No. 20-748

# In the Supreme Court of the United States

PHI AIR MEDICAL, LLC, PETITIONER,

*v.*

TEXAS MUTUAL INSURANCE COMPANY, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS*

## BRIEF OF AIRBUS HELICOPTERS, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER


DAVID J. WEINER
SAMUEL F. CALLAHAN
ARNOLD & PORTER KAYE SCHOLER LLP
*601 Massachusetts Ave., NW*
*Washington, DC 20001*
*(202) 942-5000*

DOUGLAS A. WINTHROP
*Counsel of Record*
ARNOLD & PORTER KAYE SCHOLER LLP
*10th Floor*
*Three Embarcadero Center*
*San Francisco, CA 94111*
*(415) 471-3100*
*douglas.winthrop@arnoldporter.com*

*Counsel for Amicus Curiae*

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**RULE 29.6 STATEMENT**

*Amicus curiae* Airbus Helicopters, Inc. is a non-governmental corporation. No publicly held corporation owns 10% or more of *amicus*'s stock. *Amicus* is wholly owned by Airbus Group, Inc., which in turn is wholly owned by Airbus SE, a publicly held company.

## INTEREST OF *AMICUS CURIAE*[1]

*Amicus curiae* Airbus Helicopters, Inc. (AHI), which is based in Grand Prairie, Texas, is the United States affiliate of Airbus Helicopters SAS, the world's leading manufacturer of helicopters and specifically of helicopters used for emergency medical services. Over 2,500 Airbus helicopters are currently in service worldwide for missions conducted by air ambulance providers like petitioner. Airbus helicopters have been used in lifesaving missions for over fifty years and were instrumental to the growth of air ambulance services worldwide.

As a leading supplier of helicopters for air carriers like petitioner, AHI has a strong interest in ensuring robust enforcement of preemption principles under the Airline Deregulation Act of 1978 (ADA). Congress enacted the ADA to ensure that the prices and services of air carriers like petitioner would be dictated by market forces and not by regulators—especially state regulators who could impose conflicting, burdensome restrictions and thereby hobble the efficient provision of air service. Judicial decisions that endorse state restrictions on air-carrier pricing undo Congress's efforts and jeopardize carriers' economic viability. Pet. 35. In turn, those decisions threaten serious upstream harm to suppliers like AHI, who depend on a strong, competitive market for their cutting-edge aircraft.

More broadly, as an aircraft supplier subject to myriad regulatory controls, AHI has a substantial interest in Congress's ability to protect the exclusivity and uniformity of federal law through the use of preemption

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[1] No counsel for a party authored this brief in whole or part, and no counsel or party made a monetary contribution to fund the preparation or submission of this brief. No one other than the *amicus curiae* and its counsel made any monetary contribution to its preparation and submission. The parties were given timely notice and consented to this filing.

clauses. Under the rigid, narrow approach to federal preemption applied by the Supreme Court of Texas, the ADA's preemption clause—not to mention materially identical clauses appearing in at least three other federal statutes—becomes comically easy for states to evade. AHI has a vital interest in ensuring that courts do not bypass Congress's broad, express preemption clauses like those in the ADA, and that they do not ignore this Court's precedent commanding that these broad texts be given broad effect.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The Supreme Court of Texas held that states may cap the amount that insurers pay air carriers because those caps neither "expressly reference" carriers' prices nor have a "significant effect" on those prices. Pet. App. 15a. That conclusion is wrong on its own terms, as petitioner explains. But the Texas Supreme Court's decision creates far broader problems—not just under the ADA, but under other federal statutes using similarly broad preemptive language. This Court should grant review to restore Congress's broad preemption authority and to protect the established expectations of industry.

In case after case, this Court has properly recognized that the plain text of the ADA's preemption clause—which covers state laws "related to" air-carrier prices, routes, and services—is exceedingly broad. This Court has consistently interpreted this key language to preempt laws having any "connection with" those three subjects. It has consistently rejected the notion that the connection must be *direct*, recognizing that such a reading would make preemption too easy to avoid. See Part I, *infra*.

The framework applied by the Texas Supreme Court flies in the face of Congress's broad language and this Court's cases interpreting it. State laws that this Court has unanimously held preempted would have survived

preemption under the Texas Supreme Court's rigid test. And, conversely, a straightforward application of this Court's established test—which required asking only whether Texas's reimbursement limits have a "connection with" air-carrier prices—would lead to a finding of preemption. See Part II, *infra*.

