No. 21-260

In The Supreme Court of the United States

VIRGIN AMERICA, INC., AND
ALASKA AIRLINES, INC.,

Petitioners,

v.

JULIA BERNSTEIN, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR REGIONAL AIRLINE ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

Petitioners Virgin America, Inc., and Alaska Airlines, Inc. (together, Virgin), petition this Court for a writ of certiorari to review the opinion issued by the United States Court of Appeals for the Ninth Circuit (*Bernstein*). Although Virgin is a large "mainline" carrier, the *Bernstein* ruling will also impact regional carriers, which operate smaller aircraft to smaller communities, but provide nearly half the air service in the United States. In 2020, U.S. regional airlines operated forty-three percent (43%) of scheduled passenger departures and accounted for approximately 8600 U.S. daily departures with over 73 million enplanements. Regional airlines operated over a quarter (26%) of the air service in California and carried 14% of California's enplanements in 2020. In 2019, when the industry service was more typical of its usual pattern, regional airlines enplaned 165 million passengers and operated 3.81 million departures. Regional airlines provide air service to smaller communities that lack the population density to support air service by larger airlines and aircraft. Fully 66% of U.S. airports receiving commercial, scheduled air service are served only by regional airlines. In California, regional airlines provide the majority of the air service to 17 of its 28 commercially served airports.

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[1] Pursuant to S. Ct. Rule 37.6, counsel for all parties received timely notice and have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part and no person or entity other than amicus, its members, or counsel made a monetary contribution to its preparation or submission.

The Regional Airline Association's (RAA) members include 17 U.S. regional airlines and approximately 89 associate (non-airline) members, including manufacturers and service providers that support regional airlines. If *Bernstein* is upheld, RAA's members will incur direct and immediate impacts related to the prices, routes and services they are able to offer the flying public. Importantly, the burdens imposed by California's compulsory meal and rest break laws will decimate the federal Essential Air Service program – an impact on price, routes and service not considered by the court in *Bernstein*.

INTRODUCTION AND SUMMARY OF ARGUMENT

Bernstein requires airlines to apply California meal and break rules to flights operated by California-based flight attendants, no matter if they are on the ground, airborne, or anywhere outside of California. These rigid rules require airlines to release flight crews from all duty on a strict schedule. But the Airline Deregulation Act (ADA), 49 U.S.C. § 41713, *et seq*., preempts state laws that interfere with the services, routes and prices offered by the airlines. Beyond the ADA, these California rules collide with a myriad of federal regulations that already provide for crew rest, crew size and mandatory safety duties, which can never be neglected. The Ninth Circuit resolved this conflict by suggesting carriers lengthen layovers or

add more crew, but either solution violates the ADA as they compel a change in service, routing and fares.

If the *Bernstein* court believed mainline carriers could absorb these changes without impacting services or fares, it certainly did not consider the devastating impact to smaller regional airlines. RAA's members do not have the capacity or scale to absorb additional cabin crew or the ability to change flight schedules without also altering service. Regional airlines operate aircraft with 9-76 seats. There is no room in the passenger cabin for the additional jump seats needed for the extra crew contemplated by the court in *Bernstein*, so the additional crew would necessarily have to co-opt passenger seats. This means a city that enjoyed 50 seat service would now only have 47 seats available, because three passenger seats must be reserved for an extra flight attendant, captain and first officer.[2] The alternative is shortening flights and lengthening layovers to accommodate California break schedules, thereby allowing California to effectively rewrite the tightly choreographed national flight schedules that

[2] With no limiting principles in *Bernstein*, these rules may also apply to pilots, who are not interchangeable. Per FAA regulations, only a certified captain may operate the controls arrayed around the cockpit's left seat, and only a certified first officer may operate the right seat controls. 14 C.F.R. § 121.543(b)(3) ("If the crewmember is taking a rest period, and relief is provided – (i) [i]n the case of the assigned pilot in command . . . by a pilot who . . . is currently qualified as pilot in command. . . . ; (ii) [i]n the case of the assigned second in command, by a pilot qualified to act as second in command of that aircraft. . . .").

deliver passengers on the faster, cheaper and more efficient routing envisioned by the ADA.

RAA joins Virgin in respectfully requesting that this Court intervene to restore the ADA's "deliberately expansive" preemptive effect and prevent the nationwide chaos that California meal and rest break laws will cause if imposed on flight schedules.

