a fault for an action, then that party should not be held liable for another's harm."); *Prepared Statement of the Honorable Michael G. Oxley, Rental Fairness Act of 1999*, 1999 W.L. 959128, at 1 (October 20, 1999); *Prepared Statement of Chairman Tom Bliley, Rental Fairness Act of 1999*, 1999 W.L. 1005519, at 1 (November 2, 1999).

competitors from the market. Congress acted, in part, to cure this detriment: "we will restore fair competition to the car and truck renting and leasing industry and lower costs and increase choices for all consumers." 151 Cong. Rec. H1200 (daily ed. March 9, 2005) (Representative Graves).

Third, related to the improvement of competitive conditions in the market, consumer welfare is another factor that motivated Congress' decision to enact the Graves Amendment. Witnesses and legislators noted that the imposition of vicarious liability on short-term lessors was costing the industry $100 million annually and that this cost was passed-on to consumers in the form of higher prices.[25] Underlying this concern was the recognition that motor vehicles are inherently mobile; thus, the imposition of vicarious liability in a handful of states imposed burdens on companies and consumers in other states.[26]

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[25] *Prepared Statement of Mr. Raymond T. Wagner Jr., Rental Fairness Act of 1999*, 1999 W.L. 959130, at 3 (October 20, 1999) ("vicarious liability results in losses by car rental companies of over $100 million every year . . ."); 151 Cong. Rec. H1198 *et seq.* (daily ed. March 9, 2005) (Statement of Representative Graves) ("These vicarious liability lawsuits cost consumers nationwide over $100 million annually."); 151 Cong. Rec. H1200 (daily ed. March 9, 2005) (Statements of Representative Blunt) ("This arbitrary regulation costs small and large companies more than $100 million each year. In turn, small companies are getting run out of this business, and also this limits choices and competition for the customers when that happens."); 151 Cong. Rec. H1201 (daily ed. March 9, 2005) (Representative Boucher).

[26] *See, e.g.*, H.R. Rep. 106-774, pt. 1, at 4 ("Further, because rented or leased motor vehicles are frequently driven across State lines, these small number of vicarious liability laws impose a disproportionate and undue burden on interstate commerce by increasing rental rates for all customers across the Nation.");

With respect to each of these goals, there is no indication that Congress was content with half-measures. Congress did not set out, for example, to alleviate only some of the unfairness that inheres to the imposition of vicarious liability on a faultless lessor. The notion that Congress wanted only to preempt only unlimited liability has no support in either the text of the Graves Amendment or in its legislative history, and this notion is flatly inconsistent with Congress' intent to create a uniform, national standard.[27]

One may disagree with the policy decisions made by Congress, but that is not at issue here. Rather, the task is to give effect to congressional intent. Importantly, the states do have a safety valve – the Graves Amendment leaves the States free to adjust, if they deem it necessary, the amount of required insurance and required financial responsibility. But the plain language of the Graves Amendment, and its legislative history, makes clear that Congress intended to preempt vicarious liability. Thus, the Florida Statute is preempted.

Prepared Statement of Mr. Raymond T. Wagner Jr., Rental Fairness Act of 1999, 1999 W.L. 959130, at 2 (October 20, 1999) ("The car rental industry is a fundamental part of our nation's interstate transportation network. Car rental customers across the nation pay for the vicarious liability losses incurred by car rental companies through higher rates.").

[27] *See Amicus Curiae Brief Of The Florida Justice Association In Support Of Petitioner*, at p. 4 (arguing, without support, that the Graves Amendment preempts unlimited liability only).

VI. SECTION 324.021(9)(b)(2) IS A VICARIOUS LIABILITY LAW, AND NOT FINANCIAL RESPONSIBILITY, UNDER FLORIDA LAW.

As established above, Congress enacted the Graves Amendment with the determination that the Florida Statute is not a "financial responsibility" law or an "insurance requirement." Under the Supremacy Clause, and basic rules of statutory construction, those terms must be defined as Congress intended. U.S. Const. art. VI, cl. 2. In short, Congress' intent is dispositive and it is improper to look, as Petitioner does, to Florida law to supply the definition of "financial responsibility" as that term is used by Congress in a federal statute. *See Garcia*, 510 F. Supp. 2d at 832 ("While not dispositive, Florida case law supports the Court's interpretation . . .").

