No. 21-260

In The Supreme Court of the United States

VIRGIN AMERICA, INC., ET AL.,

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 OF GEORGIA, ALABAMA, ALASKA, ARKANSAS, FLORIDA, IDAHO, KENTUCKY, LOUISIANA, MISSISSIPPI, MONTANA, NEBRASKA, NORTH DAKOTA, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, AND WEST VIRGINIA AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Does the Airline Deregulation Act preempt generally applicable state laws that have a significant impact on airline prices, routes, and services, as this Court and four circuits have held, or does it preempt such laws only if they bind an airline to a particular price, route, or service, as the Ninth Circuit has held?

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INTERESTS OF *AMICI CURIAE*[1]

Over the past half-century, few advancements have done as much good for the States and their citizens as the arrival of affordable and reliable air travel. In 2016 alone, civil aviation produced $1.8 trillion in economic activity and supported 10.9 million jobs. FAA, *The Economic Impact of Civil Aviation on the U.S. Economy* 3 (Nov. 2020), https://perma.cc/ZPL5-UB4P. These economic benefits ripple across the country to communities large and small. Regional Airline Association (RAA), *Annual Report 2019* 12 (2019), https://perma.cc/2UB5-EUUR (airports in small communities create millions of jobs and produce $134 billion annually in economic activity for their regions, including tens of millions in wage and tax revenue); Bruce A. Blonigen & Anica D. Cristea, *Air Service and Urban Growth*, J. of Urban Econ. 86, 145 (2015) (increased air traffic leads to population growth, higher incomes, and more jobs).

The airline industry's status as an engine of economic growth stems from a single, major shift in federal policy: deregulation. Before Congress passed the Airline Deregulation Act in 1978, the federal government micromanaged every aspect of the industry. As a result, fares were "absurdly expensive," and most of the country had never been on a plane. Derek Thompson, *How Airline Ticket Prices Fell 50 Percent in 30 Years (And Why Nobody Noticed)*, The Atlantic (Feb. 28,

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[1] *Amici* have notified counsel for all parties of their intention to file this brief. Sup. Ct. Rules 37.2(a), 37.4.

2013), https://perma.cc/Y4YN-N5ES. The ADA freed the airline industry from that oppressive regulation by opting for "maximum reliance on competitive market forces and on actual and potential competition." *Northwest v. Ginsberg*, 572 U.S. 273, 280 (2014) (quoting 49 U.S.C. §§ 40101(a)(6), (12)(A)). And it worked. Since 1978, the price of flying has dropped by half, democratizing air travel and creating trillions of dollars in economic growth for state and local economies.

This unqualified success story is put in peril by the Ninth Circuit's decision and the circuit precedent it extends. The ADA's success came first from retiring the federal regulatory scheme that hampered innovation and competition. But deregulation has had staying power because Congress preempted any state "law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b). Those words "express a broad pre-emptive purpose" aimed at ensuring that heavy-handed state regulation, however well-meaning, would not keep this critical industry from taking off. *Morales v. Trans World Airlines*, 504 U.S. 374, 383 (1992).

But the Ninth Circuit held below that generally applicable laws are preempted by the ADA only if they "bind" the airline to a particular price, route, or service. That holding does not reconcile with the ADA's broad language. And that cramped construction of the ADA's preemptive scope risks resurrection of the very forces that kept air travel out of reach for the average person. The *amici* States have strong and obvious interests in

maintaining the benefits of airline deregulation for their citizens and write here to urge the Court to grant certiorari and reverse.

