No. 19-735

IN THE

Supreme Court of the United States

WILLIAM TONG, ATTORNEY GENERAL OF CONNECTICUT,
Petitioner,

v.

TWEED-NEW HAVEN AIRPORT AUTHORITY,
CITY OF NEW HAVEN
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS TWEED-NEW HAVEN AIRPORT AUTHORITY AND CITY OF NEW HAVEN IN OPPOSITION

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February 10, 2020

QUESTIONS PRESENTED

1. Whether a political subdivision that satisfies Article III standing requirements is nonetheless barred from seeking declaratory relief that federal law preempts state law.

2. Whether federal law preempts state law purporting to regulate the runway length of an airport that is part of the Nation's air navigation system.

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INTRODUCTION

This Court has repeatedly held that a plaintiff has Article III standing if it establishes injury-in-fact, causation, and redressability. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The Second Circuit held that Respondent Tweed-New Haven Airport Authority ("Tweed") has standing to bring this suit because each of the *Lujan* factors is present. Petitioner does not challenge that holding here. Petitioner instead contends that the Court should adopt a *per se* rule that categorically forbids a political subdivision from ever suing a state or state official, as in this case, even when the test for Article III standing is satisfied. Far from supporting such a rule, this Court's precedent forecloses it.

The court of appeals' decision is correct under this Court's standing doctrine. It is also consistent with the vast majority of authority in the courts of appeals. Petitioner invokes the Ninth Circuit's *per se* bar on political subdivisions suing a state, but that approach is an outlier. The Ninth Circuit's ruling was incorrect from the day it was decided, and it has not been followed by any other circuit in the forty years since then. Several Ninth Circuit judges have repeatedly, including recently, called for that court to reconsider its *per se* standing bar in light of intervening case law from this Court and from other circuits. Moreover, the court of appeals' preemption ruling does not pose a circuit split or any other basis for review. This Court's review is therefore not warranted, and the petition should be denied.

STATEMENT

1. In 1958, Congress enacted the Federal Aviation Act, 49 U.S.C. § 40101 *et seq.*, to ensure that the Nation's airspace is governed exclusively by federal law. As amended, the statute provides that "[t]he United States Government shall have exclusive sovereignty of airspace of the United States." *Id.* § 40103(a)(1). It also grants broad authority to the Administrator of the Federal Aviation Administration ("FAA") to promulgate regulations "to ensure the safety of aircraft and the efficient use of airspace," and for "protecting individuals and property on the ground." *Id.* § 40103(b)(1), (2)(B).

To ensure the safety of aircraft, efficient utilization of airspace, and protect persons and property on the ground, the FAA must ensure the safety of airport runways. As this Court has recognized, airline flights begin and end on a runway—not in the air—and must be regulated as such:

> Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxis onto a runway it is caught up in an elaborate and detailed system of controls.

City of Burbank v. Lockheed Air Terminal Inc., 411 U.S. 624, 633-34 (1973) (quotation marks and citation omitted).

2. Tweed is a "public instrumentality and political subdivision of the [the] State," Conn. Gen. Stat. § 15-120i(a), but its enabling statute also ensures that it is largely independent of state control. The statute expressly states that Tweed "shall not be construed to be a department, institution or agency of the state." *Id.* It also provides that Tweed shall be governed by a fifteen-member board of directors, comprised of individuals appointed by the mayor of New Haven, the mayor of East Haven, and the South Central Regional Council of Governments. *See id.*; *see also* Pet. App. 2a. No state official sits on the board of directors, and no state official or agency has authority to appoint any board member.

Tweed is charged with the responsibility "[t]o manage, maintain, supervise and operate Tweed-New Haven Airport" ("Airport"). Conn. Gen. Stat. § 15-120j(a)(1). Given the FAA's extensive and exclusive regulatory authority over flights in and out of the Airport, Tweed is expressly authorized "to make plans and studies in conjunction with the Federal Aviation Administration or other state or federal agencies." *Id.* § 15-120j(a)(6). The law also authorizes Tweed "to apply for and receive grant funds for airport purposes." *Id.* § 15-120j(a)(7).

The Airport is part of the National Plan of Integrated Airport Systems, which the Federal Aviation Act requires the Secretary of Transportation to maintain. Pet. App. 26a. The Act specifies that the Secretary shall maintain a "plan for developing public-use airports in the United States," *i.e.* the National Plan of Integrated Airport Systems, that includes airport development "necessary to provide a safe, efficient,

and integrated system of public-use airports." 49 U.S.C. § 47103(a). Consistent with the federal requirement of "maintain[ing] a safe and efficient nationwide system of public-use airports" that meet important national needs, the Airport is eligible for federal grants. 49 U.S.C. § 47104(a).

The FAA exerts a high degree of control over the Airport through a variety of means. The FAA classifies the Airport as "a primary, commercial service airport," and given this classification, the Airport must hold an operating certificate under FAA Regulation Part 139, 14 C.F.R. Part 139. Pet. App. 27a. As a Part 139-certified Airport and because it receives federal funds under the FAA Airport Improvement Program, Tweed must maintain the Airport to the standards contained in certain FAA Advisory Circulars. Pet. App. 27a. The FAA also maintains full control over any modifications of the Tweed-New Haven Airport Layout Plan, which requires FAA review and approval for changes to the Airport's physical infrastructure, including its runway length. *See* 49 U.S.C. § 47107(a)(16).