Nonetheless, it is reassuring that even under Florida law, Section 324.021(9)(b)(2) is *not* a financial responsibility law. We know this by looking at the distinction between financial responsibility and the dangerous instrumentality doctrine manifest in the origins and development of, and the Florida authority treating, these separate bodies of law.

As will be demonstrated, it gains Petitioner nothing to argue that the Florida statute was codified in the pre-existing "Financial Responsibility" chapter. (*Initial Brief*, at 7-8).[28] It is substance, not labels that matter. As the United States

[28] The Florida statute was added to Chapter 324, over fifty years after the enactment of financial responsibility in Florida. It was codified in Chapter 324

Supreme Court declared, in a case involving the federal preemption of state law causes of action: "distinguishing between preempted and non-preempted claims based on the particular label affixed to them would elevate form over substance…" *Aetna Health Inc. v. Davila*, 542 U.S. 200, 215 (2004) (also declaring that states may not evade preemption through "attempts to authorize remedies beyond those authorized . . " by the federal statute). Here, scratch below the surface, as Florida and federal courts have done, and it is clear that Section 324.021(9)(b)(2) is a cap on the common-law vicarious liability imposed on lessors of motor vehicles, which is an entirely distinct body of law from "financial responsibility."

A. Financial Responsibility and Compulsory Insurance

Florida's financial responsibility law derives from statute. It was first enacted in 1947 and its historical basis, a security obligation triggered by an accident, is set forth in Section 324.011, Florida Statutes (2006).

Here is how financial responsibility in Florida typically works. A motor vehicle accident results in a report to the Department of Highway Safety and Motor Vehicles which then suspends the license of the operator, and the registration of the owner, unless the owner or operator can show proof of an insurance policy or bond that "contains the limits of not less than those specified in s. 324.021(7)." § 324.051(3), Fla. Stat. (2006). If a license or registration is suspended, it can be

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likely because it deals with the same general subject matter – the compensation of damages from motor vehicle accidents.

reinstated by obtaining an insurance policy or bond that satisfies the requirements of 324.021(7). §§ 324.071, 324.031, 324.021(8). The current levels of financial responsibility that are set forth at Section 324.021(7) are as follows:

> (7) PROOF OF FINANCIAL RESPONSIBILITY.--That proof of ability to respond in damages for liability on account of crashes arising out of the use of a motor vehicle:
>
> > (a) In the amount of $10,000 because of bodily injury to, or death of, one person in any one crash;
> >
> > (b) Subject to such limits for one person, in the amount of $20,000 because of bodily injury to, or death of, two or more persons in any one crash;
> >
> > (c) In the amount of $10,000 because of injury to, or destruction of, property of others in any one crash. . .

Simply put, the amounts specified in Section 324.021(7) are Florida's financial responsibility requirements. A wealth of authority exists that identifies this provision, and its predecessors, as Florida's financial responsibility law. This authority includes United States Supreme Court precedent,[29] this Court's prior

[29] *Kesler*, 369 U.S. at 164-65.

decisions,[30] secondary authority,[31] guidelines from the Florida agency responsible for overseeing motor vehicle insurance,[32] and a report from the Florida Senate.[33]

Indeed, the last of these authorities is instructive. In November 2005, the Florida Senate issued a comprehensive report that addresses motor vehicle insurance (a guide for legislators as they considered amendments to, and the future of, Florida's no-fault insurance regime). In the report, the Florida Senate identified the thresholds in Section 324.021(7) as Florida's financial responsibility requirements.[34] Notably absent in this comprehensive report on Florida motor vehicle insurance requirements, is a citation to, much less a discussion of, the vicarious liability of Section 324.021(9)(b)(2).