SUMMARY OF THE ARGUMENT

I. The Ninth Circuit's outlier decision will impose a crippling regulatory burden on airlines across the country. *First*, the decision threatens airlines with a patchwork of new state-specific regulations from California and elsewhere. The burden of scheduling wholly "off-duty" rest breaks for flight attendants traveling through California is bad enough. But the decision applies equally to other airline employees, including pilots. And, of course, if California's employment laws are enforceable against airlines, then the laws of every other state in the Ninth Circuit are, too. Plus, airlines must now account for a split among the courts of appeals over the scope of ADA preemption. When planning a flight from California to anywhere else in the country, airlines must now find, track, and comply with a shifting body of newly-applicable state laws. *Second*, this harsh regulatory burden will disproportionately harm the consumers and rural communities served by regional airlines and airports. Those airlines provide the primary access to air travel for most of the country, but they already struggle to turn a profit, hire enough staff, and provide punctual, affordable service. Providing mandatory off-duty rest breaks for their flight attendants (and other staff) will make a difficult situation nigh impossible. Regional airlines simply do not have enough staff, scheduling

flexibility, or room on their small planes to offer rest breaks to the entire flight crew every few hours.

II. This Court's precedent does not permit the Ninth Circuit's ruling. The ADA's preemptive language is broad: it applies to any state laws that are "related to" airline prices, routes, or services. This Court has interpreted that language to apply when the law in question has a "significant impact," and four circuits have faithfully followed that direction. The Ninth Circuit's rule is far different—only laws that "bind" the airline are preempted. That narrow view of ADA preemption disregards what this Court has interpreted "related to" to mean. If the Ninth Circuit had applied the correct test, the outcome would have been different. Flight attendants have mandatory duties while the plane is in the air, so flight attendants cannot go off duty every few hours while still keeping customers safe and happy. Airlines cannot offer on-the-ground breaks without scheduling fewer flights. And if airlines must hire and staff additional flight attendants to comply with the California rules, prices will inevitably rise and there will be fewer seats on the plane for paying customers. These burdens are undeniably significant.

ARGUMENT

I. The Ninth Circuit's decision will cause severe economic harm to state and local economies across the country.

The *amici* States and their citizens depend on faithful application of the ADA's preemption to prevent the serious harms caused by over-regulation. The ADA spurs innovation in the airline industry and drives down prices by precluding an oppressive regulatory landscape. *See Ginsberg*, 572 U.S. at 280. The ADA's preemption provision is central to that aim: it "ensured that the States would not undo federal deregulation with regulation of their own." *Morales*, 504 U.S. at 378. Freed from restrictive federal and state regulation, airfares dropped by half, capacity and passenger traffic tripled, and air travel became an engine for nationwide economic growth, in communities large and small. Thompson, *supra*; Shantay Piazza, *30 Years After Airline Deregulation*, OSU L. Magazine (2009), https://perma.cc/63MS-B5T5 (tripled capacity and traffic); RAA, *Annual Report 2019 supra,* 12.

Each of the first four circuits to address the issue have faithfully followed the text of the ADA and held that the ADA preempts state laws that significantly impact airline prices, routes, or services. The Ninth Circuit departed from this consensus. It held that the ADA does not preempt California's rest and meal break rules as applied to flight attendants because those rules do not "bind[] the carrier to a particular price, route, or service." Pet. App. 20a (quoting *Dilts v.*

Penske Logistics, 769 F.3d 637 (9th Cir. 2014)). Those rest and meal break rules—which rigidly require "off duty" breaks for employees every few hours—thus now apply to flight attendants who live or are based in California. But these flight attendants spend only a fraction of their time in California, and the decision's logic applies equally to transient employees just passing through California.

The breadth of the decision is striking, and it threatens widespread economic harm. The combination of disruption, delays, and price increases caused by applying California's break laws to the airline industry would cascade across the country, and the consequences would be especially painful for regional airlines—the exclusive providers of air travel for much of the country.

A. The imposition of California break requirements on flight crews will have cascading impacts on air travel nationwide.

The decision below applies California's break requirements to all flight attendants who live or are based in California. *See* Pet. App. 23a. There is nothing about the Ninth Circuit's reasoning, however, that would prevent the break requirements from applying to *all* flight attendants working even temporarily in California. *Id*. The court simply held that this kind of state law is not preempted by the ADA. *See* Pet. App. 21a. And California already covers transient

non-residents with some labor protections. *Id.* The implications are far-reaching.