The FAA requires Part 139-certified Airports to have "Master Plans" outlining future plans for upgrading airport facilities. Pet. App. 27a. Tweed's Master Plan was approved by both the FAA and the Connecticut Department of Transportation in 2002. As part of this plan, Tweed received approval for an extension of the Airport's primary runway from its current length of 5,600 feet to up to 7,200 feet. Pet. App. 26a–28a.

In 2009, however, the state enacted a law that prohibited Tweed from extending the length of the runway beyond its current length. *See* Conn. Gen. Stat. § 15-120j(c) ("Runway Statute"). As a result, state law expressly purported to prohibit Tweed from implementing the FAA- and state-approved Master Plan.[1]

Tweed has undertaken the early steps to extend the length of the runway by conducting a preliminary environmental assessment of various layout options, and has submitted the assessment for comments from the FAA. Pet. App. 29a. In the preliminary assessment, Tweed proposed that the runway be extended to 6,601 feet. But the FAA has declined to review or comment on the assessment, in part because of the length limitation imposed by the Runway Statute. Pet. App. 30. Without FAA approval, the Airport cannot move forward with layout modifications and implementation of its Master Plan. Pet. App. 70a.

Due to the current length of the runway, only one commercial airline provides service into or out of the Airport, and flights connect directly to only one other city. The Airport has been unable to attract new commercial flights due to the runway's limited length. Pet. App. 4a.

3. Tweed filed this action seeking a declaration that federal law preempts the Runway Statute. Pet. App. 2a. Tweed alleged that federal law—specifically, the Federal Aviation Act, 49 U.S.C. § 40101, *et seq*.,

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[1] Petitioner mentions a "Memorandum of Agreement," Pet. 6-7, but that agreement is no longer in effect, and in any event, Petitioner has never suggested that it bars litigation of Respondents' preemption claims.

the Airline Deregulation Act, 49 U.S.C. § 41713, *et seq*., and the Airport and Airway Improvement Act, 49 U.S.C. § 4701, *et seq*.—prevent the state from interfering with FAA's approval of the plan to extend the length of Tweed's runway.

Following a bench trial, the district court entered judgment for Petitioner. Pet. App. 22a. Although the court rejected Petitioner's argument that political subdivisions can never sue a state official, Pet. App. 83a, it nevertheless held that Respondents lacked standing because it did not view the injury caused by the Runway Statute to be redressable by a favorable ruling. Pet. App. 67a. Despite holding that it lacked jurisdiction, the district court reached the merits of Respondents' claims, concluding that federal law does not preempt the Runway Statute. *Id.*

The court of appeals reversed. The court concluded that Tweed had Article III standing under *Lujan*. Tweed suffered injury-in-fact because "[t]he Runway Statute directly targets Tweed and prevents it from extending its runway." Pet. App. 7a. Tweed established causation for standing purposes, because the Runway Statute stands as an absolute barrier to alleviating its injury. Pet. App. 8a-10a. And Tweed established redressability because a favorable declaration from the court would redress Tweed's injury from the threat of enforcement of the Runway Statute. Pet. App. 11a.

The Second Circuit also rejected Petitioner's argument that there is a *per se* bar on a political subdivisions suing the state or state officials. Pet. App. 12a. The court acknowledged its prior decisions holding

that political subdivisions could not sue under the Equal Protection Clause or Contracts Clause, but that is because political subdivisions do not have substantive rights under those constitutional provisions. Pet. App. 12a-13a. Those decisions did not preclude a political subdivision from seeking a declaratory judgment when it is governed by both state and federal law, and those two laws are arguably in conflict. Pet. App. 13a-14a. As the Second Circuit explained, "[i]f the Supremacy Clause means anything, it means that a state is not free to enforce within its boundaries laws preempted by federal law." Pet. App. 13a.

With regard to the merits of the preemption claims, the court of appeals explained that the Federal Aviation Act "impliedly preempts the entire field of air safety." Pet. App. 15a (quotation marks and citation omitted). The court of appeals held that the Runway Statute interferes with the Federal Aviation Act's "objective of establishing a uniform and exclusive system of federal regulation in the field of air safety." Pet. App. 16a (quotation marks and citation omitted). The court of appeals explained that, out of 348 airports that provide commercial service, Tweed's Airport has the thirteenth shortest runway. Pet. App. 16a. And because of the runway's short length, "carriers are forced to cut back on an ad-hoc basis the number of passengers that can safely be carried, the amount of baggage they can bring with them, and the total weight of luggage that can be loaded." *Id.* Based on the foregoing, the court of appeals held that the Federal Aviation Act preempts the Runway Statute, explaining that the law is a "localized, state-created limitation [that] is incompatible with the [Federal Avia-

tion Act's] objective of establishing a uniform and exclusive system of federal regulation in the field of air safety." *Id.* (quotation marks omitted).[2]

REASONS FOR DENYING THE PETITION

This Court's review is not warranted on the question whether political subdivisions have standing to seek a declaration that federal law preempts state law. Consistent with this Court's precedents and the overwhelming weight of circuit authority, the court of appeals correctly declined to create a *per se* bar on standing for political subdivisions. Nor is review warranted on the court of appeals' preemption ruling. Petitioner does not even allege that the ruling implicates any circuit split on preemption, and it does not argue that the court of appeals applied the wrong preemption framework. Instead, it seeks review only of the court's application of that settled law to the facts of this case.

