

HONORING U.S. FOREST SERVICE
REGIONAL FORESTER RANDY
MOORE

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 21, 2016

Mr. THOMPSON of California. Mr. Speaker, I, along with Representative GARAMENDI and Representative HUFFMAN, rise to recognize and honor Forester Randy Moore for his great contribution to the designation of the Berryessa Snow Mountain Monument by President Barack Obama on July 10, 2015.

This outstanding accomplishment was made possible by the tireless work of countless advocates. Their commitment to engaging friends, colleagues, local residents, businesses, stakeholders across the country, and policymakers in a coordinated effort to achieve permanent protection was critical to the establishment of the Monument.

Now, the Berryessa Snow Mountain Monument may be counted among the hundreds of pristine parks across the country that represent America's most treasured public resources. The region's unique geological formations will play host for the world's scientists for years to come. Centuries-old archeological sites will draw curious historians and researchers as they piece together the stories of generations past. And avid bikers, hikers, campers, horsemen, and sportsmen will be able to enjoy this landmark that is now forever open and accessible to outdoor enthusiasts from Northern California and beyond.

The Berryessa Snow Mountain Monument serves as proof of the value of the Antiquities Act and the power of the Executive to protect these lands in the face of inaction by Congress. After extensive input from interested parties and substantial evidence of this region's value, the Obama Administration honored the support of stakeholders, and the gravity of conservation.

The legacy of public lands is one of the most important we can leave for future generations. The Berryessa Snow Mountain Monument is a critical piece of a preservation system that stretches from the Hawaiian Islands to the Maine Coast. It has been a privilege working with Forester Moore to further our mutual goal of preserving our nation's great open spaces, and we look forward to collaborating in the future.

OPPOSE THE AIRR ACT PROTECT
MEAL AND REST BREAKS AND
FAIR PAY FOR TRUCKERS

HON. PETER A. DeFAZIO

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Monday, March 21, 2016

Mr. DeFAZIO. Mr. Speaker, today the House considers a clean extension of aviation programs through July 15, 2016. While I have no objection to H.R. 4721, I do have serious concerns with H.R. 4441, the "Aviation Innovation, Reform, and Reauthorization Act of 2016" (AIRR Act), the controversial Federal Aviation Administration reauthorization bill. My remarks focus on one provision in H.R. 4441, Section 611.

Section 611 of H.R. 4441 pre-empts intrastate laws related to meal breaks, rest breaks, and hourly tracking of wages for truck drivers. Specifically, Section 611(a)(3) states:

(A) A State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law prohibiting employees whose hours of service are subject to regulation by the Secretary under section 31502 from working to the full extent permitted or at such times as permitted under such section, or imposing any additional obligations on motor carriers if such employees work to the full extent or at such times as permitted under such section, including any related activities regulated under part 395 of title 49, Code of Federal Regulations.

(B) A State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law that requires a motor carrier that compensates employees on a piece-rate basis to pay those employees separate or additional compensation, provided that the motor carrier pays the employee a total sum that when divided by the total number of hours worked during the corresponding work period is equal to or greater than the applicable hourly minimum wage of the State, political subdivision of the State, or political authority of 2 or more States.

Section 611 pre-empts State laws in two parts. Part (A) is specific to meal and rest breaks, which are in effect in 21 States. Part (B) allows companies to continue to pay by the load or on a piece-rate basis, and to disregard State laws that require hourly tracking of wages.

Additional language in Section 611 makes these legislative changes retroactive to 1994. This retroactivity language will wipe out at least 50 pending lawsuits regarding wage and hour laws.

PART A: PREEMPTING STATE MEAL AND REST BREAK
LAWS

Section 611 is being pursued by a coalition of large trucking companies following a recent Ninth Circuit U.S. Court of Appeals decision that upheld the State of California's meal and rest break laws for all workers, including truck drivers. See *Dilts v. Penske Logistics, LLC*, 769 F.3d 637 (9th Cir. 2014), cert. denied, 135 S. Ct. 2049 (2015). The trucking companies supporting Section 611 claim that the language in part (A) is needed to prevent a patchwork of State hours of service laws. In reality, Section 611 goes far beyond this stated purpose.

DILTS V. PENSK LOGISTICS DECISION

Section 611 pre-empts existing State meal or rest break laws, many of which have been on the books for decades, in 21 States. If enacted, Section 611 will prevent truck drivers who work exclusively within a single State from being protected by that State's wage and hour laws. I agree that if a truck driver is operating long haul, through several States, having to comply with new rest or meal break requirements every time the driver crosses a State line is confusing and impedes interstate commerce. The Dilts case was not a case that affected drivers moving goods from coast to coast—it was a case involving local appliance delivery drivers who never left California.

The trucking companies supporting Section 611 argue that a driver would have to pull off the road at inconvenient times or in potentially unsafe situations to take a break. That is sim-

ply not true. In fact, case law has specifically established that employers do not have to require employees to take a break—they simply must permit it by relieving employees of duties or pay employees for the time.

Moreover, it is disingenuous for some in the trucking industry to imply that the need for this legislative fix was caused by one "rogue" Ninth Circuit court decision. California changed its meal and rest break law in 2000—16 years ago—to provide a monetary remedy of an additional hour of pay to an employee if an employer does not allow for a meal or a rest break.

The 2014 Dilts decision regarding meal and rest breaks cites multiple cases setting the precedent for the decision. In addition, the U.S. Department of Transportation (DOT) filed an amicus brief in this case in support of the drivers, marking the first time the Federal Government has taken a position on intrastate pre-emption. DOT argues that there is a pre-emption against preemption in areas of traditional State "police power" or control, and that labor laws are a clear area of traditional State control. DOT also notes that Federal rules requiring a 30-minute rest break do not apply to short-haul drivers. Therefore, if Section 611 were enacted, short-haul intrastate drivers would not receive any rest break protection under Federal or State law.

DOT's brief also cites a finding from a decision by the Seventh Circuit Court of Appeals, well known for its pro-business decisions, in a trucking case that found that any changes to economic inputs may raise the cost of doing business, but that does not rise to the level of challenging pre-emption. In *S.C. Johnson & Son, Inc. v. Transport Corp. of America, Inc.*, 697 F.3d 544 (7th Cir. 2012), the Seventh Circuit found:

[L]abor inputs are affected by a network of labor laws, including minimum wage laws, worker safety laws, anti-discrimination laws and pension regulations. Capital is regulated by banking laws, securities rules, and tax laws, among others. Technology is heavily influenced by intellectual property laws. Changes to these background laws will ultimately affect the cost of these inputs, and thus, in turn, the price . . . or service of the outputs. Yet no one thinks that the ADA or the FAAAA preempts these and the many comparable State laws. *S.C. Johnson & Son, Inc.*, 697 F.3d at 558.

The Ninth Circuit's Dilts decision very clearly spells out that California's labor laws, particularly related to intrastate truck drivers in this case, are not preempted under the 1994 F4A pre-emption provision:

Although we have in the past confronted close cases that have required us to struggle with the "related to" test, and refine our principles of FAAAA preemption, we do not think that this is one of them. In light of the FAAAA preemption principles outlined above, California's meal and rest break laws plainly are not the sorts of laws 'related to' prices, routes, or services that Congress intended to preempt. They do not set prices, mandate or prohibit certain routes, or tell motor carriers what services they may or may not provide, either directly or indirectly . . . They are normal background rules for almost all employers doing business in the state of California. *Dilts*, 769 F.3d at 647.

Therefore, Part (A) of Section 611 goes far beyond addressing the concern that drivers may face different rules in different States in interstate commerce. If enacted, it would deny