

No. 21-260

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In the Supreme Court of the United States

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

v.

JULIA BERNSTEIN, ET AL.,  
RESPONDENTS

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT*

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**SUPPLEMENTAL BRIEF FOR PETITIONERS**

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## SUPPLEMENTAL BRIEF FOR PETITIONERS

Since Petitioners responded to the United States’ invitation brief on June 7, there have been three developments that underscore the importance of granting cert in this case. *First*, labor shortages have begun to force airlines to cancel regional routes altogether. *Second*, labor shortages also forced airlines to delay or cancel tens of thousands of flights nationwide this past weekend alone. Those labor shortages exacerbate the significant impact of California’s meal-and-rest-break laws on airline prices, routes, and services, and they show how severe the consequences will be if this Court lets the Ninth Circuit’s decision stand. *Third*, the Transportation Secretary’s response to the flight disruptions shows that the government is commanding the airlines to fix a problem that its cert recommendation in this case will only aggravate. These developments emphasize the acute need for this Court’s review.

1. Recent events show that labor shortages are forcing airlines to cancel regional routes. American Airlines just announced that it will end all service to at least three regional cities because of labor shortages. See Bailey Schulz & Zach Wichter, *American Airlines will end service to four cities in September citing pilot shortage*, USA Today (June 21, 2022), <https://tinyurl.com/2zsyzrjh> (“We have 100 regional aircraft on the ground that we want to fly but can’t due to lack of regional pilots.”). That development confirms that state-mandated duty-free breaks pose an existential threat to regional routes. As Petitioners and their amici have warned, applying California’s meal-and-rest-break laws to the airline industry will force carriers to cancel routes to underserved cities. Airlines won’t be able to add flight crew, both because

flight crew aren't available and because regional routes typically operate on razor-thin margins. *See* Suppl. Br. 6-7; Reply 11-12; Regional Airline Ass'n Amicus Br. 5-11, 15-17; Airlines for America Amicus Br. 13-15. Indeed, if a major carrier like American is already being forced to cancel routes due to labor shortages, there's little hope for regional airlines subjected to the Ninth Circuit's erroneous decision, which held that airlines must add flight crew to comply with California law. *See* App. 18a; Pet. 28.

2. The labor shortages are also forcing airlines to cancel or delay flights on existing routes, just as Petitioners foretold. *See* Suppl. Br. 6-7. Last weekend alone, airlines had to cancel or delay tens of thousands of flights because of nationwide staff shortages. *See, e.g.,* Jyoti Mann, *Thousands of flights cancelled or delayed as labor shortages trigger more travel chaos*, Business Insider (June 19, 2022), <https://tinyurl.com/ycy4r6f3>; Jake Epstein, *US airlines have canceled or delayed more than 35,000 flights since Thursday as travel woes continue to pile on*, Yahoo (June 20, 2022), <https://tinyurl.com/522vk742>; Julianne McShane, *Holiday weekend sees massive amount of flight cancellations*, CNBC (June 19, 2022), <https://tinyurl.com/2p9y3ten>. And more cancellations are on the horizon. Delta Air Lines recently announced that it will cancel roughly 100 departures every day between July and August. *See* Rob Wile, *Delta pilots write open letter to customers as airline industry struggles to keep up with traveler demand*, NBC News (June 16, 2022), <https://tinyurl.com/339dxk45>. And things will only get worse, because the labor shortages will last through 2023, at least. Joann Muller, *Airline staff shortages expected to last into 2023*, Axios (June 19, 2022), <https://tinyurl.com/883jjxu3>;

see also Anurag Kotoky et al., *Airline staff shortages are threatening to ruin your summer holidays—and it could take 12 months before they get better*, *Fortune* (June 17, 2022), <https://tinyurl.com/4s26xds6>.

To be sure, these problems go beyond California’s meal-and-rest-break laws. But the point is that California’s state-mandated breaks will make an already difficult situation completely unmanageable. The traveling public—and our economy—will pay the price. Those compounding problems make the need for this Court’s review particularly acute.

3. The government’s approach to these recent developments only proves that this Court shouldn’t let the government turn the legal issue in this case into a political one. The Transportation Secretary’s response to the flight cancellations has been to scold the airlines to do better. See Alison Sider, *Buttigieg to Airlines: Be Prepared for a Busy Summer Travel Season*, *The Wall Street Journal* (June 16, 2022), <https://tinyurl.com/knkrecmt>. But training pilots takes three to five years, not stern warnings from the Department of Transportation. See, e.g., *Regional Airline Ass’n Amicus Br.* 16 n.7. So much for the summit the government promised in *recognizing* the widespread disruption that denying cert in this case would cause. U.S. Br. 15 n.\*. The Ninth Circuit’s rule in this case will only exacerbate the nationwide pilot shortage that the government has commanded the airlines to solve.

The Court should reject the government’s invitation to abdicate its responsibility to decide the core legal issue in this case. That invitation is especially inappropriate in an Airline Deregulation Act case. As the late Senator Edward M. Kennedy put it, the ADA

“is the result of a clear consensus among legislators, executive branch officials, consumer groups, airline regulators, economists, and many in the business community that rigid Federal economic regulation of the airlines tends to increase prices, foster inefficiency in operations, and perpetuate excessive Government control, bureaucracy, and redtape.” 124 Cong. Rec. S18798 (daily ed. Oct. 14, 1978). Lawmakers, industry leaders, and consumers all expected the law to deliver “lower fares and more efficient service,” *id.*, and for decades, it has. But unless this Court intervenes, the Ninth Circuit’s decision threatens to upset the express policy of “the most important piece of regulatory reform legislation ever acted upon.” *Id.*

**CONCLUSION**

The petition should be granted.

Respectfully submitted,

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