Start with the most direct impacts. About three-quarters of Virgin America flights pass through both California and another state. Pet. App. 3a. And since every major airline has multiple flights through California each day, the break rules will introduce serious logistical challenges for every airline, and not just for their California flights. *See infra* at 18–20. At minimum, airlines would have to track not only which employees live or are based in California, but also how long they spend in California.

And the impact will extend well beyond this case. To begin with, the court of appeals' reasoning encompasses flight attendants who are merely passing through California, not just those who live or are based in California. The court of appeals "extrapolated" California labor law as applying to "nonresidents, as well as residents." Pet. App. 21a, 43a (citing *Sullivan v. Oracle Corp.*, 51 Cal. 4th 1191, 1197–98 (2011)) (cleaned up). So there is reason to believe that the break rules will apply to *all* flight attendants while in California, no matter where they live or are based. Unless these rules are preempted, airlines will have to provide off-duty breaks for all of those employees, too.

Nor is there any apparent reason why the court of appeals' decision would apply only to flight attendants. The next cases will inevitably be about the rest of the flight and ground crew. We know this because they have already been brought. *See Goldthorpe v. Cathay*

Pac. Airways Ltd., 279 F. Supp. 3d 1001, 1003 (N.D. Cal. 2018) (pilots); *Angeles v. U.S. Airways*, No. C 12-058600, 2013 WL 622032 (N.D. Cal. Feb. 19, 2013) (ground crews). So the decision below imposes regulatory uncertainty and related costs on airlines for those employees as well.

To make matters worse, if the ADA does not preempt the enforcement of California's break rules against the airline industry, then other states' laws will be enforceable, too. *See, e.g.*, *Rodriguez v. Peak Pressure Control*, No. 217CV00576JCHJFR, 2020 WL 3000414, at *2 (D.N.M. June 4, 2020) (applying New Mexico's overtime laws "to employment done in New Mexico, without reference to an employer's or employee's place of residence"); *O'Neill v. Mermaid Touring*, 968 F. Supp. 2d 572, 579 (S.D.N.Y. 2013) (similar); *Dow v. Casale*, 83 Mass. App. Ct. 751, 758 (2013) (applying the Massachusetts Wage Act to work done by a non-resident traveling salesman). Consider the implications. The Ninth Circuit's decision seems to apply California's break rules to work performed by *anyone* while in California. But the same rule presumably holds for Oregon, or Washington, or Nevada, so a flight attendant who lives in California might be covered by three or four states' laws during a day's work. Even assuming that an airline could find some way to simultaneously satisfy each state's break laws, compliance would be expensive and time-consuming. Airlines would have to parse each state's labor laws, then determine which state laws cover each flight attendant during each flight, and try to factor that information

into its schedules—while still building in flexibility for unexpected delays or diversions.

And there is yet more. The existence of the circuit split itself creates logistical difficulties for airlines. Because the standard for preemption differs across the country, *see* Pet. 16–21; *infra* at 16–17, airlines must track *that* shifting legal landscape, too. An airline planning flights from Boston to Atlanta, for instance, need not comply with Massachusetts or Georgia laws that would significantly impact the airline's prices, routes, or services. *See Bower v. Egyptair Airlines Co.*, 731 F.3d 85, 96 (1st Cir. 2013); *Branche v. Airtran Airways, Inc.*, 342 F.3d 1248, 1255 (11th Cir. 2003). When it comes to a flight from Atlanta to Los Angeles, the airline must apply two different standards to determine which state laws it must comply with. And the planning can get even more complicated if the flight ends in—or connects through—a circuit that has not clearly defined the scope of ADA preemption. In that scenario, airlines are all but required to comply with all state laws that fall short of "binding" the airline to a specific price, route, or service, lest the airline risk an expensive class action lawsuit like the one Virgin America is defending now.

