No. 19-

In the Supreme Court of the United States

ROBIN BRINDLE, KATHLEEN BROWN, SANDRA CARTER, MARCIE LAPORTE, AND KELVIN RAMIREZ,

Petitioners,

V.

DELTA AIRLINES, INC., AND THE RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING,

Respondents.

On Petition for a Writ of Certiorari to the Rhode Island Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the preemption provision of the Airline Deregulation Act of 1978, 49 U.S.C. § 41713(b)(1), exempts airlines from state and local wage regulation.

RELATED PROCEEDINGS

Rhode Island Supreme Court:

Brindle et al. v. Rhode Island Department of Labor and Training, by and through its Director, et al., Nos. 2016-324-M.P., 2016-325-M.P., 2016-326-M.P., 2016-328-M.P., 2016-329-M.P. (June 18, 2019)

Rhode Island Superior Court, Providence County:

Brown et al. v. Delta Airlines, Inc., No. PC-2012-3075 (Oct. 3, 2016)

Ramirez v. Rhode Island Department of Labor and Training, Nos. PC-2012-3071, PC-2012-3072, PC-2012-3073, PC-2012-3074, PC-2012-3075, PC-2012-3076 (Sept. 3, 2014)

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PETITION FOR A WRIT OF CERTIORARI

Robin Brindle, Kathleen Brown, Sandra Carter, Marcie LaPorte, and Kelvin Ramirez respectfully petition for a writ of certiorari to review the judgment of the Rhode Island Supreme Court.

OPINIONS BELOW

The opinion of the Rhode Island Supreme Court (App. 1a) is published at 211 A.3d 930. The 2016 opinion of the Rhode Island Superior Court (App. 16a) is available at 2016 WL 5865984. The 2014 opinion of the Rhode Island Superior Court (App. 38a) is available at 2014 WL 4412618.

JURISDICTION

The judgment of the Rhode Island Supreme Court was entered on June 18, 2019. This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATUTES INVOLVED

R.I. Gen. Laws § 25-3-3(a) provides in relevant part: "Work performed by employees on Sundays and holidays must be paid for at least one and one-half (1 ½) times the normal rate of pay for the work performed."

49 U.S.C. § 41713(b)(1) provides in relevant part: "[A] State … may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier."

STATEMENT

Until this case, the federal courts of appeals and state supreme courts were unanimous in holding that the Airline Deregulation Act of 1978 does not preempt state and local wage regulation. Airlines, like other employers, have been subject to state and local laws governing the wages they pay their employees.

The Rhode Island Supreme Court has now broken with this consensus. In the decision below, the court held that the ADA exempts Delta Airlines from a state law requiring employers to pay time and a half for work on Sundays and holidays, on the ground that compliance with the law could reduce the number of employees Delta hires.

This Court should grant certiorari. In the forty-plus years since it was enacted, the ADA has never been thought to preempt state and local wage regulation. In the ADA, Congress deregulated the relationship between airlines and their *customers*, not the relationship between airlines and their *employees*.

1. Petitioners Robin Brindle, Kathleen Brown, Sandra Carter, Marcie LaPorte, and Kelvin Ramirez were customer service agents for Delta Airlines. App. 2a. They worked at the T.F. Green Airport in Warwick, Rhode Island, just outside Providence. *Id.*

Under Rhode Island law, employers must pay one and a half times an employee's normal wage for work on Sundays and holidays. R.I. Gen. Laws § 25-3-3(a). In 2011, petitioners filed complaints with the Rhode Island Department of Labor and Training in which they alleged that Delta had violated this statute by

failing to pay time and a half for the hours they worked on Sundays and holidays. App. 2a. Delta conceded that it not complied with the state statute. Delta argued instead that the statute was preempted by the Airline Deregulation Act of 1978. *Id.*

The Department dismissed the complaints without taking any testimony, on the ground that the statute is preempted by the ADA. *Id.* at 3a, 66a-70a. The Rhode Island Superior Court reversed and remanded to the Department for factfinding. *Id.* at 3a, 38a-58a.

On remand, the Department heard the testimony of two witnesses. The President of the Rhode Island Airport Corporation testified that if airlines faced higher labor costs, the airport would be less competitive. *Id.* at 4a. Delta's station manager at the airport testified that higher wages could cause Delta to reduce staffing at the airport. *Id.* at 4a-5a. The Department once again dismissed the complaints on the ground that the statute is preempted by the ADA. *Id.* at 5a, 59a-65a.