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[30] *Lynch-Davidson Motors v. Griffin*, 182 So. 2d 7, 8 (Fla. 1966); *Bankers & Shippers Ins. Co.*, 210 So. 2d at 718 (Fla. 1968); *Williams v. Newton*, 236 So. 2d 98 (Fla. 1970).

[31] T. Shane Roweh, *Florida Automobile Insurance Law*, ch. 1, at § 1.10 (6th ed. 2005).

[32] Florida Department of Financial Services, *Automobile Insurance, A Guide For Consumers*, pp. 4, 11 (describing the requirements of Section 324.021(7) as Florida's "Financial Responsibility Law.") (available at http://myfloridacfo.com/Consumers/literature/auto_guide_2007.pdf).

[33] The Florida Senate, Committee on Banking and Insurance, *Florida's Motor Vehicle No-Fault Law*, Report Number 2006-102, at 24-25 (November 2005) (citing at footnote 77, Ch. 47-23626, Laws of Florida, and at footnote 78, Section 324.031, Florida Statutes). The Florida Senate report is available at http://www.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-102bilong.pdf.

[34] *Id.*

Certainly Florida law imposes other minimum insurance requirements. As one commentator put it, "[i]n 1971 . . . the financial responsibility laws were overwhelmed by the advent of compulsory no-fault insurance." Roweh, ch. 1 at § 1.8. The Motor Vehicle Insurance Reform Act of 1988, as amended, requires an owner or operator to obtain certain minimum insurance coverage (or proof of other security) as a condition of registering a motor vehicle, and without regard to whether or not the driver has been irresponsible in the past. Ch. 88-370, Laws of Fla.; §§ 324.022; 627.733(1), Florida Statutes (2005). These additional insurance requirements, like Florida's financial responsibility law at Section 324.021(7), are not preempted by the Graves Amendment.

B. The Common-Law Dangerous Instrumentality Doctrine And Section 324.021(9)(b)(2).

The dangerous instrumentality doctrine, by contrast, derives from common law. It is based on the proposition that an owner who entrusts another with an intrinsically dangerous item, which invariably poses some risk to others, should be held strictly liable for any damages that accrue. It is a form of strict liability.

The doctrine was first applied to motor vehicles in 1920 (predating the Florida financial responsibility law by nearly three decades) at a time when motor vehicles were less abundant and insurance coverage did not provide an adequate remedy. *Southern Cotton Oil Co. v. Anderson,* 86 So. 629 (Fla. 1920). This Court subsequently extended the doctrine to bailors and lessors of motor vehicles.

Lynch v. Walker, 31 So. 2d 268 (Fla. 1947), *rev'd in part*, 462 So. 2d 1071 (Fla.1984); *Susco Car Rental Sys. of Fla. v. Leonard*, 112 So. 2d 832 (Fla. 1959).

More recently, the Florida Legislature limited the scope of the dangerous instrumentality doctrine as applied to motor vehicles. Through positive enactments, the vicarious liability of long-term lessors, short-term lessors, and private owners has been capped. § 324.021(9)(b)(1)-(3), Fla. Stat. (2008). As described by one Florida court, the legislature was motivated by notions of fairness:

> Florida is apparently the only state that imposes strict vicarious liability on the owner of an automobile who entrusts it to another, and the doctrine has drawn its fair share of criticism. The real and perceived inequities created by the doctrine prompted the legislature to amend section 324.021 to add [the caps on vicarious liability]. . . . In 1999, the legislature added subsections (9)(b)(2) and (3), which limit the liability of lessors who rent or lease a motor vehicle for less than a year and owners who are natural persons who lend their car to any permissive user.

Fischer v. Alessandrini, 907 So. 2d. 569, 570-71 (Fla. 2d DCA 2005). In this regard, both the Florida Legislature and Congress, in part, were motivated by basic fairness to alleviate the harsh results of vicarious liability.