I. The Standing Question Does Not Warrant This Court's Review.

Petitioner attempts to create a special standing rule—applicable only to political subdivisions—that would preclude a political subdivision from obtaining a declaration that federal law preempts state law. Consistent with this Court's precedents and the over-

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[2] Given its holding that the Federal Aviation Act preempted the Runway Statute, the court of appeals did not address whether the Airline Deregulation Act, 49 U.S.C. § 41713, *et seq*., or the Airport and Airway Improvement Act, 49 U.S.C. § 4701, *et seq*. also preempted the law. Pet. App. 15a.

whelming weight of circuit authority, the court of appeals refused to adopt such a *per se* rule. Petitioner invokes federalism principles, but our system of federalism is not undermined by a court applying the Supremacy Clause to clarify a political subdivision's responsibilities and obligations under both state and federal law.

A. The Second Circuit's Decision is Consistent With the Overwhelming Weight of Circuit Authority.

Petitioner does not challenge that Respondents have established Article III standing to seek a declaratory judgment that federal law preempts the Runway Statute. And the Second Circuit correctly followed decisions of other circuits in declining to adopt a *per se* bar on political-subdivision standing. The Ninth Circuit's contrary approach is an outlier that multiple members of that court have acknowledged should be reconsidered.

1. The Second Circuit correctly held that Tweed has met the requirements for Article III standing, and that this Court's precedents provide no support for Petitioner's asserted *per se* bar on standing for political subdivisions.[3]

Petitioner does not dispute here the court of appeals' ruling that Respondents have established the requisite injury-in-fact, causation, and redressability.

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[3] The court of appeals correctly held that it need not address the City of New Haven's standing because only one party must have standing to seek each form of relief. *See Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017).

See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992); Pet. App. 6a-12a. Tweed suffers an injury-in-fact because "[t]he Runway Statute directly targets Tweed and prevents it from extending its runway," Pet. App. 7a, which would "attract new airline services," Pet. App. 4a. Tweed has also suffered a cognizable injury based on the threat that Petitioner would enforce the Runway Statute against it. Pet. App. 8a; *see, e.g.*, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). Causation and redressability are also easily satisfied. The Runway Statute has caused Tweed's injuries because it prohibits Tweed from extending its runway. *See Lujan*, 504 U.S. at 561-62. And a favorable decision would redress Tweed's injury because it would remove a barrier to the extension of the Airport's runway. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 261-62 (1977).

The Second Circuit rejected Petitioner's argument that Tweed, as a political subdivision of the state, cannot seek a declaratory judgment that federal law preempts state law. Pet. App. 12a-14a. The court of appeals acknowledged that it had previously "held that a political subdivision does not have standing to sue its state under the Fourteenth Amendment," Pet. App. 14a n.7, but standing was lacking in those cases because a political subdivision has no rights to assert under the Fourteenth Amendment. Those decisions did not support a *per se* bar on standing, nor did they foreclose standing on a claim that federal law preempts state law. As the Second Circuit correctly concluded, because "a state is not free to enforce within its boundaries laws preempted by federal law,"

a political subdivision may seek such declaratory relief. Pet. App. 13a-14a.

2. The Second Circuit's ruling is consistent with the approach taken by every circuit but one. Courts of appeals have uniformly held that a political subdivision lacks standing to sue under the Fourteenth Amendment.[4] But most circuits hold that a different analysis applies when a political subdivision is subject to potentially conflicting state and federal laws, and it seeks a declaration to clarify which law governs. *See, e.g.*, *Branson School Dist. RE-82 v. Romer*, 161 F.3d 619, 628 (10th Cir. 1998); *Rogers v. Brockette*, 588 F.2d 1057, 1068-69 (5th Cir. 1979).

In *Rogers*, for example, the Fifth Circuit held that a school district could seek a declaratory judgment that federal law preempted a state law requiring the school district to participate in a subsidized breakfast program. 588 F.2d at 1070. The Fifth Circuit first analyzed whether the school district had standing under "general principles developed by the Supreme Court to govern standing in all federal cases," including whether the school district satisfied the "case or controversy" requirement of Article III, and concluded

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[4] *See United States v. State of Alabama*, 791 F.2d 1450, 1455-56 (11th Cir. 1986); *South Macomb Disposal Auth. v. Township of Washington*, 790 F.2d 500, 504-05 (6th Cir. 1986); *Delta Special Sch. Dist. No. 5. v. State Bd. of Educ.*, 745 F.2d 532, 533 (8th Cir. 1984); *Town of Ball v. Rapides Parish Police Jury*, 746 F.2d 1049, 1051 n.1 (5th Cir. 1984); *City of Moore, Oklahoma v. Atchison, Topeka, & Santa Fe. Ry. Co.*, 699 F.2d 507, 511-12 (10th Cir. 1983); *Vill. of Arlington Heights v. Reg'l Trans. Auth.*, 653 F.2d 1149, 1152-53 (7th Cir. 1981); *City of So. Lake Tahoe v. Cal. Tahoe Reg'l Planning Agency*, 625 F.2d 231, 233 (9th Cir. 1980); *City of N.Y. v. Richardson*, 473 F.2d 923, 929 (2d. Cir. 1973).

that the school district had standing "[u]nder the criteria normally governing standing to sue in federal court." *Id.* at 1060-67. The Fifth Circuit then expressly rejected the argument that political subdivisions are categorically barred from seeking a declaratory judgment that federal law preempts state law. *See id.* at 1067-71.