The Superior Court affirmed. *Id.* at 6a, 16a-37a. The court reasoned that the time-and-a-half statute "attempts to regulate the work force on Sundays and holidays, which undoubtedly affects the competitive market force of airlines." *Id.* at 30a. The court concluded that "a state law is preempted by the ADA when it directly substitutes the state's own policies for competitive market forces." *Id.* at 31a.

The Rhode Island Supreme Court affirmed. *Id.* at 1a-15a.

The court observed that the ADA preempts state laws "related to a price, route, or service of an air

carrier." *Id.* at 8a (quoting 49 U.S.C. § 41713(b)(1)). After summarizing this Court's cases interpreting this provision, App. 8a-12a, the court noted that a state law is not preempted merely because it imposes costs on airlines. *Id.* at 12a. As the court explained, "were preemption to apply to a state law solely in that circumstance, preemption 'would effectively exempt airlines from state taxes, state lawsuits of many kinds, and perhaps most other state regulation of any consequence.'" *Id.* (quoting *DiFiore v. American Airlines, Inc.*, 646 F.3d 81, 89 (1st Cir. 2011)).

The court nevertheless held that the ADA preempts the Rhode Island time-and-a-half statute, because "Delta has demonstrated that compliance with [the statute] goes far beyond a mere increase in labor costs." App. 13a. Paying time and a half "could impact the services that Delta and other airlines provide on Sundays and holidays," by causing them to operate with a smaller staff. *Id.* at 14a. A reduced staff on Sundays and holidays "would make Delta less competitive in the Rhode Island market." *Id.* at 15a. The court concluded that the statute is preempted by the ADA because it "does in fact 'relate to' the services provided by Delta." *Id.*

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari. Because of the decision below, there is now a conflict among the lower courts over whether the Airline Deregulation Act preempts state and local wage regulation. The decision below is clearly incorrect. The ADA cannot preempt Rhode Island's time-and-a-half statute without also preempting *all* state and local laws that

could raise an airline's labor costs, including workers compensation laws, workplace safety laws, payroll and income taxes, and the like. The ADA was intended to ensure that airlines compete for customers, not to give airlines a free pass from state employment regulation.

I. The decision below creates a lower court conflict on whether the Airline Deregulation Act preempts state and local wage regulation.

The Airline Deregulation Act preempts any state law "related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1). The phrase "related to" obviously has a broad reach, but "the breadth of the words 'related to' does not mean the sky is the limit." *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260 (2013). As Justice Scalia observed of the same preemptive phrase in ERISA, "everything is related to everything else," so if the phrase is read with a wooden literalism, the result will be "a degree of preemption that no sensible person could have intended." *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 335-36 (1997) (Scalia, J., concurring).

Until this case, the federal courts of appeals and state supreme courts unanimously held that the Airline Deregulation Act does not preempt state and local wage regulation. As the Seventh Circuit summarized the cases, airlines' "labor inputs are affected by a network of labor laws, including minimum wage laws, worker-safety laws, anti-discrimination laws, and pension regulations. … Yet no one thinks that the ADA or the FAAAA preempts these and the

many comparable state laws." *S.C. Johnson & Son, Inc. v. Transp. Corp. of America, Inc.*, 697 F.3d 544, 558 (7th Cir. 2012).[1]

For example, in *Filo Foods, LLC v. City of SeaTac*, 357 P.3d 1040, 1057-59 (Wash. 2015), the Washington Supreme Court held that the ADA does not preempt a city's minimum wage ordinance. The court observed that "the ADA does not preempt generally applicable laws that regulate how an airline behaves as an employer, even though the law indirectly affects the airline's prices and services." *Id.* at 1058. "The fact that [the ordinance] may impose costs on airlines and therefore affect fares is inconsequential." *Id.*

Likewise, in *Amerijet Int'l, Inc. v. Miami-Dade Cty.*, 627 F. Appx. 744, 747-51 (11th Cir. 2015) (per curiam), the Eleventh Circuit held that the ADA does not preempt Miami-Dade County's minimum wage ordinance. The Eleventh Circuit rejected the air carrier's argument that the ordinance was "related to" its services because paying higher wages would force it to charge its customers higher prices. *Id.* at 751. "In this regard," the court concluded, the minimum wage ordinance "is no different from myriad state laws in areas traditionally subject to local regulation, which Congress could not possibly have intended to eliminate." *Id.* (citation and internal quotation marks omitted). The Eleventh Circuit con-

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[1] The Federal Aviation Administration Authorization Act of 1994 includes a preemption provision, 49 U.S.C. § 14501(c)(1), that was copied from the ADA's preemption provision and was intended to have the identical scope. The two provisions are therefore interpreted identically. *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008).

sidered this point so obvious that it did not even publish the opinion.