With respect to short-term lessors, it is notable that the Section 324.021(9)(b)(2) was enacted as part of a broader effort to make "comprehensive modifications to Florida's civil justice system." Conf. Rep. H.B. 775, *Committee*

on Judiciary Final Analysis, (Fla. June 2, 1999).[35] This fact underscores that the Florida statute does not share a common origin with, and developed separately from, Florida's financial responsibility law despite their codification together in Chapter 324, Florida Statutes.[36]

Further, in addressing these legislative caps, Florida courts have made a clear distinction between financial responsibility and vicarious liability. For example, in *Folmar v. Young*, 591 So. 2d 220 (Fla. 4th DCA 1991) (*en banc*), the Fourth District Court of Appeal upheld the constitutionality of Section 324.021(9)(b), against a challenge that the cap infringed on the right of access to the courts.[37] At issue in that case was the subsection that pertains to *long-term* lessors, now codified at Section 324.021(9)(b)(1). That subsection states that where a long-term lessor maintains a required level of insurance, the lessor "shall not be deemed the owner of said motor vehicle for the purpose of determining financial responsibility for the operation of said motor vehicle." *Id.* The plaintiff

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[35] Ch. 99-225, § 28 Laws of Fla.; s*ee also Enterprise Leasing Co. South Central, Inc. v. Hughes*, 833 So. 2d 832 (1st DCA 2002) (holding that 324.021(9)(b)(2) did not deny right of access to courts and that this provision limited the perceived excesses in civil litigation).

[36] Given that the Florida statute concerns liability for motor vehicle accidents and compensation to those injured in such accidents, it is not surprising that the Florida legislature codified its limitation of the dangerous instrumentality doctrine in Chapter 324, Florida Statutes. But this proximity does not alter the Florida statute's substance, origin, development, or treatment by Florida courts.

[37] Ch. 86-228, § 3, Laws of Fla.

seized on this reference to "financial responsibility" to argue that the statute was not a limitation on the dangerous instrumentality doctrine, but a limitation on Florida's financial responsibility law. What is remarkable about the *Folmar* decision, for our purposes here, is that both the majority and the dissent agreed that these were distinct bodies of law. *Id.* at 222. Indeed, the dissent acknowledged the "clear separation of the dangerous instrumentality doctrine from the financial responsibility law" and also "the long-standing precedent in the state of Florida which differentiates the dangerous instrumentality doctrine from the financial responsibility law." *Id.* at 226, 227. While agreeing with the majority with respect to this distinction, the dissent construed the statute as applying to the financial responsibility law. This Court agreed with the majority.[38]

This Court's approval of the majority in *Folmar* is instructive for the broader lesson that substance, not labels, is what matters. The Petitioner's principal argument on appeal is Section 324.021(9)(b)(2) is a "financial responsibility" because it is in a Chapter titled "Financial Responsibility." (*Initial Brief* at 13). This argument is wrong for all of the reasons set forth above. The Eleventh Circuit

[38] *Kraemer v. General Motors Acceptance Corp.*, 572 So. 2d 1363, 1367 (Fla. 1990) (citing to the original panel opinion in *Folmar* which described the legislative history of the statute and "conclude[ing] that section 324.021(9) constitutes an exception to the dangerous instrumentality doctrine"); *see also Insurance Co. of North Am. v. Avis Rent-A-Car Sys., Inc.*, 348 So. 2d 1149 (Fla. 1977) (first describing "financial responsibility law" and then noting "[i]ndependent of this insurance requirement is the common law obligation of vehicle owners under the dangerous instrumentality doctrine.").

rejected this argument, as did all of the District Courts of Appeal, and the Fourth District aptly stated that such "label-based legal analysis fails to acknowledge that Congress used the term in a specific historical context." *Vargas*, 993 So. 2d at 623.

VII. THE GRAVES AMENDMENT IS CONSTITUTIONAL.

By any measure, the discussion above establishes the "clear and manifest" intention of Congress to preempt Section 324.021(9)(b)(2), and similar state laws imposing vicarious liability on lessors of motor vehicles. Indeed, the singular purpose of the Graves Amendment is to preempt these laws.