Similarly, in *Branson*, 161 F.3d at 624-25, the Tenth Circuit held that school districts could seek a declaratory judgment that federal law preempted a state constitutional amendment. The Court of Appeals reached this result by applying the test for Article III standing and concluding that the state law imposed a sufficient "injury in fact" to establish the school districts' Article III standing. *Id.* at 630-31. Agreeing with the Fifth Circuit's reasoning in *Rogers*, the Tenth Circuit rejected the argument that a political subdivision is barred from seeking a declaration that federal law preempts state law "merely because the defendants are sued in their official capacities representing the state that created these subdivisions." *Id.* at 629. Instead, the court held the Supremacy Clause "allows a political subdivision to sue its parent state when the suit alleges a violation by the state of some controlling federal law." *Id.* at 630.

Other circuits have suggested that they, too, would reject Petitioner's proposed *per se* bar of standing for political subdivisions. *See City of Charleston v. Pub. Serv. Comm. of W. Va.*, 57 F.3d 385, 389-90 (4th Cir. 1995) (noting doubts about whether political subdivisions are *per se* barred from suing a state); *Amato v. Wilentz*, 952 F.2d 742, 754-55 (3d Cir. 1991) (rejecting the argument that this Court's precedent establishes

a *per se* bar against political-subdivision standing); *South Macomb Disposal Authority v. Township of Washington*, 790 F.2d 500, 504 (6th Cir. 1986) ("There may be occasions in which a political subdivision is not prevented, by virtue of its status as a subdivision of the state, from challenging the constitutionality of state legislation."); *United States v. Alabama*, 791 F.2d 1450, 1454 (11th Cir. 1986) ("[W]e cannot accept appellant's broad contention that [public university], as creature of state government, has no federally protected rights under the Constitution or laws of the United States.").

In short, the overwhelming weight of the authority in the courts of appeals is clear—whether a political subdivision may bring suit for a declaratory judgment that state law violates the Constitution is not determined by a *per se* bar against such suits. Rather, courts apply the well-established test for Article III standing, and in many instances, have held that a political subdivision has standing to seek a declaration that federal law preempts state law.

3. The Ninth Circuit is the only circuit that has held that political subdivisions *per se* do not have standing to bring suit for a declaratory judgment that state law is unconstitutional. *See Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1362-64 (9th Cir. 1998); *So. Lake Tahoe v. Cal. Tahoe Reg'l Planning Agency*, 625 F.2d at 233-34.

The Ninth Circuit has not provided a substantive explanation for its *per se* rule. In *South Lake Tahoe*, the case that established the *per se* rule, the Ninth Circuit began its analysis by stating that "[i]t is well-

established that political subdivisions of a state may not challenge the validity of a state statute under the Fourteenth Amendment." 625 F.2d at 233 (quotation marks and citation omitted). Then, in a single conclusory sentence, the court extended that bar, which had been set forth in the context of suits under the Fourteenth Amendment, to create a much broader principle. The circuit stated that *all* constitutional suits against a state or state official by political subdivisions are precluded, including suits for a declaration that state law is preempted under the Supremacy Clause. *Id.* (holding that "the City may not challenge the [State]'s plans and ordinances on constitutional grounds"); *see also Palomar Pomerado Health Sys. v. Belshe*, 180 F.3d 1104, 1109 (9th Cir. 1999) (Hawkins, J., concurring) (noting that the Ninth Circuit has "never satisfactorily stated [its] rationale for including all constitutional challenges" within the bar on political subdivision suits).

This Court need not resolve the disagreement between the Ninth Circuit and other courts of appeals at this time. The Ninth Circuit's outlier position has found no following by any other circuit and, indeed, that court may resolve the issue on its own. Various Ninth Circuit judges have called for the circuit to reconsider its precedent, most recently just last year, in light of subsequent case law from other circuits and from this Court. *See City of San Juan Capistrano v. California Utilities Comm'n*, 937 F.3d 1278, 1282-84 (9th Cir. 2019) (Nelson, J., concurring); *Palomar*, 180 F.3d at 1108-11 (Hawkins, J., concurring); *Burbank*, 136 F.3d at 1364-65 (Kozinski, J., concurring); *Indian Oasis-Baboquivari Unified School Dist. No. 40 of Pima Cty.*, 91 F.3d 1240, 1245-61 (9th Cir. 1996)

(Reinhardt, J., dissenting), *vacated for reh'g en banc and dismissed on other grounds*, 109 F.3d 634 (9th Cir. 1997) (en banc).

In *City of San Juan*, Judge Nelson wrote separately "to highlight the potential, in the appropriate case, to revisit the court's per se rule in light of intervening caselaw from other circuit courts and the Supreme Court." 937 F.3d at 1282 (Nelson, J., concurring). He explained that other circuits have rejected a *per se* rule, noting that "the Second, Fifth, and Tenth Circuit approaches remain faithful to the driving force behind our rule—the unique relationship between state subdivisions and their creating states." *Id.* (Nelson, J., concurring). He emphasized that a *per se* standing rule "does not permit full consideration of important constitutional questions." *Id.* at 1284. (Nelson, J., concurring). En banc review was not warranted in *City of San Juan* because the political subdivision raised only Fourteenth Amendment claims, which courts uniformly have held may not be brought against a state by political subdivisions. *See id.* at 1283-84. (Nelson, J., concurring). Yet Judge Nelson's concurrence suggests that the Ninth Circuit may reconsider its approach in a future case where a political subdivision brings a claim asserting preemption under the Supremacy Clause. *See id.* (Nelson, J., concurring).