The Ninth Circuit's opinion thus guarantees a patchwork of inconsistent standards across the country, which is exactly what Congress meant to prevent by including a broad preemptive provision in the ADA. *See Morales*, 504 U.S. at 384. Even setting aside the uncertainty produced by the circuit split, California's break rules will disrupt air traffic across the country if

applied to flight attendants who live in or are based out of California. *See infra* at 17–20. The compliance burdens magnify exponentially if airlines must also give pilots and ground crew the same breaks, plus comply with the employment law of every state in the Ninth Circuit. This Court's review is necessary to restore a uniform, nationwide standard for airline regulation.

B. The decision below will disproportionately harm the consumers and rural communities served by regional airlines and airports.

Most parts of the country depend on regional airports and airlines for air travel, but regional airlines already struggle to stay profitable. The Ninth Circuit's decision threatens to bury them with costly compliance burdens. The inevitable result would be fewer routes to small airports, higher rates for the remaining flights, and increased delays. The decision thus risks depriving entire communities of the economic and quality-of-life benefits that come with affordable and accessible air travel.

1. Most states receive a majority of their air service through regional airports and airlines. Regional carriers are the sole provider of air service to 63 percent of airports in the United States. RAA, *Regional Airlines Provide the Critical Link*, https://perma.cc/UB95-XX7Q. Twenty-nine states receive at least fifty percent of their air service from regional airlines, and

fifteen states receive more than seventy-five percent. RAA, *Annual Report 2020* 64–65 (2020), https://perma.cc/H3Q6-SGD6.

These regional airports and airlines provide irreplaceable economic benefits. In the fifteen states that depend almost exclusively on regional airlines for air service, the aviation industry generated $67.1 billion in economic activity in 2016. *See The Economic Impact of Civil Aviation on the U.S. Economy*, *supra*, at 10; *see also* William Swelbar, *Will Regional Airlines Survive the COVID-19 Market?*, Brink News (Aug. 12, 2020), https://perma.cc/AKL5-6NS2 (explaining that "small community air service contributes more than $130 billion in economic activity every year"). Put simply, regional air service provides huge economic benefits for small communities. Douglas Jacobson, *The Economic Impact of the Airline Industry in the South*, The Council of State Gov'ts (May 2004), https://perma.cc/XZM9-KBVG. And when communities lose this link to the national and global economy—from dropped routes or shuttered airports—economic growth stagnates. *See* Greg Pecorara & Ed Bolen, *General Aviation and Smaller Airports Critical Now More Than Ever*, Clarion Ledger (Oct. 2, 2020), https://perma.cc/B9UY-YJ48; Hugo Martin, *As airlines post big profits, small communities lose service*, LA Times (Jan. 22, 2018), https://perma.cc/6YRH-GF45.

2. These regional carriers and airports are likely to be hit hardest by the costs that the court of appeals' rule will impose, and that could decimate the many communities that rely on them for air travel.

Regional airlines already operate on a knife's edge. They have fewer resources, administrative staff, and pilots. RAA Panel Amicus Br., Black Decl. ¶¶5, 8. "Their profits are shrinking, costs are rising, and they're having trouble finding enough pilots to work for the salaries they pay." David Koenig, *Regional airlines not sharing in majors' success*, AP News (Sept. 10, 2014), https://perma.cc/M7V8-QSD2. Since 2007, ninety-one airports nationwide have closed. RAA Panel Amicus Br., Black Decl. ¶9. And aviation experts predict more failures and route cancellations. Koenig, *supra*.

Applying a layer of state regulations like California's will only increase the pressure on regional airlines. Regional flights are (by definition) short. So, even assuming in-flight breaks are permitted by federal law and would comply with California law (*but see infra* at 17–18 & n.2), there will typically not be enough time for flight attendants to take an in-flight break while still performing their assigned duties. Regional airlines might instead have to staff an extra flight crew to comply with a break rule like California's. Those extra employees take up seats on small-capacity planes, which will displace paying customers and threaten the profitability of regional airlines that operate on razor-thin margins. *See* Iowa DOT, *Iowa Air Service Study* 2-34 (Apr. 2008), https://perma.cc/4UXR-EHYU. Since regional airlines already struggle to break even, Koenig, *supra*, these substantial and duplicative costs, *see* Doc. 120 at 4–5 (estimating break rules would cost Virgin America $1,950,925 annually in extra salary

alone), would inevitably require higher rates or less in-flight service.