The next inquiry is whether Congress has the constitutional authority, under the Commerce Clause, to take this action. U.S. Const. art. I, § 8, cl. 3. On the question of constitutionality, this Court should afford substantial deference to the Eleventh Circuit's determination that the Graves Amendment is constitutional:

> These principles indicate that the Graves Amendment is valid. It is plain that the rental car market has a substantial effect on interstate commerce. It is also apparent that Congress rationally could have perceived strict vicarious liability for the acts of lessees as a burden on that market. The reason it could have done so is that the costs of strict vicarious liability against rental car companies are borne by someone, most likely the customers, owners, and creditors of rental car companies. If any costs are passed on to customers, rental cars-a product which substantially affects commerce and which is frequently an instrumentality of commerce-become more expensive, and interstate commerce is thereby inhibited. Moreover, if significant costs from vicarious liability are passed on to the owners of rental car firms, it is possible that such liability contributes to driving less-competitive firms out of the marketplace, or inhibits their entry into it,

> potentially reducing options for consumers. We do not know with any certainty the incidence or effect of these costs, and we do not have to know. It is enough that Congress rationally could have perceived a connection between permissible ends, namely increasing competition and lowering prices in the rental car market, and the means it chose to effectuate them, preempting vicarious liability suits.

Garcia, 540 F.3d at 1253. The Eleventh Circuit is correct. Here, the Petitioner's abbreviated constitutional argument (*Initial Brief* at 14-17) makes the same points considered and rejected in *Garcia*. In other words, the Petitioner's argument is refuted by the well-established constitutional "principles" outlined in *Gracia*.

Indeed, a fair consideration of U.S. Supreme Court's jurisprudence dispels any doubt that Congress was well-within its constitutional authority to enact the Graves Amendment. The Supreme Court has identified three broad categories of activity that Congress may regulate under its commerce power. Congress may regulate (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce and persons of things in interstate commerce, and (3) those activities that substantially affect interstate commerce. *Gonzales v. Raich*, 125 S.Ct. 2195, 2207 (2005) (J. Scalia, concurring). A regulation is authorized if it meets any one of these independent categories. In this case, the Graves Amendment easily satisfies the second and third categories.[39]

[39] Arguably, the first category is also satisfied. Here Congress is regulating the liability incurred by lessors of motor vehicles for accidents occurring on public roads and highways. This activity implicates the first category here given that motor vehicle accidents are an unavoidable consequence of the use of highways.

The Graves Amendment's satisfaction of these categories is a function of the activity and thing that it regulates. The leasing of motor vehicles is a national, multi-billion dollar industry that Congress reasonably perceived as a component of the nation's interstate transportation network.[40] Also, Congress recognized that vicarious liability imposed by a handful of states reaches across state lines in several respects. First, perhaps most obviously, motor vehicles are inherently mobile and may be driven across state lines. Due to this inherent mobility, lessors cannot entirely avoid the risk of vicarious liability. Also, lessors of motor vehicles perform an additional role in our interstate travel network as a complement to other methods of interstate travel (as evidenced by the proximity of lessors to baggage claim carousels at most airports). Second, the vicarious liability imposed by states such as Florida imposes a cost to consumers of $100 million annually. Third, the existence and threat of vicarious liability erects a barrier to competition. As Congress heard, smaller competitors have been driven out of the market, which is ultimately to the detriment of consumers. For these reasons, Congress perceived the need for a uniform, national standard.

In any event, because the regulated activity so clearly fits within the second and third categories of authorized commerce regulation, it is not necessary resolve the applicability of the first category.

[40] Congress heard testimony to this effect. *See e.g., Prepared Statement of Mr. Raymond T. Wagner Jr., Rental Fairness Act of 1999*, 1999 W.L. 959130, at 2 (October 20, 1999).