ARGUMENT

I. APPLICATION OF CALIFORNIA'S BREAK LAWS WOULD VITIATE THE ESSENTIAL AIR SERVICE PROGRAM AND DEPRIVE SMALL COMMUNITIES OF VITAL AIR TRANSPORTATION

Regional airlines provide passenger air service to communities without sufficient demand and facilities to attract mainline service. Often, regional airlines provide the only viable air transportation link for small communities to connect with the National Airspace System (NAS) and international airlines. Through the Small Community Air Service Development Program and the Essential Air Service Program, Congress made provisions for small communities to participate in the national and global economies that allow them to increase their economic output by adding jobs and to strengthen local business opportunities by creating global business ties. Even without federal assistance, many small communities rely heavily on travel and tourism for their financial well-being, which

are supported through air service provided exclusively by regional airlines. Air service also allows residents of smaller communities to travel to see loved ones, pursue business opportunities, and gain access to premium health care. If *Bernstein* is not reversed, dozens of small communities will lose service, frustrating the federal programs Congress created to avoid service loss.

A. The Essential Air Service Program

The ADA, enacted in 1978, gave air carriers almost total freedom to determine which domestic markets to serve and what fares to charge for that service. Its purpose was to make flying more expansive and affordable to the flying public – and it has resulted in air travel being accessible to ever increasing numbers of passengers at affordable fares. Since 1978, airline fares have fallen by 45% in real, inflation-adjusted terms. The savings to travelers have been approximately $19 billion per year.[3] As prices have decreased, air travel has increased exponentially. The total number of passengers who fly annually has more than doubled since 1978. Travelers have more convenient travel options with greater flight frequency and more nonstop flights. Fewer passengers must change airlines to make a connection, resulting in better travel coordination and higher customer satisfaction. Moreover, air

[3] Fred L. Smith, Jr., et al., *Benefits of Partial Deregulation*, Airline Deregulation, https://www.econlib.org/library/Enc/AirlineDeregulation.html (last visited Sept. 15, 2021).

travel is unequivocally safer now than it was before deregulation. Accident rates during the twelve-year period from 1979 to 1990 improved dramatically compared with the accident rates in the years before deregulation.[4]

Deregulation, however, meant that many small communities would lose air service, as market forces would drive carriers out of these underserved, fragile and predictably unprofitable markets. In recognition of the importance of air travel and to protect these communities, Congress created the Essential Air Service (EAS) program. Under the EAS program, the U.S. Department of Transportation (DOT) currently subsidizes 108 communities in the lower 48 states which otherwise would not receive scheduled air service.[5] Three airports in California, Crescent City, El Centro, and Merced, receive air service through the EAS program. Regional airlines are the backbone of this program.

The DOT subsidies are small and limited. Under EAS guidelines, participating airlines are restricted to approximately five percent (5%) profit margins. The

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[4] Alfred E. Kahn, *Safety in the Skies*, Airline Deregulation, https://www.econlib.org/library/Enc1/AirlineDeregulation.html (last visited Sept. 15, 2021).

[5] U.S. Department of Transportation, *Subsidized Essential Air Service Communities and Distances to Nearest Hubs*, Current and Historical Status Reports, https://www.transportation.gov/sites/dot.gov/2021-09/EAS%20community%20hub%20distances%20Web_Updated_Sep2021_0.pdf (last visited Sept. 15, 2021). In addition, numerous small communities in Alaska and Hawaii which are not counted here participate in and rely on the EAS program. *Id*.

program only provides for two round trips a day on small aircraft with 50 or fewer seats. Unless the communities are located more than 210 miles from the nearest large or medium hub airport, the subsidy per passenger cannot exceed $200, absent a waiver from the Secretary. If the subsidy cap is exceeded, the community becomes ineligible for the EAS subsidy and loses its service altogether. Over the past two decades, 51 EAS communities have lost service because the subsidy was insufficient to cover carrier costs. As such, regional airlines servicing EAS markets operate on the thinnest of margins.