The Texas Supreme Court's decision does not just harm air carriers, or the patients to whom they provide lifesaving care. Nor is its harm limited to suppliers like AHI, which depends on a robust market for its aircraft unburdened by stifling state regulation. Rather, the Texas Supreme Court's approach to preemption affects a wide array of American businesses subject to numerous exclusive, uniform federal regulatory schemes. The ADA's preemption clause appears essentially verbatim in other statutes, ranging from federal employee health insurance, to cargo transportation, to employee benefit plans. The similarity is no coincidence: "Congress characteristically employs" the key statutory language present in each of these statutes "to reach any subject that has a connection with, or reference to, the topics the statute enumerates." *Coventry Health Care of Mo., Inc.* v. *Nevils*, 137 S. Ct. 1190, 1197 (2017) (quotation marks omitted). The Texas Supreme Court's decision restricts Congress's preemption powers under these statutes and others where it chooses the same broad phrasing. This Court frequently grants review to reaffirm the broad scope of federal preemption under these statutes; it should do the same here. See Part III, *infra*.

## ARGUMENT

### I. This Court's Decisions Interpreting the ADA's Preemption Clause And Materially Identical Clauses In Other Statutes Establish a Broad Rule Favoring Preemption.

The ADA's preemption clause is among the broadest in the U.S. Code. Its text prohibits states from enacting or enforcing any "law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier." 49 USC 41713(b)(1). This Court has described this text—and particularly the "key phrase" "related to"—as "express[ing] a broad pre-emptive purpose." *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992); see *Nw. Inc.* v. *Ginsberg*, 572 U.S. 273, 284 (2014); *Am. Airlines, Inc.* v. *Wolens*, 513 U.S. 219, 226–228 (1995). The "ordinary meaning" of "relating to," after all, "is a broad one"—"[t]o stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with." *Morales*, 504 U.S. at 383 (quoting Black's Law Dictionary 1158 (5th ed. 1979)).

The ADA, while unusually expansive, is not unique. Congress "copied" the ADA's language into the Federal Aviation Administration Authorization Act of 1994 (FAAAA), with the express goal of extending to the trucking industry the "broad preemption interpretation adopted by [this Court] in *Morales*." *Rowe* v. *N.H. Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008); see 49 USC 14501(c)(1), 41713(b)(4)(A). This Court accordingly interprets the two provisions in parallel. *Rowe*, 552 U.S. at 370. In emphasizing the sweep of their texts, this Court has relied on cases interpreting "the similarly worded preemption provision of" ERISA, which "pre-empts all state laws 'insofar as they … relate to any employee benefit plan.'" *Morales*, 504 U.S. at 383 (quoting 29 USC 1144(a)). And Congress in the Federal Employees Health Benefits Act of 1959 (FEHBA) likewise provided that terms in

contracts for federal employees' health insurance that "relate to * * * payments with respect to benefits" preempt any corresponding state-law provision that "relates to health insurance or plans." 5 USC 8902(m)(1); see *Coventry*, 137 S. Ct. 1190.

This Court has given these broadly worded provisions an appropriately broad construction. The ADA, FAAAA, ERISA, and FEHBA each preempt laws having "'a connection with, or reference to,' the topics the statute enumerates." *Coventry*, 137 S. Ct. at 1197 (quoting *Morales*, 504 U.S. at 384); see *Rowe*, 552 U.S. at 370-371 (FAAAA); *Shaw* v. *Delta Airlines, Inc.*, 463 U.S. 85, 96-97 (1983) (ERISA). The Court has refused to limit preemption to laws "*actually* prescribing rates, routes, or services," as that narrower reading would "read[] the words 'relating to' out of the statute." *Morales*, 504 U.S. at 385 (emphasis added). "Had the statute been designed to preempt state law in such a limited fashion, it would have forbidden the States to '*regulate* rates, routes, and services.'" *Ibid.*

Moreover, preemption occurs "even if a state law's effect * * * 'is only indirect.'" *Rowe*, 552 U.S. at 370-371 (quoting *Morales*, 504 U.S. at 386). In *Rowe*, for example, the Court held that although the FAAAA's preemption clause applies only to laws related to "carriers," the statute preempted a Maine law that regulated shippers alone. 552 U.S. at 372. The Court "concede[d] that the regulation [was] less 'direct' than it might be." *Ibid.* "Nonetheless, the effect of the regulation is that carriers will have to offer tobacco delivery services that differ significantly from those that, in the absence of the regulation, the market might dictate." *Ibid.* Because regulations on shippers had a clear connection to carriers, "treating sales restrictions and purchase restrictions differently for pre-emption purposes would make no sense." *Ibid.* (quoting *Engine Mfrs.*

*Ass'n* v. *S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 255 (2004)).