Against this backdrop, the commerce power is evident. The second category is satisfied because "cars themselves are instrumentalities of commerce, which Congress may protect." *United States v. Oliver*, 60 F.3d 547, 550 (9th Cir. 1995). There is a wealth precedent designating motor vehicles as instrumentalities of commerce and, thus, satisfying the second category of commerce powers. *See United States v. Ballinger*, 395 F.3d 1218, 1226 (11th Cir. 2005) (upholding Congress' power to criminalize the destruction of religious property noting that "[i]nstrumentalities of interstate commerce, by contrast, are the people and things themselves moving in commerce, including automobiles, airplanes, boats, and shipments of goods."); *United States v. Redditt*, 87 Fed. Appx. 440, 443 (6th Cir. 2003) (upholding the constitutionality of the federal carjacking statute determining that "the automobile, which, in and of itself, because of its place, like a train or automobile, is an instrumentality of interstate commerce.").[41] In short, the Graves

[41] *See also United States v. Marek*, 238 F.3d 310, 318-19 (5th Cir. 2001) ("Interstate commerce facilities that have created a criminal federal jurisdictional nexus during intrastate use include telephones, automobiles, and airplanes."); *United States v. Avila*, 205 F.3d 1342 (6th Cir. 2000) (table) ("Motor vehicles are instrumentalities of interstate commerce"); *United States v. McHenry*, 97 F.3d 125, 126 (6th Cir. 1996) ("The carjacking statute, by contrast, is explicitly designed to regulate and protect an "instrumentality" of interstate commerce, placing it within the second category of legitimate congressional action . . ."); *United States v. Bishop*, 66 F.3d 569, 588-90 (3d Cir. 1995) (describing motor vehicles as "the quintessential instrumentalities of modern interstate commerce"). Congress' authority with respect to motor vehicles and roads is also evident the dormant Commerce Clause cases (*i.e.*, where Congress has not spoken) striking down state regulations. *See, e.g., Kassel v. Consolidated Freightways Corp. of Del.*, 450 U.S.

Amendment increases the availability and affordability of these instrumentalities of interstate commerce.

Further, the short-term lease of a motor vehicle is often necessary for interstate travel by other means, for example, as a complement to air travel. In this additional regard, a leased motor vehicle is more plainly an instrumentality of interstate commerce than the privately owned motor vehicles at issue in the cases cited above. And because leasing is a commercial transaction, a leased motor vehicle is a "thing" in interstate commerce, which is yet another basis upon which to find commerce authority under the second category. *See Reno v. Condon*, 528 U.S. 141 (2000) (holding that driver's license information is an article of interstate commerce such that the substantially affects commerce test does not apply); *United States v. Faasse*, 265 F.3d 475 (6th Cir. 2001) (upholding the federal Child Support

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662 (1981) (holding that safety regulations imposed by the State of Iowa on the length of trucks violated the dormant Commerce Clause); *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429 (1978) (holding that Wisconsin safety regulations, governing the length of trucks, violated the dormant Commerce Clause); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959) (holding that Illinois statute requiring certain mudguards on trucks and trailers violated dormant Commerce Clause); *Charter Limousine, Inc. v. Dade County Board of County Commissioners*, 678 F.2d 586 (5th Cir. 1982) (holding that county's award of franchise to single transportation service to and from airport, while taking place solely within one state, violate the dormant commerce clause).

Recovery Act as constitutional because child support payments constitute a "thing" in interstate commerce).[42]

Sweeping broader still is the third category of commerce power: activities that "substantially affect" interstate commerce. Under this third category, Congress may regulate "purely local activities that are part of an economic class of activities that have a substantial effect on interstate commerce." *Gonzales*, 125 S.Ct. at 2205. The Court's task here is limited to determining whether Congress had a rational basis for its conclusions, not whether vicarious liability, in fact, substantially impacts interstate commerce. *Gonzales*, 125 S.Ct. at 2208 ("We need not determine whether respondents' activities, taken in the aggregate, substantially affect interstate commerce in fact, but only whether a "rational basis" exists for so concluding."). Also, Congress is not required to make particularized findings, in order to exercise its commerce authority. *Id.* at 2207 ("we have never required Congress to make particularized findings in order to legislate . . . while we will consider congressional findings in our analysis when they are available, the absence of particularized findings does not call into question Congress' authority to legislate.").

[42] Arguably, the customers that lease motor vehicles are "persons" in commerce. This is an additional basis for determining that the Graves Amendment is a legitimate exercise of the second category of commerce power.