Any review by this Court to address the Ninth Circuit's outlier ruling would be warranted only after the Ninth Circuit definitely resolves, or declines to resolve, its analysis contrary to other circuits, or provides a substantive explanation for barring political subdivisions from seeking a declaratory judgment

that state law is preempted by federal law under the Supremacy Clause.

B. Petitioner's Special Standing Rule for Political Subdivisions Has No Support in This Court's Decisions.

Petitioner urges the Court to adopt the Ninth Circuit's view that a political subdivision cannot seek a declaratory judgment against a state or state official, no matter the legal theory it advances or how clearly it can establish the usual requirements for Article III standing under *Lujan*. This Court's precedents provide no support for such a rule. Indeed, Petitioner points to no case where this Court has held that political subdivisions lack standing to seek a declaration that federal law preempts state law.

1. This Court has not adopted *per se* standing rules based on the identity of the plaintiff. To the contrary, the Court has repeatedly recognized that the "standing inquiry focuses on whether the plaintiff is the proper party to bring the suit," and that inquiry "'often turns on the nature and source of the claim asserted.'" *Raines v. Byrd*, 521 U.S. 811, 818 (1997) (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975)). And regardless of the plaintiff's identity, the Court has determined whether the plaintiff has standing by addressing Article III requirements of injury-in-fact, causation, and redressability. *See Lujan*, 504 U.S. at 561-62.

The Court's decision in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 135 S. Ct. 2652, 2663 (2015), is instructive. There, the

Court considered a lawsuit between two state entities. A state legislature sued a state agency, seeking a declaration that a ballot initiative creating an independent redistricting commission violated the Elections Clause of the U.S. Constitution. *See id.* at 2658-59. The Court did not suggest that there was any categorical prohibition on one state entity suing another state entity in federal court. Instead, the Court applied the *Lujan* analysis to determine whether the legislature had alleged "injury in the form of invasion of a legally protected interest that is concrete and particularized and actual or imminent." *Id.* at 2663 (quotation marks and citation omitted). The Court concluded that the state legislature had done so, and thus had standing to bring the suit. *See id.*[5]

The Court conducted a similar analysis in *Raines*, 521 U.S. at 818-30. Although the Court held there that the individual legislators lacked standing to bring their suit, it did not create a categorical rule prohibiting all such lawsuits. Instead, the Court applied the *Lujan* analysis to determine whether the plaintiffs alleged a legally cognizable injury. *See id.* at 818-19. The Court concluded that the individual members of Congress who brought suit there had "not alleged a sufficiently concrete injury to have established Article

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[5] This Court has performed a similar standing analysis in other cases involving suits between state entities. *See, e.g.*, *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1953-56 (2019) (holding that House of Delegates lacked standing because it lacked a "legally and judicially cognizable" injury); *Coleman v. Miller*, 307 U.S. 433, 446 (1939) (holding that state legislators had standing to challenge a state official's tie-breaking vote for a state constitutional amendment).

III standing." *Id.* at 818-21, 830; *see also Powell v. McCormack*, 395 U.S. 486, 496-97 (1969).

Petitioner's proposed *per se* bar on political-subdivision standing is also difficult to reconcile with the Court's decision in *Virginia Office for Protection & Advocacy v. Stewart*, 563 U.S. 247, 250 (2011) ("*VOPA*"). There, an independent state agency alleged that another state agency's refusal to produce certain documents violated federal law. *See id.* The Court granted review to determine whether one state agency could sue another state agency in federal court—although in that case the bar was alleged to arise from the Eleventh Amendment and the state's sovereignty immunity, rather than from Article III's standing requirement. Writing for the Court, Justice Scalia rejected the sovereign-immunity argument and held that "a federal court [may] hear a lawsuit for prospective relief against state officials brought by another agency of the same State." *Id.* The Court did not expressly address standing, but given its obligation to ensure that it has jurisdiction, the Court surely would have done so if it thought that Article III barred such suits. If Petitioner is correct that a political subdivision lacks standing to sue the state, then the Court's sovereign-immunity ruling in *VOPA* would be meaningless.

As these cases demonstrate, the Court has consistently applied the *Lujan* factors to assess whether the particular plaintiffs in a lawsuit have established an Article III injury, and it has refused to create *per se* rules prohibiting suits between government entities.

Petitioner offers no reason why political subdivisions should be treated differently in this case.[6]

2. Petitioner relies on this Court's decisions in *City of Trenton v. New Jersey*, 262 U.S. 182 (1923), and *Williams v. Mayor of Baltimore*, 289 U.S. 36 (1933), to support its view that a political subdivision can never seek a declaratory judgment against a state or state official, even when the only claim is that federal law preempts state law. Pet. 22. But the holdings in *Trenton* and *Williams* are not nearly as broad as Petitioner suggests, and they do not justify departing from the *Lujan* Article III standing doctrine here.