Likewise, in *People ex rel. Harris v. Pac Anchor Transp., Inc.*, 329 P.3d 180, 185-90 (Cal. 2014), the California Supreme Court held that the FAAAA does not preempt a variety of state employment statutes, including a minimum wage law. The court explained that "the FAAAA does not preempt generally applicable employment laws that affect prices, routes, and services." *Id.* at 188.

Likewise, in *Lupian v. Joseph Cory Holdings LLC*, 905 F.3d 127, 135-38 (3d Cir. 2018), the Third Chircuit held that the FAAAA does not preempt a state statute barring unauthorized deductions from employees' paychecks. "Wage laws like" the one at issue "are a prime example of an area of traditional state regulation," the court observed. *Id.* at 136. The Third Circuit held that the state statute "is steps away from the type of regulation the FAAAA's preemption clause sought to prohibit." *Id. See also Bedoya v. American Eagle Express Inc.*, 914 F.3d 812, 824 (3d Cir. 2019), pet. for cert. filed Apr. 29, 2019 (No. 18-1382) (holding that the FAAAA does not preempt state law governing whether workers are classified as employees or independent contractors, and noting that "[m]any of our sister circuits have similarly held that the FAAAA and ADA do not preempt state employment laws," *id.* at 820); *Gary v. Air Group, Inc.*, 397 F.3d 183, 189 (3d Cir. 2005) (holding that the ADA does not preempt a state statute protecting employee whistleblowers, because an employee's suit under the statute is "comparable to a garden variety employment claim").

Likewise, in *Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1055 (7th Cir. 2016), the Seventh Circuit held that the FAAAA does not preempt an Illinois statute prohibiting an employer from taking unauthorized deductions from its employees' wages. The "relevant distinction," the Seventh Circuit held, is between "state laws that affect the carrier's relationship with its customers and those that affect the carrier's relationship with its workforce." *Id.* at 1054.

Likewise, in *Californians for Safe and Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1189 (9th Cir. 1998), the Ninth Circuit held that the FAAAA does not preempt a California statute requiring employers to pay prevailing wages. Although the statute caused the employer to increase its prices by 25% and to alter the services it offered customers, the court held that the statute's effect on prices and services was "no more than indirect, remote, and tenuous." *Id. See also Allied Concrete and Supply Co. v. Baker*, 904 F.3d 1054, 1068 (9th Cir. 2018) (same); *Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 647 (9th Cir. 2014) (holding that the FAAAA does not preempt California statutes requiring employers to give their employees periodic meal and rest breaks, because such statutes "are normal background rules for almost *all* employers doing business in the state of California"); *California Trucking Ass'n v. Su*, 903 F.3d 953, 961-67 (9th Cir. 2018) (holding that the FAAAA does not preempt state law governing whether workers are independent contractors).

The Eighth Circuit has reached the same conclusion in dicta. In *Watson v. Air Methods Corp.*, 870 F.3d 812, 818-20 (8th Cir. 2017) (en banc), the court held that the ADA does not preempt Missouri's

common law of wrongful discharge. "[A] wrongful-discharge claim is akin to claims arising under background employment laws that are not expressly preempted by the ADA," the unanimous en banc court explained. *Id.* at 818. "Laws regulating minimum wages, worker safety, and discrimination based on race, sex, or age may affect a carrier's costs, but they generally operate at a level one or more steps away from the moment at which the firm offers its customer a service for a particular price." *Id.* at 818-19 (citation and internal quotation marks omitted).