With these standards in mind, there is no question that the Graves Amendment regulates activities that Congress reasonably believed have a substantial impact on interstate commerce. To take just one example, Congress heard that vicarious liability imposes $100 million in annual costs on consumers. This quantified impact is sufficient, without more, to sustain Congress' regulation. In point of fact, the salient attribute of the commerce authority, as measured by the third category, is its sheer scope. "As interpreted by the Court, Congress' authority under the Commerce Clause is broad indeed." *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 308 (1981) (Rehnquist concurring). This breadth of authority has been upheld in numerous contexts, many of which involved activities that are less obviously connected to interstate commerce than is true of the Graves Amendment.[43]

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[43] *See Gonzalez v. Raich*, 545 U.S. 1, 125 S.Ct. 2195 (2005) (holding that enforcement of the federal Controlled Substances Act to home-grown medical marijuana, authorized by California statute, was authorized under the commerce clause); *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985) (holding that Congress had the authority to enforce the minimum-wage and overtime provisions of the Fair Labor Standards Act (FLSA) with respect to state employees); *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264 (1981) (holding that Congress was authorized to enforce the Surface Mining and Reclamation Act with respect to private lands); *Maryland v. Wirtz*, 392 U.S. 183 (1968) (upholding that applicability of the Fair Labor Standards Act to state employees); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964) (holding that Congress had the authority to enforce the public accommodations provision of the Civil Rights Act of 1954 under its commerce authority); *Wickard v. Filburn*, 317 U.S. 111 (1942) (holding that Congress had the authority, under the

Here, Petitioner asserts that the Graves Amendment falls outside of Congress' Commerce Clause authority. (*Initial Brief* at 15-17). He does so by attempting to analogize the Graves Amendment to the regulations at issue in two United States Supreme Court decisions, *Lopez* and *Morrison*, that are simply inapt.

In *United States v. Lopez*, 514 U.S. 549 (1995), the Court analyzed the Gun-Free School Zones Act of 1990, which made it a federal offense for any individual to possess a firearm at a place the individual knows, or has a reasonable cause to believe, is a school zone." *Id.* at 549. The Court held that the law exceeded Congress' authority because "[t]he Act neither regulates a commercial activity nor contains a requirement that the possession be connected in any way to interstate commerce." *Id.* To put a finer point on its determination, the Court noted that "[t]he possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce." *Id.* at 565.

In *United States v. Morrison*, 529 U.S. 598 (2000), the Court analyzed the Violence Against Women Act, which provided a civil remedy for victims of gender motivated violence. The Court struck down the law holding that "[g]ender

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Commerce Clause and pursuant to the Agricultural Adjustment Act of 1938, to limit the production and consumption of homegrown wheat).

related crimes of violence are not, in any sense of the phrase, economic activity. *Id.* at 613.

Lopez and *Morrison* are the only recent decisions in which the Supreme Court held that a federal law was beyond Congress' expansive Commerce Clause powers. The resolution of those cases, and the notable factual disparities between those cases and the instant case, support the constitutionality of the Graves Amendment. Any attempt to analogize the Graves Amendment to the regulations at issue *Morrison* and *Lopez* is a non-starter. The regulation of the vicarious liability imposed on a multi-billion-dollar national industry, selling a product that is inherently mobile and itself a component of interstate travel, and which costs consumers $100 million annually and creates competitive barriers, cannot reasonably be compared to a sexual assault, or to prosecuting a student who brings a gun to school.

Notably, neither *Lopez* nor *Morrison* involved economic or commercial activity. This is the diacritical issue, as the Supreme Court clarified in a subsequent decision stating:

> Despite congressional findings that such crimes had an adverse impact on interstate commerce, we held the statute unconstitutional because, like the statute in *Lopez*, it did not regulate economic activity. We concluded that the noneconomic, criminal nature of the conduct at issue was central to our decision in *Lopez*, and that our prior cases had identified a clear pattern of analysis: Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained.