The Court's decisions in *Trenton* and *Williams* hold only that a political subdivision cannot bring a suit against a state under the Contracts Clause or Fourteenth Amendment. *See Trenton*, 262 U.S. at 184-85; *Williams*, 289 U.S. at 39. Although portions of those opinions discuss the holdings in terms of "standing," the Court's analysis made clear that the reason the suits could not proceed was because the political subdivisions had no substantive rights under the Contracts Clause and Fourteenth Amendment. *See Trenton*, 262 U.S. at 184-85; *Williams*, 289 U.S. at 39. Indeed, this Court long ago clarified the limited scope of those rulings, explaining that those suits held only that "the State's authority is unrestrained by the

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[6] Even outside of the preemption context, this Court has considered the merits of other constitutional challenges to the validity of state laws brought by political subdivisions. *See Romer v. Evans*, 517 U.S. 620, 625 (1996); *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 464-87 (1982); *Board of Educ. v. Allen*, 392 U.S. 236, 240-49 (1968).

particular prohibitions of the Constitution considered in those cases."[7] *Gomillion v. Lightfoot*, 364 U.S. 339, 344-45 (1960) (emphasis added); *see also Rogers*, 588 F.2d at 1068-70 (same).

Nor does this Court's decision in *Ysursa v. Pocatello Education Association*, 555 U.S. 353 (2009), support a *per se* bar on standing for political subdivisions. *Ysursa* repeated the Court's prior statements that a political subdivision "has no privileges and immunities under the federal constitution which it may invoke in opposition to the will of its creator." *Id.* at 363 (quoting *Williams*, 289 U.S. at 40). *Ysursa* also reiterated the general principle that a state has broad legislative authority to "withhold, grant or withdraw" power from a political subdivision as it sees fit. *Id.* at 362; *see Trenton*, 262 U.S. at 187.

Ysura did not address the question presented here. Tweed does not seek to assert "privileges or immunities under the federal constitution." *Ysursa*, 555 U.S. at 363 Instead, it indisputably has responsibilities and obligations imposed by both state and federal law, and based on its view that a conflict exists between state and federal law, it has sought a declaration that

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[7] Although this Court occasionally referenced that political subdivisions lacked "standing" to sue in that line of cases, *see Williams*, 289 U.S. at 47; *Coleman*, 307 U.S. at 441, the decisions do not reflect decisions on "standing" as the term is used today. At the time those cases were decided, the term "standing" was not viewed as a threshold question before considering the merits of a claim. *See Rogers*, 588 F.2d at 1070. Instead, "[a] party had standing or a 'right to sue' if it was correct in its claim on the merits that the statutory or constitutional provision in question protected its interests." *Id.*; *see also City of San Juan*, 937 F.3d at 1282-83 (Nelson, J., concurring).

the relevant state law is preempted. As this Court has repeatedly recognized, when state legislation targets a political subdivision, that legislation is subject to constitutional scrutiny. *See Ysursa*, 555 U.S. at 362 ("State's legislative action is of course subject to First Amendment and other constitutional scrutiny whether that action is applicable at the state level, the local level, both, or some subpart of either."); *Gomillion*, 364 U.S. at 344-45 ("Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution.")

3. This Court has repeatedly recognized that political subdivisions may bring suit for declaratory relief alleging that state law is preempted by federal law under the Supremacy Clause.

In *Lawrence County v. Lead-Deadwood School District No. 40-1*, 469 U.S. 256 (1985), a county contended that a South Dakota law was preempted by a federal statute, the Payment in Lieu of Taxes Act. That federal law provided payments to local governments with federal lands located within their jurisdictions, providing that the local government "may use the payment for any governmental purpose." *Id.* at 258 (quotation marks and citation omitted). South Dakota law, however, required local governments to distribute the federal payments "in the same way they distribute general tax revenues," which required about 60% of funds to be allocated to school districts. *Id.* at 259. This Court held that the South Dakota law was preempted by federal law under the Supremacy Clause because Congress intended to give local governments discretion over how to spend the federal

payments under the Payments in Lieu of Taxes Act. *See id.* at 260-68.

In *Nixon v. Mo. Mun. League*, 541 U.S. 125, 128-31 (2004), municipalities and public utilities alleged that a Missouri law prohibiting political subdivisions from offering telecommunications services was preempted by the Telecommunications Act. This Court considered the merits of the political subdivisions' claim of "regulatory preemption under the Supremacy Clause," and ultimately concluded that federal law did not preempt the Missouri statute. *Id.* at 133-40; *see also Lassen v. Arizona ex rel. Arizona Highway Dep't*, 385 U.S. 458, 459-70 (1967) (considering the merits of a state agency's claim that another state agency's action violated federal law).

The decisions in *Lawrence* and *Nixon* clearly establish that a political subdivision may bring suit for a declaratory judgment that state law is preempted by federal law.

In sum, Petitioner's proposed *per se* rule that political subdivisions may not bring suit for a declaration that state law is preempted by federal law finds no support in this Court's precedent. *See City of So. Lake Tahoe v. Cal. Tahoe Reg'l Planning Agency*, 449 U.S. 1039, 1039-42 (1980) (White, J., dissenting from the denial of certiorari) (recognizing that a *per se* rule that political subdivisions do not have standing to assert constitutional claims is inconsistent with this Court's precedent).

