

App. No. \_\_\_\_\_

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In The

Supreme Court of the United States

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Andrea Hirst, *et al.*

*Petitioners,*

v.

SkyWest, Inc. *and* SkyWest Airlines, Inc.

*Respondents.*

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PETITIONER'S APPLICATION TO EXTEND TIME TO  
FILE PETITION FOR A WRIT OF CERTIORARI  
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To the Honorable Brett M. Kavanaugh, as Circuit Justice for the United States Court of Appeals for the Seventh Circuit:

Petitioners Andrea Hirst, Molly Stover, Emily Stroble Sze, Cheryl Tapp, Renee Sitavich, Sarah Hudson, Brandon Colson, and Bruno Lozano respectfully request that the time to file a Petition for a Writ of Certiorari be extended thirty days from April 11, 2019, to and including May 11, 2019.

The U.S. Court of Appeals for the Seventh Circuit denied a petition for rehearing en banc on January 11, 2019, App. A, *infra*, after issuing its opinion and judgment on December 12, 2018, App. B, *infra*. Absent an extension, the Petition therefore would be due on April 11, 2019. This Application is being filed at least 10 days before that date. *See* Sup. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1254 to review this case.

## Background

1. Petitioners (collectively “Flight Attendants”) all worked as flight attendants for Respondents SkyWest Airlines, Inc. and its parent corporation SkyWest, Inc. (collectively “SkyWest”). Petitioners Andrea Hirst, Molly Stover, and Emily Stroble Sze filed a class and collective action against SkyWest in March 2015 in the Northern District of Illinois alleging that SkyWest violated the FLSA and the Illinois Minimum Wage Law by failing to pay minimum wage. *See Hirst, et al. v. SkyWest Inc., et al.*, No. Nos. 17-3643, 17-3660, 2018 U.S. App. LEXIS 34926, at \*4-\*5 (7th Cir. Dec. 12, 2018). Several months later, Petitioners Cheryl Tapp, Renee Sitavich, Sarah Hudson, Brandon Colson, and Brūno Lozano filed a similar action in the Northern District of California under the FLSA and state and local minimum wage laws and ordinances in California, Arizona, and Washington. Both complaints sought class certification of nationwide, state, and local classes. The two cases were consolidated in the Northern District of Illinois.

2. The District Court dismissed all of the Flight Attendants’ claims with prejudice on SkyWest’s Rule 12(b)(6) motion. *See Hirst v. SkyWest*, 283 F. Supp. 684, 702 (N.D. Ill. 2017). As the bases of the dismissal, the District Court held that 1) Flight Attendants failed to adequately plead specific workweeks in which they were paid less than the federal minimum wage sufficient for their FLSA claims, and 2) all of the Flight Attendants remaining state wage law claims are foreclosed by the dormant Commerce Clause.

3. The Flight Attendants appealed the matter to the Seventh Circuit Court of Appeals. On December 12, 2018, the Seventh Circuit affirmed the dismissal of the FLSA claims, but reversed and remanded the dismissal of the state and local wage law claims. *See*

*Hirst v. SkyWest*, Nos. 17-3643, 17-3660, 2018 U.S. App. LEXIS 34926, at \*10 (7th Cir. Dec. 12, 2018).

4. SkyWest filed a petition for rehearing and for rehearing *en banc* on December 26, 2019. The Seventh Circuit denied that petition on January 11, 2019.

5. On February 15, 2019, SkyWest filed a Petition for Writ of Certiorari to this Court, presenting two questions: 1. Is a state law exempt from the Dormant Commerce Clause merely because it does not discriminate against interstate commerce? and 2. Is a state law exempt from the Dormant Commerce Clause merely because Congress has passed a federal statute saving the law from preemption under that statute? *See SkyWest, Inc., et al. v. Andrea Hirst, et al.*, Supreme Court of the United States, Case No. 18-1097.

#### **Reasons for Granting an Extension of Time**

The time to file a Petition for a Writ of Certiorari should be extended for thirty days for at least two reasons:

1. Undersigned counsel and his firm are currently preparing a brief in opposition to SkyWest's petition, and responding to issues raised in the amicus briefs of Airlines for America and American Trucking Associations, Inc., both filed in support of SkyWest to oppose the application of state wage and hour laws to flight attendants. The brief in opposition is due on April 24, 2019. Additional time is necessary for counsel to study the facts and the law in light of the arguments of amici to prepare a thorough brief in opposition for this Court's review. The press of matters before other courts, as well as the brief in opposition due in this case, make the existing deadline on April 11, 2019, difficult to meet. *See SkyWest, Inc., et al. v. Andrea Hirst, et al.*, Supreme Court of the United States, Case No. 18-

1097. The additional time will assist counsel in preparing a concise and well-researched petition that will be of maximum benefit to this Court.

2. The Court is likely to grant the petition. This petition raises significant concerns about the pleading requirements for a Fair Labor Standards Act minimum wage claim and whether the pleading requirements of overtime claims under FLSA, which have been litigated often, are applicable to minimum wage claims. Should SkyWest's petition—asking this Court find that state and local wage laws are inapplicable to flight attendants—be granted, it is even more critical that the correct pleading standard for minimum wage claims under the FLSA be correctly determined. The petition will demonstrate the extreme nature of the Seventh Circuit's approach to Flight Attendants' FLSA claims, and demonstrate why the minimum wage and overtime pleading standards are not interchangeable, especially when employees are paid based upon a hybrid of hourly and piece-rate wages. This case involves the exceptionally important question of whether employees are required plead their FLSA minimum wage claims with mathematical precision in light of FLSA's lack of provisions permitting employees access to their own records.

### **Conclusion**

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended for thirty days to and including May 11, 2019.

Respectfully submitted,

s/Gregory F. Coleman

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