No. 20-748

IN THE

Supreme Court of the United States

PHI AIR MEDICAL, LLC,
Petitioner,
v.
TEXAS MUTUAL INSURANCE COMPANY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

BRIEF FOR *AMICUS CURIAE* AIR MEDICAL OPERATORS ASSOCIATION IN SUPPORT OF PETITIONERS

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INTERESTS OF THE *AMICUS CURIAE*[1]

The Air Medical Operators Association (AMOA) is a diverse group of federally authorized and certificated air carriers working together to improve safe air medical transportation. AMOA's 20 members conduct over 90% of the air medical operations across the nation.

Air medical transportation has become integral to the nation's healthcare infrastructure, especially in light of the rapid closure of hospitals across the country in many rural areas. Millions of Americans rely on the availability of air medical transportation as a critical resource, and in some cases the only option, for appropriate care in the event of serious injury or illness.

Air medical transportation is an interstate business. As such, the operational viability of AMOA members, as air carriers, is dependent upon freedom from state regulation of prices, routes, and services as currently ensured by the federal preemption provision of the Airline Deregulation Act of 1978 (ADA), 49 U.S.C. § 41713(b)(1). It is critical that this federal preemption protection be uniformly recognized by all states and not undercut by the vagaries of individual states, as it now has been by the decision of the state court of last resort in this case. The federal preemption provision of the ADA, and the parallel field preemption of aviation safety under the Federal Aviation Administration (FAA), has fostered the development of a robust nationwide network of air medical services

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[1] Rule 37 statement: All parties to this matter have provided written consent for this amicus curiae brief. No party's counsel authored any of this brief. PHI, the Petitioner in this case, is a member of AMOA and its association dues contributed to the funding of this brief's preparation and submission.

that save lives and serve the public interest while operating within the National Airspace System.

SUMMARY OF ARGUMENT

The majority decision by the Texas Supreme Court conflicts with decisions of two US courts of appeals in factually similar cases. See *EagleMed LLC* v. *Cox*, 868 F.3d 893 (10th Cir. 2017); *Air Evac EMS, Inc.* v. *Cheatham*, 910 F.3d 751 (4th Cir. 2018). This presents a compelling reason for this Court's grant of the petition for certiorari. See Sup. Ct. R. 10(b). Those federal courts have concluded that the ADA preempts state workers compensation schemes effecting a restriction on reimbursement of air carriers engaged in air medical transportation. The majority decision acknowledges these countervailing cases but erroneously distinguishes them from the case at hand, a mistake not made by the dissenting opinion or by the Texas lower court. See *Tex. Mut. Ins. Co.* v. *PHI Air Med., LLC*, No. 18-0216 (Tex. June 26, 2020) (Green, Hecht, dissenting); *PHI Air Med., LLC* v. *Tex. Mut. Ins. Co.*, No. 03-17-00081-CV (Tex. App. Jan. 31, 2018). The petition for certiorari should be granted to establish that the Texas Supreme Court is wrong in its interpretation of federal law and its decision in this case is not a valid precedent for other states.

ARGUMENT

This case provides an opportunity for the Court to affirm the principle consistently upheld by US courts of appeals that state restrictions on air carrier reimbursement through workers compensation regimes run afoul of the ADA's federal preemption of state regulation of air carrier pricing.

In passing the ADA, Congress wisely sought to avoid a 50-state patchwork of air regulation and recognized that a uniform system of national regulation was necessary to achieve safe and accessible air transportation. Economic regulation of air transportation under the ADA is under the sole purview of the U.S. Department of Transportation (DOT). Safety regulation remains with the FAA under principles of field preemption. State regulation of air carriers "related to" prices, routes, and services is explicitly preempted under the ADA. This Court has ruled time and again that this preemption mandate has "a broad preemptive purpose" and should be so read. *Northwest, Inc.* v. *Ginsberg*, 572 U.S. 273, 284 (2014); *American Airlines, Inc.* v. *Wolens*, 513 U.S. 219, 223 (1995); *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992). The Texas Supreme Court decision has deviated from this longstanding and widely upheld mandate.