And this all assumes that the airlines can actually hire more staff. But that is a problem too: regional airlines struggle to find enough pilots. In fact, some smaller routes have already been canceled for lack of staff. *See* RAA, *Valuable: Air Service to Small Communities Generates Significant Economic Activity* (2019), https://perma.cc/3LRB-ZX98; *see also* Ethan S. Klapper, *Effects of the Pilot Shortage on the Regional Airline Industry: A 2023 Forecast*, Embry-Riddle Aeronautical Univ. 1 (2019), https://perma.cc/N59M-PHBK (predicting a "substantial . . . regional pilot shortage" that would "have devastating effects for the overall U.S. airline industry, and the broader U.S. economy"). If airlines must hire additional pilots to accommodate California's break rules, more cancellations will follow.

Breaks on the ground would present extra difficulties for regional airlines, too. Regional aircraft visit up to eight cities on an average day, more than national airlines, RAA Panel Amicus Br., Black Decl. ¶7, because regional flights typically connect travelers from smaller communities to large "hub" airports, where they continue their journey. *Iowa Air Service Study*, *supra*, 2-27; Lauren Zumbach, *Frequent travelers assume regional flights are more likely to get canceled, Are they really?* Chicago Tribune (Mar. 26, 2019), https://perma.cc/E3K6-CWJ8. Regional airlines have tight windows in which to deliver these passengers so they can make their connections, and even short delays will add up over the course of the day. *Id*.

To make the logistics work, regional airlines would either have to fly fewer connections (thus limiting air access for some customers) or hire more staff. Either answer will significantly impact rates and routes and harm consumers in smaller communities.

In short, if the Ninth Circuit's decision stands, the story does not end well for regional airlines and the hundreds of millions of people they serve. Even if major airlines can adapt—still at the expense of consumers, who will have to pay more and get less in return—regional airlines may well struggle to stay in business at all. At the very least, the decision will mean fewer regional flights, higher prices, and more delays, erasing substantial gains from deregulation with a single opinion.

II. The Ninth Circuit's decision conflicts with this Court's ADA holdings and causes a circuit split.

That outcome seems wrong, and it is. The Ninth Circuit's decision does not square with this Court's construction of the ADA and diverges from the other courts of appeals to address the question. This Court should review and reverse.

1. This Court has explained several times that the ADA's preemptive sweep in § 41713(b) is "broad"—it covers laws that are even just "related to" the prices, routes, or services of an air carrier. *Morales*, 504 U.S. at 383; *see also Ginsberg*, 572 U.S. at 284; *Am. Airlines v. Wolens*, 513 U.S. 219, 223 (1995). The Court has

interpreted that language to mean "[s]tate enforcement actions having a *connection with or reference to* airline 'rates, routes, or services' are pre-empted." *Id*. at 384 (emphasis added).

Under this test, "what is important is the effect of a state law, regulation, or provision, not its form." *Ginsberg*, 572 U.S. at 283 (cleaned up). Some state actions, like gambling or prostitution bans, "may affect airline fares in too tenuous, remote, or peripheral a manner to have pre-emptive effect." *Morales*, 504 U.S. at 390 (cleaned up). But laws that have a "significant impact" on the fares airlines charge, the routes they travel, or the services they provide are preempted, *id.*, even when that impact could be described as "indirect," *id*. at 386. As a result, even generally applicable state laws that ban deceptive advertising, *id.* at 388, or allow private lawsuits for consumer fraud, *Wolens*, 513 U.S. at 228, or breach of implied covenants, *Ginsberg*, 572 U.S. at 284, are preempted as applied to airlines because they have "the forbidden significant effect" on prices, routes or services. *Morales*, 504 U.S. at 388 (quoting *Shaw v. Delta Airlines*, 463 U.S. 85, 100 n.1 (1983)).