C. Requiring a State to Comply with Federal Law Does Not Raise Federalism Concerns.

Petitioner invokes this Court's federalism decisions, but the court of appeals' decision does not raise federalism concerns. Contrary to Petitioner's assertions, Respondents have not been commandeered into enforcing federal law. They have voluntarily filed this declaratory judgment action to obtain clarity about their responsibilities and obligations under both state and federal law. Nor does the Second Circuit's ruling implicate the state's sovereign immunity. It instead allows only declaratory relief against a state official—a type of suit that the Court has repeatedly held is not barred by the Eleventh Amendment.

1. This suit for a declaratory judgment that federal law preempts the Runway Statute does not run afoul of the anti-commandeering principle. Pet. 20 (discussing *Printz v. United States*, 521 U.S. 898, 904-05 (1997)). Respondents seek to prevent a state law from unlawfully interfering with a federal program—and they do so voluntarily to vindicate the responsibilities they bear under state and federal law. Unlike in *Printz*, where federal legislation required state officials to enforce a federal regulatory program, the federal government has not sought to "compel [the state] to enact or administer a federal regulatory program." *Printz*, 521 U.S. at 933. Here, Respondents were not compelled to file this lawsuit. They did so voluntarily because they are injured by the Runway Statute. They sought a declaration that federal law preempts this state law so they can extend the runway at the Airport

in accordance with the Master Plan that both the FAA and the state have already approved.

This case is a poor vehicle for exploring any federalism concerns that may arise from federal legislation that regulates political subdivisions. Although this Court has recognized "limits on the Federal Government's power to affect the internal operations of a State," *VOPA*, 563 U.S. at 260, this case does not present an opportunity to explore those limits. The federal government's authority to regulate air transportation falls comfortably within its powers under the Commerce Clause. Permitting Tweed to pursue this preemption suit enforces federal law. It does not interfere in a state's internal political organization based on a disagreement with the policies of the state. *See Branson*, 161 F.3d at 630. The lawsuit affords a federally regulated entity an action to ensure that a state government does not impermissibly interfere in its federally regulated program.

2. Nor does this case raise Eleventh Amendment concerns. Indeed, this Court has already rejected the argument that a state's sovereignty protects it from declaratory-judgment actions like Respondents brought here. Pet. 20-21 (citing *Alden v. Maine*, 527 U.S. 706 (1999)).

In *Alden*, 527 U.S. at 757, this Court emphasized that state sovereign immunity "does not bar certain actions against state officers for injunctive or declaratory relief." (citing *Ex Parte Young*, 209 U.S. 123 (1908)). The Court then explained that "[t]he principle of sovereign immunity as reflected in our jurispru-

dence strikes the proper balance between the supremacy of federal law and the separate sovereignty of the States." *Id.* This lawsuit is precisely the type of action that does not raise state sovereignty concerns because it is an action against a state officer solely for declaratory relief. It falls within the proper balance of power necessary to "vindicate the interests which animate the Supremacy Clause." *Id.*

That Respondents are political subdivisions does not change the analysis. This Court recognized in *VOPA*, 563 U.S. at 256, that the *Ex Parte Young* rule does not turn on the identity of the plaintiff—so there is no reason a plaintiff's "status as a state agency changes the calculus." *Id.*; *see also Branson*, 161 F.3d at 629 (noting that "school districts' status as political subdivisions does not disentitle them from bringing an action under the Supremacy Clause"). Nor is a state's dignity at stake here. As this Court explained, the state's dignity suffers no greater harm when "*its own agency* polices its officers' compliance with their federal obligations, than when a *private person* hales those officers into federal court for that same purpose—something everyone agrees is proper." *VOPA*, 563 U.S. at 257.

3. Despite Petitioner's assertions, federalism concerns would arise only if the Court adopted Petitioner's *per se* bar on standing for political subdivisions. Congress has authority under the Commerce Clause to regulate political subdivisions engaged in interstate commerce, and it has exercised this authority to occupy the field of regulating the nation's airspace and airline safety. *See* pp. 2-4, *supra.* But in Petitioner's view, a state should be allowed to enact a

law that directly interferes with an airport's compliance with such federal law, and if the airport is a political subdivision (as many are), it cannot seek a declaration that federal law preempts state law. An airport like Tweed's would then be forced to either follow federal law—and risk having the state bring an enforcement action against it—or forgo exercising rights granted to it under federal law. It serves no federalism purpose to allow state law to take priority over federal law in this manner.

II. The Preemption Question Does Not Warrant This Court's Review.

Petitioner seeks review of the court of appeals' preemption ruling, but it does not contend that the ruling implicates any circuit split or conflicts with this Court's precedent. Indeed, Petitioner does not challenge the legal framework applied by the court of appeals. It disagrees with the court's application of settled law to the facts of this case, but that disagreement does not warrant this Court's review.

