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Hon. Scott S. Harris
Clerk of the Court
Supreme Court of the United States
1 First Street, N.W.
Washington, D.C. 20543

RE: *Virgin America, Inc. v. Bernstein*, No. 21-260

Dear Mr. Harris:

Respondents Julia Bernstein, *et al.*, respectfully submit this short response to Petitioners' Supplemental Brief, filed earlier today, on the eve of the June 23rd conference in which the Court is scheduled to consider this case.[1]

In a final, desperate attempt to influence this Court's consideration of their request for review of the Ninth Circuit's decision determining, correctly, that the Airline Deregulation Act ("ADA") does not preempt the application of California's meal-and-rest-break requirements to the California-based flight attendants in this case, Petitioners point to the airline industry's well-known, post-pandemic woes and argue that they "underscore the importance" of this Court's review. Suppl. Br. 1. Virgin's overwrought attempt to lay the recent spate of nationwide flight cancellations and disruptions at the feet of the narrow decision below fails for two reasons.

First, the various cancellations, delays, and other disruptions in air travel that Petitioners point to self-evidently have *nothing at all to do with the narrow issue in this case*. As explained in our Brief in Opposition (at 36–38), the decision below is exceedingly limited: it did nothing more than apply California's meal-and-rest-break requirements to *California-based flight attendants* who worked for an *airline based in California*, and only when those flight attendants operate flights that take off, fly, and land *entirely within California*. The notion that this limited application

[1] While this Court's Rule 15.8 would ordinarily call for the filing of a responsive supplemental brief complying with Rule 33.1, the strategic timing of Petitioners' filing makes it impossible for Respondents to arrange to print and file a formal supplemental brief before the Court's conference tomorrow morning.

of California labor law within California is somehow responsible for, or would meaningfully exacerbate, the problems currently facing America's airlines is risible. For one thing, Petitioners' own description of these problems shows that they are nationwide in scope—yet they never explain how a ruling applying California labor law to flights that take place entirely in California could even conceivably have any measurable impact on the structural problems currently facing the airline industry both nationally and regionally. For another, the various news sources Petitioners cite also indicate that the principal source of the recent spate of cancellations and delays is a shortage in *pilots*, not flight attendants, *see* Suppl. Br. 1, 3—and the decision below applies only to the latter. Petitioners' supplemental brief acknowledges that the airlines' "problems go beyond California's meal-and-rest-break laws." *Id.* at 3. That sentence should read: "these problems have so little to do with California's meal-and-rest-break laws that the impact of this case would be microscopic."

Second, even if the application of California's break requirements to California-based flight attendants—operating wholly intra-California flights for a California-based airline—could conceivably have a discernable impact on the current issues facing the airline industry, Petitioners' Chicken-Little argument would *still* fail because they continue to ignore the undisputed, record fact that they can comply with those *California-specific* requirements at the cost of no more than $100 per flight. Pet. App. 59a. Virgin's suggestion that having to pay an extra $100 to operate a handful of wholly intra-California flights is going to "make an already difficult situation completely unmanageable," Suppl. Br. 3, is beyond the pale. Indeed, even if every State in the Nation adopted meal-and-rest-break requirements governing in-State flight attendants working for in-State air carriers on in-State flights, Virgin has pointed to nothing in the record showing that the resulting $100 hit the airline industry would take on the few affected intra-state flights would amount to anything more than a pinprick to the air industry's post-COVID-19 woes.

As the United States' amicus brief in this case explains (at 8), Petitioners have utterly failed to "demonstrate[ ] that a requirement to provide . . . in-flight [meal and rest] break[s] would have a significant impact on prices, routes, or services." Nothing in Petitioners' bottom-of-the-ninth supplemental brief fills this gaping whole in their attempt to justify this Court's review. The petition should be denied.

I would appreciate it if you would share this letter with the Court.

Respectfully Submitted,

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Counsel of Record for Respondents

CC: Counsel of Record