The Ninth Circuit did not merely disagree that applying California's break rules to flight attendants would have a "significant impact" on airline prices, routes, or services. The court declined even to apply that test, despite its Supreme Court pedigree, *see Morales*, 504 U.S. at 388. In its place, with little analysis, the court relied on *Dilts v. Penske Logistics*, 769 F.3d 637 (9th Cir. 2014), which held that the Federal Aviation Administration Authorization Act—a law that

borrowed the ADA's preemption language—did not preempt break rules as applied to *trucking companies*. *See* Pet. App. 20a. Under *Dilts*, the ADA preempts state law only if the law "*binds* the carrier to a particular price, route, or service." *Id.*

That narrow test cannot be squared with this Court's construction of the ADA. *See Massachusetts Delivery Ass'n v. Coakley*, 769 F.3d 11, 20 (1st Cir. 2014) (refusing "to adopt [*Dilt*'s] categorical rule"); *see also California Trucking Ass'n v. Bonta*, No. 20-55106, 2021 WL 1656283, at *14–19 (9th Cir. Apr. 28, 2021) (Bennett, J., dissenting) (explaining why the *Dilts* line of cases contradict Supreme Court precedent). This Court has directly rejected the argument that the ADA preempts only state enforcement actions that "actually prescribe rates, routes, or services" because that would "read[] the words 'relating to' out of the statute." *Morales*, 504 U.S. at 385. And asking whether a state law "binds" a carrier to a particular rate, route, or service is no different than asking whether a law *prescribes* it. Nor does it matter that the break rules here are "normal background rules for almost *all* employers doing business in the state of California," *Dilts*, 769 F.3d at 647. This Court has made clear that the ADA preempts laws of general applicability, too. *Morales*, 504 U.S. at 386 (calling a proposed exception for generally applicable laws "utterly irrational"). Given all that, it should be no surprise that other courts of appeals have rejected the Ninth Circuit's "binds to" test. *See Bower*, 731 F.3d at 96 (1st Cir. 2013) (asking only whether the challenged law had a "significant impact"); *Witty v.*

Delta Air Lines, Inc., 366 F.3d 380, 383 (5th Cir. 2004) (same); *Branche*, 342 F.3d at 1255 (11th Cir. 2003) (same); *Travel All Over the World v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1431 (7th Cir. 1996) (same).

In short, *Dilts* conflicts with Supreme Court precedent construing the ADA, and the Ninth Circuit's decision applying it here does too. The Court should grant certiorari to clear this direct obstacle to proper application of the ADA's text.

2. If the Ninth Circuit had applied the right test, the result would have been different. California's break requirements will undeniably have a "significant impact" on airline prices, routes, and services if applied to flight attendants. Airlines could theoretically schedule these mandated breaks either while in flight or on the ground between flights. But either option would significantly affect prices, routes, or services.

Take in-flight breaks first. California law generally prohibits employees from being on duty at all—not even "on call"—during their breaks. *See* Cal. Code Regs. tit. 8, § 11090(11)–(12); *Augustus v. ABM Sec. Servs.*, 2 Cal. 5th 257, 269 (2016). But FAA regulations generally contemplate that flight attendants will remain on duty for the whole flight to handle both routine and emergency safety duties—including medical emergencies, in-flight fires, and evacuations. *Flight Attendant Duty Period Limitations and Rest Requirements*, 59 Fed. Reg. 42,974-01, 42,974 (Aug. 19, 1994). And federal law requires the minimum contingent of flight attendants to be on duty the entire time

the aircraft is operating. 14 C.F.R. § 121.385(a). These requirements alone seem to preclude in-flight breaks altogether. *See* U.S. Panel Amicus Br. at 19–20.