These small margins require maximally efficient scheduling, routing and staffing – but *Bernstein* would eviscerate this model, burdening airlines with extended ground delays, schedule inefficiency, and redundant crew to satisfy California break rules. These rules require employees to receive a duty-free rest break whenever they work more than "three and one-half (3 ½) hours." *Brinker Rest. Corp. v. Superior Court*, 273 P.3d 513, 529 (Cal. 2012). They also must receive a "duty free" meal break before five hours of work time have elapsed. *Id*. at 533. During a meal break, the employee must be "free to leave the premises." *Id.* And a meal or rest break must be completely "duty free," which means employees may not be "on call" – even for emergencies. *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d 823, 833 (Cal. 2016). They must be relieved from *all* work-related duties, and completely free of any type of employer control. *Id.* at 832. These rules apply no matter where the California crew is located when the

break period must be provided – whether the flight attendant is in the EAS market in Hays, Kansas or Altoona, Pennsylvania.

B. Regional Airlines Contribute Significantly to Scheduled Air Service

Although regional airlines operate smaller aircraft to smaller markets, their impact on the NAS is enormous. Regional airlines exclusively served approximately 222 airports in the lower 48 U.S. states based on 2019 data. In 2019, small communities (small hubs, non-hubs and EAS) supplied 5,000 daily departures. Approximately, seventy percent (70%) of those departures occurred on aircraft with 76 or fewer seats. On average, the distance from smaller communities to the nearest large-to-medium sized hub airport was 125 miles for small hubs, 146 miles for non-hubs, and 198 miles for EAS communities. Two-thirds of U.S. airports with commercial air service are currently served only by regional airlines. Moreover, over half of all regional air service is operated on aircraft with 50 or fewer seats. Although critical to the NAS, these small aircraft have the most limited revenue potential and the routes they serve are marginal, requiring maximum operational efficiency.

C. Bernstein's Crippling Impact on Regional Airlines and the Smaller Communities They Serve

To comply with the California break laws, the Ninth Circuit suggests that airlines (i) alter schedules to provide enough time between flights for California breaks; or (ii) schedule longer flight times to accommodate in-flight breaks; or (iii) simply add redundant flight attendants, so that the required number of flight attendants may remain on active duty while the primary flight attendant goes on break. These purported solutions totally disregard the realities of ensuring safe, cost-effective and efficient air travel to smaller communities and EAS markets. "There can be no serious question that applying California's meal and rest break laws to flight attendants will have a significant impact on the market forces influencing carrier services and prices." Brief for the United States as Amicus Curiae in Support of Appellants, *Bernstein v. Virgin America, Inc.*, No. 19-15382, 2019 WL 4307414, *18 (9th Cir. Sept. 3, 2019).

Far from complying with the ADA, the *Bernstein* solutions collide with it. The ADA contains an express preemption to "ensure that the States [cannot] undo federal deregulation with regulation of their own." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378–79 (1992). The ADA preempts state laws that are "related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1). This language is "deliberately expansive." *Morales*, 504 U.S. at 384. The Supreme Court has interpreted the ADA to preempt any state law that has

"a significant impact on carrier rates, routes, or services." *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 375 (2008). Such laws are preempted even if they are "not specifically designed to affect" airlines, and even if "the effect is only indirect." *Morales*, 504 U.S. at 386. This reflects Congress's judgment that airlines should operate under uniform federal rules instead of "a patchwork of state . . . laws, rules, and regulations." *Rowe*, 552 U.S. at 373.

If applied to regional airlines, the *Bernstein* solutions would dramatically curtail the EAS program and would undeniably result in loss of air service to many smaller communities. Adding redundant crew for any flight carrying a California flight attendant would be logistically challenging and financially ruinous. To make matters worse, the smaller aircraft operated by regional airlines do not have extra jump seats for redundant crew. If the *Bernstein* rationale is extended to pilots, then three highly-paid and inefficiently deployed crewmembers would occupy passenger seats, further eroding revenue, pushing subsidy levels above the federally set ceilings, and ultimately depriving EAS markets of the essential air service Congress intended them to have. Further, the loss of air service would extend beyond EAS markets. This is what Congress sought to avoid when it told states, by way of the ADA, to stay out of the cabin and allow airlines to provide the most efficient and cost-effective services possible, particularly to EAS communities.

Further, the loss of air service would extend beyond EAS markets and beyond total loss of service.