Gonzalez v. Raich, 125 S. Ct 2195, 2210 (2004) (internal quotes and citations omitted).[44] In short, where the activity involves a commercial transaction, courts must defer to Congress via a simple rational basis test. *Id.* at 2208.[45]

The Graves Amendment regulates commercial/ economic activity. Indeed, it is expressly limited to vehicle owners "engaged in the trade or business of renting or leasing motor vehicles." 49 U.S.C. § 30106(a)(1). At its core, the Graves Amendment regulates the potential liability that flows from a commercial transaction -- the lease of a motor vehicle -- which itself has a direct connection to

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[44] Indeed, the *Gonzalez* court clarified that, "even if [an] activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce." *Id.* Moreover, the Court has "reiterated that when a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequence." *Id.*

[45] Congress' authority to regulate even local conduct, with a nexus to interstate commerce, is well-established. *See United States v. Logan*, 419 F.3d 172, 180-181 (2nd Cir. 2005) (In [*Russell v. United States*, 471 U.S. 858, 859-60 & n. 4, 105 S.Ct. 2455 (1985)], the Supreme Court recognized that rental of a local apartment is part of a vast commercial market in rental properties, and "[t]he congressional power to regulate the class of activities that constitute the rental market for real estate includes the power to regulate individual activity within that class." 471 U.S. at 862, 105 S.Ct. 2455. *Russell* holds that where property is being rented to tenants at the time of an arson, it is being used in an "activity affecting commerce" within the meaning of 18 U.S.C. § 844(i). . . . Moreover, we note the Supreme Court recently reaffirmed "Congress' power to regulate purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce," *Raich*, 125 S.Ct. at 2205, the same basis on which *Russell* upheld federal regulation of local properties involved in the nationwide "class of activities that constitute the rental market for real estate.").

interstate travel. Moreover, numerous cases have upheld Congress' authority to place limits on state tort liability under the Commerce Clause.[46]

In sum, the Graves Amendment regulates commercial/economic activity and more than satisfies the applicable rational basis test. *See Gonzales*, 125 S.Ct. at 2208. For this reason, the Fourth District Court of Appeal's determination that the Graves Amendment is constitutional should be affirmed.

[46] *See, e.g., Kelley v. United States*, 69 F.3d 1503,1507-09 (10th Cir. 1995) (upholding federal preemption of state laws, including tort laws, regulating interstate motor carriers); *In re: Aircrash in Bali, Indonesia*, 684 F.2d 1301, 1309 (9th Cir. 1982) (upholding liability limits on air crash liability in Warsaw Convention); *City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp. 2d 244 (E.D.N.Y. 2005) (upholding federal statute immunizing firearms manufacturers from tort liability); *Cipollone v. Ligett Group, Inc.*, 505 U.S. 504 (1992) (federal statute preempted failure to warn claims against cigarette manufacturers); *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59 (1978) (federal statute limited liability for nuclear accidents); *see also Pierce County v. Guillen*, 537 U.S. 129 (2003) (upholding constitutionality of a federal statute, 23 U.S.C. § 409, which prohibited use of certain State-created highway safety documents in actions for damages).

CONCLUSION

For the foregoing reasons, Enterprise respectfully submits that the Court should affirm the reasoned decision of the Fourth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Answer Brief* has been furnished by U.S. Mail this **27th** day of **August 2009** to: **Mariano Garcia, Esq.**, 2328 10th Avenue North, Suite 600, Lake Worth, FL. 33461, and **Marjorie Gadarian Graham, Esq.**, 11211 Prosperity Farms Road, Oakpark-Suite D 129, Palm Beach Gardens, FL 33410, **Jimmy Middleton,** c/o Elizabeth Price and **Elizabeth Price,** 12050 SE 123rd Avenue, Ocklawaha, FL 32170.

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CERTIFICATE OF TYPEFACE COMPLIANCE

Counsel for Appellee Enterprise Leasing Company certifies that this *Answer Brief* is typed in 14 point (proportionately spaced) Times New Roman, in compliance with Rule 9.210 of the Florida Rules of Appellate Procedure.

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