Congress preserved this preemptive construct as it applies to air carriers engaged in air medical transportation most recently in the FAA Reauthorization Act of 2018 (P.L. 115-254) (2018 Act). Presented with options to increase the role of the states in regulating air medical transportation prices and services, Congress not only rejected those options, but restricted the mandate of an Advisory Committee created to review air medical services and pricing matters by requiring

consideration only of those state actions that may be taken consistent with current consumer protection laws. Further, Congress required DOT to act on Advisory Committee recommendations within current statutory authorities, including the ADA.[2]

Two US courts of appeals decided that state workers compensation regimes factually similar to that of Texas are federally preempted to the extent they set compensation that air ambulances may receive for their services.[3] These courts recognized Congress intended for market forces—not state agencies—to determine prices charged by air carriers and thus their reimbursement. They concluded federal preemption prevents state workers compensation regimes from limiting reimbursement for air carriers engaged in air medical transportation.

The US Court of Appeals for the Tenth Circuit concluded that the plain language of the ADA preempts the Wyoming Worker's Compensation Act and its rate schedule as applied to reimbursement of air ambulance claims. The court's rationale equally applies to a mandatory, non-negotiated, non-fixed "fair and reasonable" rate as in this case. The court, quoting this Court in *Puerto Rico* v. *Franklin Cal. Tax-Free*, 136 S. Ct. 1938, 1946 (2016), noted "when a statute contains an express preemption clause, we . . . focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive

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[2] *See* 2018 Act, Sections 418 (d)(3) and (f).

[3] No US courts of appeals have decided to the contrary. Several lower federal court decisions are in accord. *See Guardian Flight, LLC* v. *Godfread*, 359 F. Supp. 3d 744 (D.N.D. 2019); *Air Evac EMS, Inc.* v. *Sullivan*, 331 F. Supp.3d 650, 662, 664 (W.D. Tx. 2018); *Valley Med Flight, Inc.* v. *Dwelle,* 171 F. Supp. 3d 930 (D.N.D. 2016).

intent. And . . . when the statute's language is plain, our inquiry into preemption both begins and ends with the language of the statute itself", *Cox*, 868 F.3d at 903-904 (internal quotation marks omitted).

The US Court of Appeals for the Fourth Circuit held that West Virginia's workers compensation laws ran afoul of the ADA because they would limit "reimbursement rates paid by the state and prevent air ambulance companies from seeking additional recovery from any third party." *Cheatham*, 910 F.3d at 769. The court explained: "The balance of state and federal responsibility created by the ADA is a complex balance in an exhaustively debated field that Congress has struck. As to that, we take no sides. Our own decision is not one of policy, but of law. That must be in the end what matters." *Ibid* at 770.

The Texas Supreme Court, instead of following this Court's rulings on the breadth of the ADA's federal preemption clause and adopting the analysis of the two US courts of appeals, devises a narrow, incongruous test. The court shifts the analysis from the ADA's express preemption language to one in which the air carrier is required to prove its fares have been affected by the state regulation. *PHI Air Med., LLC*, No. 18-0216 at 2. But Congress' preemptive mandate does not depend on an air carrier proving a state law's air carrier fare regulation depresses its fare. Instead, it expressly prohibited such regulations in any form.

Granting certiorari will provide an opportunity to review the Texas Supreme Court's decision, which, if left to stand, could lead other states to emulate a workers compensation scheme antagonistic and corrosive to federal preemption. The Texas law at issue is part of a long and varied line of state (See, e.g., *Med-Trans Corporation* v. *Benton*, 581 F. Supp. 2d 721

(E.D.N.D. 2008), *Guardian Flight, LLC* v. *Godfread* 359 F. Supp. 3d 744 (D.N.D. 2019) and even local government (See, e.g., Letter from Ronald Jackson, Assistant Gen. Counsel for Operations, U.S. Dep't of Transp., to Thomas A.A. Cook, Vice President & Gen. Counsel, REACH Air Medical Services, LLC (Feb. 25, 2016)) efforts intended to subvert the preemption provision as it applies to air medical transportation.

CONCLUSION

In considering the application of the Texas state workers compensation regime to air medical transportation services, the Texas Supreme Court grossly confuses the border lines of the federal-state jurisdictions established by the ADA as interpreted by this Court. The closely watched Texas majority decision is at odds with those of the US courts of appeals on factually similar cases. The Court should grant the petition to provide now necessary clarity in this area of the law and prevent erosion by states of the federal legal structure essential to the operation of a safe and vital national air medical transportation system.

Respectfully submitted,

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