Many non-EAS small communities would be impacted by the *Bernstein* solutions and would suffer loss of service as well. For example, in 2019, RAA member SkyWest Airlines provided service on 25,176 sold-out flights that departed from California airports. If a single additional flight attendant occupied an otherwise available passenger seat, then 25,176 passengers traveling out of California would have been denied their preferred service. If SkyWest were also required to staff the aircraft with a spare captain and first officer, then 75,000+ travelers would have been forced elsewhere for air service, at a different time and fare than they preferred, contrary to the ADA's design and purpose. Moreover, regional airlines operating small aircraft would be subjected to the highest relative labor cost increases if compelled to add crew. Unlike mainline airlines whose increased costs for added flight crew may be amortized over 200 or more fare paying passengers per flight, regional airline labor costs could be increased by as much as 100% (two member flight deck and one cabin crew aircraft would have to staff an additional three crewmembers if applied to pilots), amortized over only 47 fare paying passengers, with a loss of three revenue seats to the additional flight crew on a 50 seat aircraft. These simultaneous and extreme cost increases and revenue decreases would impact vulnerable small communities, rendering them unprofitable and at risk of losing all service.

II. COMPLIANCE WITH CALIFORNIA BREAK LAWS IS IMPOSSIBLE AND WOULD WREAK HAVOC ON THE NATIONAL AIR TRANSPORTATION SYSTEM

A. Regional Airlines Cannot Alter Routes or Schedules to Accommodate State-law Mandated Rest or Meal Breaks

Most regional airlines are "code-share" partners with mainline airlines, including Alaska, American, Delta, United and JetBlue. Regional airlines generally transport passengers to major airport hubs where they connect with long-haul flights. This inextricably entwined, closely-timed, and complex hub-and-spoke operation is bigger than one aircraft connecting to another. Dozens of aircraft, from all over the country, arrive, connect, and depart during a hub "bank" which is generally a two-hour block of time during which passengers connect between flights. These bank schedules are created by the mainline carriers and are assigned to the regional airlines to operate. As a necessary result, regional airlines do not have the ability to alter their schedules to build in longer ground stops to accommodate California mandated meal and rest breaks. If they do, their passengers will miss their connections at the destination airport. But even if they could, regional airlines' schedules would still be limited by runway, gate and crewmember availability across the nation. U.S. Br., *Bernstein*, 2019 WL 4307414, *21. Delays in one airport – due to any cause – can easily snowball into delays at other airports throughout the country. *Id*. Typically, there are well

over a thousand disruptions each day owing to weather, Air Traffic Control and mechanical issues – so even the best laid plans to provide California breaks can evaporate in an instant as the NAS reacts and adapts to disruptions.

These disruptions are known as "irregular operations," and adding California breaks on top of irregular operations would further – and egregiously – disrupt the system. For example, consider a delayed-arriving flight, now sitting at the gate in Reno (RNO) and awaiting departure to San Francisco (SFO). The flight, already delayed, will now endure an *additional* delay as its original California crew take their required 30-minute break before operating the next flight. Owing to the additional meal break, connecting passengers will miss their SFO connections, potentially stranding them overnight. Adding to the complexity, these accumulating delays could ultimately cause the crew to exceed their federally mandated flight and duty time limits, at which point they can no longer operate the flight. If a new crew can be assigned, the flight will incur an *additional* delay. If no alternate crew are available, passengers will be stranded in Reno. Alternatively, should the flight proceed to SFO without providing the 30-minute meal break, the regional airline would violate California law and be subject to damages and penalties.

B. Regional Airlines Cannot Add Redundant Flight Attendants as the Ninth Circuit Suggested

In the alternative, the Ninth Circuit suggests that airlines may satisfy California's meal and rest break laws by adding extra flight attendants to the cabin. But even with an extra crewmember on board, no California-compliant meal or rest break can occur during a duty period. First, flight attendants are not free to "leave the premises" while a plane is in the air or even on the ground if passengers are onboard. *See Brinker*, 273 P.3d at 534. Second, FAA rules do not allow flight attendants to be completely "off duty" and free from employer control during a duty period. Instead, FAA regulations and carrier service rules impose a series of mandatory safety responsibilities that require all flight attendants to be constantly on duty and "on call" to assist passengers, on the ground and in the air, in case of emergency. From California's perspective, the redundant flight attendant would be considered "on duty" during the entirety of the pre-boarding, boarding, inflight, and deplaning time; given the physical impossibility of leaving an airborne flight, he or she would be required to stay at the worksite and be subject to employer control. *Ridgeway v. Wal-Mart, Inc.*, 946 F.3d 1066, 1078-79 (9th Cir. 2020). While on break, a uniformed flight attendant would remain visible and accessible to passengers for questions and, once interrupted by a passenger, would experience a non-compliant break.

