Myth vs. Facts: the Denham/Cuellar/Costa F4A Amendment (#140) to H.R.4, the FAA Reauthorization Act:

Rebutting the False Claims Made by Opposition:

Myth: The Denham/Cuellar/Costa Amendment would overturn the ability of states to govern the working conditions of their truck drivers.

Fact: Nothing in the amendment impedes a states' ability to govern the working conditions of truck drivers engaged solely in intrastate commerce. The amendment specifically ties preemption of state break requirements to USDOT's jurisdiction under 49 U.S.C. 31502, which applies when the driver works in *interstate* commerce—regulation of which the Constitution assigns to Congress. For example, a driver who does not cross state lines would be covered under this provision *if* USDOT has jurisdiction over his/her hours of service because he/she transports goods in interstate commerce – even if he/she works within a single state. In other words, the amendment ensures that all drivers' hours of service are subject *either* to USDOT's jurisdiction *or* to the state's break rules—but not both at the same time.

Myth: California's state meal and rest break laws were specifically designed to reduce worker fatigue and to protect workers and the public from workplace crashes, injuries, and deaths.

Fact: The federal rules governing driver hours and breaks were developed by USDOT specifically with commercial drivers in mind, based on a review of truck-specific highway safety evidence and fatigue science. The state break rules at issue here, by contrast, are general employment laws, not developed in the context of truck safety concerns, and not rooted in evidence about how best to ensure commercial drivers don't drive while fatigued. On the contrary, applying state break rules for all employees on top of the federal rules developed for commercial drivers interferes with the nationwide uniformity of the latter, to the potential detriment of highway safety.

Moreover, in places like California, employees who work under a collective bargaining agreement are exempt from state break rules. And the rules only apply to employees, not independent contractors—who in trucking make up a significant portion of the driver population. If states had indeed enacted these break rules to prevent crashes and deaths, they would hardly have exempted unionized and independent drivers.

Myth: The Denham/Cuellar/Costa Amendment would deny truck drivers from taking the lunch and/or rest break they are granted under state law.

Fact: By its express terms, the amendment would *not* preempt state break requirements for drivers who are not subject to USDOT's hours-of-service jurisdiction because they do not work in interstate commerce. And USDOT's safety-focused regulations already give drivers the right to take a break whenever they feel they need one—with whistleblower protections for drivers who are coerced to keep driving by carriers or customers.

Myth: The 1994 Federal Aviation Administration Authorization Act preemption provision that the Denham/Cuellar/Costa Amendment clarifies was limited to direct economic regulation of the trucking industry.

Fact: The U.S. Supreme Court has repeatedly held that the F4A's preemption provision (and the identical provision governing airline deregulation in the Airline Deregulation Act of 1980)

expressed a *broad* preemptive intent, that it extends to indirect as well as direct regulation, and that it is not targeted at economic regulation alone. The Supreme Court has found a wide range of state laws—from consumer protection requirements to the common-law covenant of good faith and fair dealing—preempted under these statutes. And until the Ninth Circuit's erroneous 2014 decision, the vast majority of lower courts held that existing law preempts state meal and rest break laws—hence the need for clarification offered by the Amendment.

Myth: This issue has not had a public hearing or any meaningful discussion or analysis.
Fact: F4A has been the subject of ample Congressional discussion and consideration. Over the last 3 years, the issues surrounding federal preemption of state meal and rest breaks have been discussed, debated and voted on in Congress no less five different times. To suggest this matter has not received adequate Congressional scrutiny is simply imaginary and untrue.

Myth: The Denham/Cuellar/Costa Amendment has no place in legislation reauthorizing the FAA.
Fact: The Federal Aviation Administration Authorization Act of 1994 explicitly preempted state laws "related to a price, route, or service of any motor carrier … with respect to the transportation of property." The Denham/Cuellar/Costa Amendment simply clarifies that this preemption provision has always extended to state break rules, contrary to a 2014 9th Circuit decision. As such, the FAA Reauthorization bill currently pending before Congress is an entirely germane and appropriate vehicle for clarifying the earlier FAA bill's provision.

Myth: The Denham/Cuellar/Costa Amendment goes beyond the purpose of preventing a patchwork of State laws by preempting existing meal or rest break laws that have been on the books for decades.
Fact: Motor carriers operating in interstate commerce have, since 1994, been subject only to nationally uniform federal rules governing their working hours. The amendment only applies to motor carriers and their employee drivers and does not affect any other industry or independent contractors. The 9th Circuit ruling has unleashed a torrent of lawsuits against motor carriers engaged in interstate commerce. Regulating interstate commerce is a constitutional responsibility of the federal government.

Myth: The Denham/Cuellar/Costa Amendment would undermine every state law relating worker compensation, leave and benefits.
Fact: Assertions that the Denham/Cuellar/Costa Amendment would undercut other state laws relating to compensation and benefits represents a gross misreading – and, intentionally misleading reading – of the amendment's language. The clear intent of the language is – and always has been – to make clear that federal law preempts state law specifically with respect to meal and rest breaks. Moreover, to allay concerns regarding the amendment's potential impact on driver compensation, the amendment's sponsors explicitly excluded the "piece-rate" language that had been included in previous iterations. These dramatic and inaccurate characterizations by the amendment's opponents are nothing more than a desperate, last-minute attempt to undermine a well-reasoned proposal to eliminate conflicts between federal and state rules governing the working hours of interstate drivers.