At minimum, meeting both federal law and California's break rules would require staffing many flights with extra flight attendants so they could take turns going "off duty."[2] The result would be higher prices and fewer seats for paying customers. *See* Doc. 120 at 4–5 (estimating the break rules will cost Virgin $1,950,925 annually just in additional salary); *Iowa Air Service Study*, *supra*, 2-34 (calculating that airlines must already have a paying customer in about 80 percent of their seats on every flight to break even). Combined with already-slim margins, those higher costs and lower revenues would significantly impact prices. *Id*. at 2-40 (explaining that escalating operating costs have forced airlines to "increase[] fares, and . . . increase their average load factors for each departing flight"). And those cost pressures likely would make some routes unprofitable, thus impacting routes and services as well. *Id*. at 2-31–32 (warning that rising operating costs have "reduced service frequencies" at

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[2] Even under such an arrangement, it is hard to see how airlines could ensure that off-duty flight attendants would be left alone for the full break, *see* Cal. Code Regs. tit. 8, § 11090(11)(C), (E) (requiring a "suitable place" for breaks), since flight attendants on break in jump seats would be fully visible, in uniform, and steps away from passengers. And allowing off-duty attendants to refuse to help passengers in need—even those with health or safety issues—would significantly impact airline "services." Scott McCartney, *Imagine Not Hating Flying Coach*, WSJ (Oct. 16, 2019), https://perma.cc/36SU-E3WM.

some airports and put "commercial air service" at risk for some communities entirely); *Valuable: Air Service to Small Communities*, *supra* (explaining that "mainline airlines intensely focused on profitability" may drop service to smaller markets, especially if there are staffing concerns).

Between-flight breaks would significantly impact prices, routes, and services, too. Commercial aircraft operate under tight, carefully coordinated schedules that must account for many factors, including weather, congestion in airspace and at airports, mechanical failures, and connection times. Vinayak Deshpande & Mazhar Arıkan, *The Impact of Airline Flight Schedules on Flight Delays*, Mfg. & Serv. Operations Mgmt. 14(3), pp. 423–24 (2012). But delays happen anyway, usually from bad weather or congested airports. And because airlines share gates, runways, and airspace, delays at even one airport will have "significant ramifications for the rest of the national airspace system." GAO*, Initiatives to Reduce Flight Delays and Enhance Capacity are Ongoing but Challenges Remain* 1 (May 26, 2005), https://perma.cc/G5RN-YY3T.

On-the-ground breaks for California-based flight attendants would make this logistical challenge much harder. An airline might need to shift crew schedules around to accommodate breaks. But flight schedules are driven by inflexible factors including gate availability, aircraft availability, takeoff and landing slots, passenger demand, weather, mechanical failures, connection times, and air traffic congestion. Deshpande &

Arıkan, *supra*. So incorporating rest breaks would introduce severe disruptions into the schedule for not just California flights, but the rest of the country, too.

If airlines instead hire and staff additional sets of flight attendants for California flights, that will also impact prices and services. Flight attendants typically fly a string of connected flights that begin and end (often days later) in the same city. Xugang Ye, *Airlines' Crew Pairing Optimization: A Brief Review*, Dep't of Applied Sciences and Mathematics, Johns Hopkins Univ. 1 (2007). So if an airline swaps out flight attendants for a break, the airline will have to ferry both flight attendants to their next destination. Airlines would thus be paying two flight attendants, and incurring unnecessary transportation costs, to do the work of just one.

Finally, these impacts only account for California-based flight attendants. But as explained above, the decision's logic extends to any flight attendants while their flight is "in" California, to other airline employees (e.g., pilots), *and* to other states that have similar or even conflicting break requirements.

All together, the Ninth Circuit's decision has breathtaking potential to disrupt air travel. Applying California's break rules to the airline industry will significantly impact rates, routes, and services not only in California, but across the entire country—ultimately to the detriment of consumers, who will bear the burden of higher prices and less reliable air

travel. Those rules are preempted under the ADA's express terms.

CONCLUSION

Congress passed the ADA to free airlines from burdensome regulation and unleash the free market. But the Ninth Circuit's decision reinstitutes the burdensome web of state regulation that spurred Congress to action in the first place. This Court should grant the petition for certiorari.

Respectfully submitted,

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