C. If Extended to Pilots, the Pilot Shortage Would Make Compliance Impossible

As Virgin stated in the Petition, plaintiffs have already argued that *Bernstein*'s application of state law to flight attendants extends to pilots, ground crew, and other employees necessary for airlines to function. Petition at 3. In that event and as described above, regional airlines would have to add a captain and a first officer to each flight. The airline industry, however, has been grappling with a severe shortage of qualified pilots for several years, making it impossible to add redundant captains and first officers to flights for the sole purpose of providing 10 or 30 minutes of work while the assigned crew take California mandated breaks.

Since before the COVID-pandemic, which has only worsened matters, airlines were confronting a global pilot shortage. As a result, commercial airlines have been forced to ground aircraft because there are not enough pilots to fly them. Analysts project that the airlines will be short 8,000 pilots by 2023 and 14,139 pilots by 2026. A shortage of 8,000 pilots translates to 835 grounded aircraft, and over 61 million passengers lost since 2016.[6] The causes of the shortage include the mandatory retirement age, the high flight-hour

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[6] Victoria Crouch, *Analysis of the Airline Pilot Shortage*, Scientia et Humanitas: A Journal of Student Research 93 (Spring 2020), https://libjournals.mtsu.edu/index.php/scientia/issue/view/170/101 (internal citations omitted).

requirement, flight training costs, and the lack of pilot hiring in the 2000s. *Id*.

As the data demonstrates, there is already an insufficient number of new pilots available for the airlines' staffing needs. The proposition that regional airlines could simply hire additional pilots to provide coverage during rest and meal breaks to satisfy California's state law is untenable. There are not enough trained and qualified pilots available for hire.[7] Moreover, nearly half of today's working pilots, at airlines of all sizes, face mandatory retirement within 15 years.[8] This does not contemplate growth or attrition, nor the additional hiring draw of other, larger airlines who will need to staff up to meet *Bernstein's* solutions. Regional airlines currently operate approximately 2,236 aircraft, staffed with 22,236 pilots. If other states follow the Ninth Circuit redundancy proposition, regional airlines will have to instantaneously hire an equal number of pilots which is simply impossible.[9] Being unable to fully staff the flight deck, and provide the redundancy suggested by the Ninth Circuit, regional airlines will necessarily be forced to eliminate service

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[7] Traditionally, the military has been a significant source of pilots for airlines; however, it is experiencing a pilot shortage as well. Without prior military service, it takes three to five years to train and qualify a commercial pilot. *See id*. at 95-96.

[8] *Id*. at 95.

[9] Even if other states do not follow California's lead, regional airlines would have to instantaneously double the number of pilots serving California which is impossible due to the current and worsening pilot shortage.

to small communities and may even be forced out of business altogether.

III. FLIGHT ATTENDANT REST IS FULLY REGULATED BY THE FAA

Flight attendants are, first and foremost, professionals with safety responsibilities, charged with passenger care during all relevant portions of air travel, from boarding, taxiing, take off, inflight, landing and deplaning. "Flight attendants are crewmembers who perform essential routine and emergency safety duties" aboard flights. 14 C.F.R. § 121.467(a). Like pilots, flight attendants are not easily replaced. Flight attendants must continuously be prepared to recognize and attend to medical emergencies, bomb threats, suspicious passenger activity that may be indicative of hijacking, controlling inflight fires, biohazardous materials, human trafficking, smoking, intoxicated passengers, and any other threats to passenger safety and security. Even the *number* of flight attendants on each flight falls within the exclusive province of the FAA, which, depending on cabin size, requires a certain number of flight attendants "on board each passenger carrying airplane when passengers are on board." 14 C.F.R. § 121.391(a). California cannot reach into the cabin and relieve flight attendants of these required federal duties or alter the FAA allotted number of crew members.