This Court likewise has rejected efforts to impose temporal limits on the broad preemptive phrase "related to." In *Coventry*, the Court held that federal contract provisions requiring subrogation and reimbursement "relate to * * * payments with respect to benefits," and thus preempt corresponding state-law provisions under the FEHBA. 137 S. Ct. at 1197. Relying on its ADA cases interpreting the same "notably expansive" text, the Court found it irrelevant that subrogation and reimbursement "occur long after a carrier's provision of benefits." *Ibid.* (quotation marks omitted). Instead, the Court applied simple logic: "When a carrier exercises its right to either reimbursement or subrogation, it receives from either the beneficiary or a third party 'payment' respecting the benefits the carrier had previously paid." *Ibid.* That logical relationship provided the requisite "connection with" benefits. *Ibid.*

This Court has thus explained that only laws with a "tenuous, remote, or peripheral" connection to the subjects enumerated in a preemption clause (in the ADA, prices, routes, or services) could possibly survive preemption. *Rowe*, 552 U.S. at 371 (quoting *Morales*, 504 U.S. at 390). The examples this Court has given of such "tenuous" laws are at the true outer edges of these federal statutes: things like forbidding "gambling and prostitution as applied to airlines," or "preventing obscene depictions" in fare advertising, *Morales*, 504 U.S. at 390; tort claims for personal injury and wrongful death, *Wolens*, 513 U.S. at 234-235; or, in the ERISA context, garnishing pension income to enforce alimony orders, *Shaw*, 463 U.S. at 100 n.21. But unlike with these fringe examples, this Court has not viewed the actual state laws at issue in these cases as "borderline question[s]," even where lower courts did. *Shaw*, 463 U.S. at 96, 100 n.20; see *Morales*, 504 U.S. at

387 ("quite obviously" related); *Wolens*, 513 U.S. at 823 ("we need not dwell on" relatedness); *Ginsberg*, 572 U.S. at 284 ("clearly * * * a connection").

## II. The Test Applied By the Texas Supreme Court Cannot Be Squared With This Court's Cases.

While the Texas Supreme Court briefly acknowledged that the ADA preempts laws having "a connection with or reference to" air-carrier prices, Pet. App. 15a, the court quickly bypassed that test and imposed one of its own. The court held categorically that state laws relating to air-carrier prices are valid unless they "express[ly] reference" air-carrier prices or have a "significant effect upon" those prices. *Id.* at 15a-16a.

That is not this Court's test. Pet. 18; see *Morales*, 504 U.S. at 384 ("State enforcement actions having a connection with *or* reference to airline rates, routes, or services are pre-empted." (emphasis added; quotation marks omitted)). To know that is true, one need only try applying it to laws this Court has found preempted.

Take *Ginsberg*—this Court's most recent decision on ADA preemption. *Ginsberg*, which the Texas Supreme Court did not mention, involved a state-law breach-of-covenant suit contesting "the termination of [a] WorldPerks elite membership." 572 U.S. at 285. The suit did not "expressly reference" prices or services. Indeed, the lack of any such reference was the key argument against preemption—an argument this Court never quibbled with. While the membership program offered, as one of its many benefits, mileage credits that could be "redeemed for tickets and upgrades," the plaintiff emphatically did "not challenge access to flights and upgrades or the number of miles needed to obtain air tickets." *Id.* at 284-285. This Court nonetheless found "no substance" to the plaintiff's "proffered distinction" between his suit seeking reinstatement in a rewards program and one directly challenging prices and services. *Ibid.* Rather, because the

program awarded "mileage credits that *can* be redeemed for tickets and upgrades," a claim seeking reinstatement in that program "clearly" had "a connection" to prices and services. *Id.* at 284 (emphasis added).

Nor would the lawsuit in *Ginsberg* have a "significant effect" on prices or services under the Texas Supreme Court's rationale. The Texas Supreme Court required "evidence proving" that the challenged limits "have a significant effect on price." Pet. App. 17a. *Ginsberg* identified no evidence regarding the effect of suits seeking reinstatement in a rewards program—which, again, implicated prices and services only if enrollees chose to spend points on tickets and upgrades. To the contrary, because of how airline miles work, it was entirely "possible that" reinstatement in the program would never affect any rate charged or service provided, which under the Texas Supreme Court's rationale would *necessarily* "show that the [suit] does not have" the requisite "significant effect." Pet. App. 21a. The lawsuit in *Ginsberg* would have failed the test applied by the Texas Supreme Court.