A. Relying on circuit precedent, the court of appeals explained that the Federal Aviation Act preempts "the entire field of air safety" and that "preemption extends to grounded planes and airport runways." Pet. App. 15a (quotation marks and citations omitted); *see also Burbank*, 411 U.S. at 634 (airplane is subject to exclusive federal control from "[t]he moment [it] taxis onto a runway"). Applying that preemption framework to the facts of this case, the court noted that "the State has conceded that 'the length of the runway has a direct bearing on the weight load and passenger capacity that can be safely

handled on any given flight,'" and that "'[w]eight penalties are imposed on [existing] aircraft [at the Airport] for safety reasons.'" Pet. App. 16a. Given the direct relationship between runway length and safety, the "Runway Statute falls well within the scope of the [Federal Aviation Act's] preemption because of its direct impact on air safety." *Id.*

Petitioner challenges the court of appeals' conclusion by pointing to evidence that, in its view, shows that "the Airport is already safe." Pet. 30. Petitioner bases this assertion on the fact that airlines can mitigate safety risks by operating planes at less than full capacity. *See id.* But that fact does not undermine the court of appeals' conclusion. It supports it. That the Runway Statute forces planes to fly at less-than-full capacity for safety risks demonstrates the "direct impact" that the state law has on airline safety. Pet. App. 16a. In any event, Petitioner offers no good reason for this Court to reconsider the court of appeals' application of settled law to the facts of this case.[8]

B. Petitioner contends that the court of appeals' ruling presents a question of national importance because it affects all small airports. Pet. 28. That is

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[8] Petitioner quotes fifty-year-old legislative history for the proposition that "'[t]he Federal Government is in no position to require an airport to accept service by larger aircraft and, for that purpose, to obtain longer runways.'" Pet. 31 (quoting *Burbank*, 411 U.S. at 649–50 (Rehnquist, J., dissenting) (quoting S. Rep. No. 1353, 90th Cong., 2d Sess.)). Even if this legislative history carried interpretive weight for the statutory text ultimately enacted, it would not assist Petitioner. The federal government is not forcing the Airport or Tweed to do anything. Tweed's Master Plan authorizes expansion of the runway, and Petitioner is prohibiting that expansion.

incorrect. The preemption issue arose in this case because the FAA had approved a plan to extend the runway at Tweed and then the state enacted a law to prohibit Tweed from implementing the FAA-approved plan. Similar preemption issues could arise at other small airports only if they also are subject to a state law that prohibits them from implementing an FAA-approved plan. Petitioner does not identify any other case addressing a similar preemption issue. Nor has it identified any similar state law prohibiting an airport to implement an FAA-approved plan.[9]

Petitioner also contends that the ruling presents a question of exceptional importance because it deprives it of any input on development of airports within its boundaries. Pet. 30. According to Petitioner, if it lacks authority to determine the length of a runway, then it necessarily cannot have "any input into whether the Airport remains a local airport or eventually becomes a major hub of regularly scheduled commercial air service." *Id.* It then claims it could not enact laws addressing a wide range of issues, including environmental laws to protect "wetlands and watercourses" and laws to address "traffic congestion." *Id.* But the court of appeals' decision is not even remotely that sweeping. The court of appeals relied on the well-settled principle that the Federal Aviation Act preempts the field of airline safety and the stipulated facts showing that state law affected airline safety. *See* pp. 7-8, *supra*. There is no reason to presume wetland-protection laws (or other laws

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[9] Even if Petitioner could show that this issue may arise in future cases, it offers no reason for the Court to depart from its typical practice of waiting to see if a circuit split develops on an issue.

identified by Petitioner) would raise similar airline safety concerns. Moreover, the court of appeals' ruling permits Tweed to implement the runway modifications approved in its Master Plan—a plan that obtained approval from both the FAA *and the state*.[10]

C. Review by this Court of the ruling that the Federal Aviation Act preempts the state Runway Statute would not, in any event, resolve the preemption question in this case. There are two alternative grounds for affirmance of the court of appeals' ruling of preemption because two other federal statutes also have preemptive effect.

First, the Airline Deregulation Act contains an express preemption provision, which states that "a State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law *related to a price, route, or service of an air carrier* that may provide air transportation under this subpart." 49 U.S.C. § 41713(b)(1) (emphasis added). The term "related to" is broadly interpreted, *see, e.g.*, *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992), and the provision preempts state law even where the law's application "is only indirect" to the federal scheme. *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008). The Runway Statute is "related to" the routes and services of the air carrier that currently operates in and out of the Airport and is limited by the restriction on runway length, as well as the

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[10] Even if Petitioner were correct about the breadth of the court of appeals' ruling, it would not warrant review in this case because Petitioner could seek review in any later case that involved such expansion of the ruling.

routes and services of air carriers who would be able to use the Airport if the expansion plan were not blocked. The record demonstrates that at least one air carrier specifically refuses to fly into the Airport because the runway is too short. Pet. App. 35a. And the Runway Statute affects air carrier routes because, if the runway is lengthened, air carriers will change their routes to make use of the newly safe and accessible airport. Pet. App. 34a.

Second, Congress enacted the Airport and Airway Improvement Act to foster "airport construction and improvement projects that increase the capacity of facilities to accommodate passenger and cargo traffic," 49 U.S.C. § 47101(a)(7), and it specifically identified "artificial restrictions on airport capacity" as being against "the public interest," *id.* § 47101(a)(9). Accordingly, the statute authorizes the FAA to provide federal grants, but only if the FAA receives written assurances about the grantee's airport operations and only on terms necessary to carry out the various federal regulations for airport improvement.

The Airport and Airway Improvement Act preempts the Runway Statute because the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hillsborough Cty., Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985) (quotation marks and citation omitted). Tweed created a Master Plan, which the FAA approved, for the improvement of the Airport's facilities—including the extension of its primary runway. But the Runway Statute has prevented Tweed from expanding the length of that runway, contributing to Tweed's unstable financial condition. Pet.

App. 34a. The Runway Statute is therefore in conflict with federal law, as it "artificially restricts" Tweed's ability to increase its capacity and stands as an obstacle to the federal purpose of fostering airport improvement.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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