Finally, the FAA has written detailed and sophisticated regulations governing flight attendant rest and duty periods. In so doing, it has balanced the needs of both passenger and crew safety. The Federal Aviation Act of 1958, 49 U.S.C. § 40101, *et seq*., authorizes the FAA Administrator "to promote safe flight of civil aircraft in air commerce" by prescribing "regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers." 49 U.S.C. § 40101(a)(4). The FAA may also prescribe "regulations and minimum standards for other practices, methods, and procedure[s] the Administrator finds necessary for safety in air commerce." 49 U.S.C. § 40101(a)(5). Pursuant to its authority, the FAA has promulgated specific regulations governing the rest and duty periods for flight attendants to ensure passenger safety. 14 C.F.R. § 121.467 ("Flight attendant duty period limitations and rest requirements: Domestic, flag, and supplemental operations"). The regulations define "duty period" to mean "the period of elapsed time between reporting for an assignment involving flight time and release from that assignment." 14 C.F.R. § 121.467(a). After being released from duty, a flight attendant "must be given a scheduled rest period of at least 9 consecutive hours" before being scheduled to work again. 14 C.F.R. § 121.467(b)(2). During a mandated rest period, the flight attendant is released from all duties. 14 C.F.R. § 121.467(b)(11). Similarly, the FAA has specifically defined the meaning of "rest period" as applicable to flight attendants as follows: "*Rest period* means the period free of all restraint or duty for [the airline] and free of all responsibility for

work or duty should the occasion arise." 14 C.F.R. § 121.467(a). The FAA has established sophisticated protocols and regulations governing the length and frequency of required rest periods when flight attendants are required to be on duty for more than 14 hours. It is *only* in connection with duty periods that exceed 14 hours that the FAA requires airlines to staff flights with additional flight attendants (above the minimum number required for safe operations) to permit sufficient breaks in the work load per flight attendant. 14 C.F.R. § 121.467(b)(4)-(6). In fact, the FAA expressly *rejected* a proposal to "establish provision for on-board rest" for flight attendants because it found that the rest requirements "adopted in [the] final rule are adequate to ensure flight attendants are provided the opportunity to be sufficiently rested to perform their routine and emergency safety duties without imposing a significant burden on operators." 59 Fed. Reg. 42,974, 42,979-80 (Aug. 19, 1994); *see also* 14 C.F.R. § 117.5 (flight crew must report for duty rested and may not be on duty period if too fatigued); 14 C.F.R. § 117.25 (additional rest period requirements). Regulation of flight attendants' meal and rest breaks necessarily implicates the field of airline safety. The FAA's considered decision to refrain from mandating inflight breaks precludes California from doing so here because Congress intended to occupy the field of aviation safety to the exclusion of state regulation. *U.S. Airways Inc. v. O'Donnell*, 627 F.3d 1318, 1326-27 (10th Cir. 2010); *see also Greene v. B.F. Goodrich Avionics Sys., Inc.*, 409 F.3d 784, 795 (6th Cir. 2005) ("We agree . . . that federal law establishes the standards of care in the field of

aviation safety and thus preempts the field from state regulation."); *Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363, 367 (3d Cir. 1999) ("[W]e hold that federal law establishes the applicable standards of care in the field of air safety, generally, thus preempting the entire field from state and territorial regulation.").

There is simply no need, nor room, for California to impose its notions of required rest breaks on flight crews operating under federal laws and regulations. The FAA has fully studied the subject and imposed consistent, nation-wide regulations for the employees that work in its airspace.

CONCLUSION

Regional airlines provide access to vital air transportation services to small and EAS communities across California and the United States. Like the mainline carriers, regional airlines operate under applicable federal laws and regulations governing the unique environment that is the navigable airspace over the United States. The Airline Deregulation Act has expressly preempted state laws "relating to the rates, routes, or services of any air carrier" and that preemption has an expansive sweep. *Morales*, 504 U.S. at 384. As the RAA has amply shown, the Ninth Circuit's opinion enforcing California's meal and rest break law will have a "significant impact" on rates, routes and services (*id*. at 390) and a deleterious effect on regional airlines and the small communities they

serve. The RAA, on behalf of its member regional airlines, joins Petitioner Virgin in requesting that the Court intervene to reverse the Ninth Circuit's unfounded opinion likening airlines to short-haul trucking companies and to enter a finding of ADA preemption of California's meal and rest break law.

Respectfully submitted,

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September 2021