This Court's recent, unanimous decision in *Coventry* also would have come out differently if federal preemption were governed by the rule of law articulated by the Texas Supreme Court. The court believed that unless a law restricts the price used in what the court called "the transactional relationship"—between the carrier and the injured customer—then the law is preempted only if the carrier proves a significant effect on that immediate "transactional" price. Pet. App. 18a. The federal contract provisions in *Coventry* dealt only with subrogation and reimbursement—payments that "occur long after a carrier's provision of benefits" and sometimes are paid by "a third party." 137 S. Ct. at 1197 (quotation marks omitted). This Court identified no findings suggesting that subrogation or reimbursement provisions had any direct effect on the immediate amount or manner of initial benefits

payments. Yet, this Court had no trouble concluding that subrogation and reimbursement provisions "relate to ... payments with respect to benefits," and thus preempt corresponding state-law provisions. *Ibid.* A straightforward application of that expansive, binding approach would have required holding Texas's reimbursement limits preempted.

## III. Immediate Review Is Necessary To Restore Critically Important Preemption Principles

The Texas Supreme Court's invention of a new test for evaluating preemption under the ADA calls out for review. But the substance of that new test, which will govern preemption not just under the ADA, but under any express preemption clause that uses the signature phrase "related to," makes the need for review urgent.

Most directly, the Texas Supreme Court's decision threatens the central purpose of the ADA: to replace a scheme where federal regulators chose prices, services, and routes with one placing "maximum reliance on competitive market forces." 49 USC 40101(a)(6). Congress chose free markets because it believed they "would best further 'efficiency, innovation, and low prices' as well as 'variety [and] quality … of air transportation services.'" *Morales*, 504 U.S. at 378 (alteration in original) (quoting 49 USC 40101(a)(6), (12)). And Congress included a preemption clause specifically to "ensure that the States would not undo federal deregulation with regulation of their own." *Ibid.* The Texas Supreme Court has given regulators a blueprint for doing just that. So long as the state enacts a law of general applicability and avoids directly capping the prices charged, then under the court's rationale the state can proceed with its regulatory scheme because it has neither expressly referenced prices, routes, or services, nor significantly affected those matters.

Even if cabined to Texas, a state with 29 million people, AHI is concerned about the consequences of this

invitation to evade federal preemption. While the ADA's language focuses on "air carriers," its protections against disruptive regulation protect the entire market, including those responsible for supplying and supporting those carriers. In particular, AHI and its over 700 U.S. employees based in Texas and Mississippi depend on a robust market for their cutting-edge helicopters, and for their extensive customer service, training, and maintenance operations. The record in this case makes clear that air ambulances provide critical, lifesaving service to patients who otherwise would be stranded without medical care. But that service necessarily comes at high cost, and a substantial share of air ambulance bills go unpaid or are reimbursed at unsustainably low rates. Pet. 35. If Texas is permitted to cap prices paid for this service, then so are other states. The inevitable consequence is reduced efficiency and stifled innovation, just as Congress sought to avoid.

If these immediate consequences for air transportation were not enough, the Texas Supreme Court admitted that its narrow approach to preemption was in no way limited to the ADA, but rather extended to other "similarly worded" provisions. Pet. App. 16a. As explained, Congress in at least three other federal statutes—the FAAAA, ERISA, and FEHBA—used materially identical preemption language. Thus, following the Texas Supreme Court's decision, preemption under at least four important statutes is governed by a test much more permissive of state regulation than the approach this Court has previously demanded. The scope of federal preemption under these statutes arises frequently, with significance not just to what laws and regulations states may enact and enforce (as in *Coventry* and *Rowe*), but also what common law causes of action private litigants may assert (as in *Wolens* and *Ginsberg*). This Court should grant review, reaffirm the broad scope of preemption under these statutes, and restore much-needed predictability for

businesses that, under the Texas Supreme Court's lax approach, are likely to face an onslaught of conflicting, burdensome regulation that Congress sought to foreclose.

## CONCLUSION

For these reasons, and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

DAVID J. WEINER
SAMUEL F. CALLAHAN
ARNOLD & PORTER
KAYE SCHOLER LLP
*601 Massachusetts Ave., NW*
*Washington, DC 20001*
*(202) 942-5000*

DOUGLAS A. WINTHROP
*Counsel of Record*
ARNOLD & PORTER
KAYE SCHOLER LLP
*10th Floor*
*Three Embarcadero Center*
*San Francisco, CA 94111*
*(415) 471-3100*
*douglas.winthrop@*
*arnoldporter.com*

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