The federal courts of appeals and state supreme courts were thus unanimous until the decision below. The lower courts "drew the preemption 'dividing line' between state laws that regulate 'how [a] service is performed' (preempted) and those that regulate how an airline behaves as an employer or proprietor (not preempted)." *Tobin v. Federal Express Corp.*, 775 F.3d 448, 456 (1st Cir. 2014) (quoting *DiFiore v. American Airlines, Inc.*, 646 F.3d 81, 87-88 (1st Cir. 2011)). Thus in *DiFiore*, the First Circuit held that the ADA preempts a state law regulating the collection of service charges from customers because the law "directly regulates how an airline service is performed and how its price is displayed to customers—not merely how the airline behaves as an employer." *Id.* at 88. The court made clear that "[w]e do not endorse American's view that state regulation is preempted whenever it imposes costs on airlines." *Id.* at 89. *See also Schwann v. FedEx Ground Package Sys., Inc.*, 813 F.3d 429, 438-39 (1st Cir. 2016) (holding that the FAAAA preempts a state law with the effect of requiring FedEx to use em-

ployees rather than independent contractors, because the law directly regulates how shipping service is performed rather than merely increasing the cost of labor).

The decision below upsets this consensus. The Rhode Island Supreme Court held that the ADA preempts the state's time-and-a-half law because paying higher wages "could impact the services that Delta and other airlines provide on Sundays and holidays," App. 14a, and "would make Delta less competitive in the Rhode Island market," *id.* at 15a. Every other court that has addressed this issue would have reached the opposite conclusion.

II. The decision below is wrong.

Review is also warranted because the decision below is clearly wrong.

Before 1978, airlines were largely insulated from price competition, so fares were very high. The purpose of the Airline Deregulation Act was to benefit consumers by making the airlines compete on the basis of price. The ADA achieved that goal. Airfares declined dramatically. *See* Stephen G. Breyer, *Two Models of Regulatory Reform*, 34 S.C.L. Rev. 629, 630-39 (1983).

The ADA's preemption provision was intended "[t]o ensure that the States would not undo federal deregulation with regulation of their own." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992). To that end, the ADA bars states from enacting any law "related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1). Congress made clear, by enacting this "broad pre-emptive" provision, *Morales*, 504 U.S. at 383, that airlines must compete

for customers in a free market. "The ADA is based on the view that the best interests of airline passengers are most effectively promoted, in the main, by allowing the free market to operate." *Northwest, Inc. v. Ginsberg*, 572 U.S. 273, 288 (2014).

The states thus may not regulate the methods by which airlines advertise their fares, *Morales*, 504 U.S. at 387-90, or the terms of the frequent flyer programs airlines use to retain passengers, *Northwest*, 572 U.S. at 285-88; *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 228 (1995). When airlines compete for customers, the ADA's preemption provision leaves the playing field "largely to the airlines themselves, and not at all to States." *Id.*

The ADA deregulated the relationship between airlines and their *customers*; it did not deregulate the relationship between airlines and their *employees*. The ADA was not meant to exempt airlines from state and local wage regulation. That sort of exemption has nothing to do with achieving the ADA's goal of making airlines compete on airfares.

In the decision below, the Rhode Island Supreme Court reasoned that if state law requires an airline to pay a higher wage, the airline might hire fewer employees, which would affect the level of service the airline would offer. On this reasoning the state law would be "related to" the airline's "service." App. 15a.

But this Court has already rejected such wooden reasoning. The preemption provision in ERISA, like that in the ADA, preempts state laws that "relate to" an employee benefits plan. 29 U.S.C. § 1144(a). Yet the Court held that ERISA does not preempt California's prevailing wage law, despite the California law's clear effect on the cost of labor. *California Div.*

of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc., 519 U.S. 316, 325-34 (1997). Indeed, the Court cited the "basic regulation of employment conditions" as an example of state law that is clearly *not* preempted by ERISA, even though state employment laws "invariably affect the cost and price of services" offered through employee benefits plans. *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 660 (1995).

The same logic applies to the preemption provision in the ADA. If the ADA preempts any state law that increases an airline's cost of labor, the ADA will preempt state minimum wage laws, state maximum hours laws, state workplace safety laws, and state workers compensation laws. It will preempt state laws prescribing state holidays and state laws requiring employers to allow employees to miss work for jury service. It will preempt state income taxes, state payroll taxes, state occupational licensing requirements, and state unemployment insurance programs. All these state laws (and many more) "relate to" an airline's services in just the same way as Rhode Island's time-and-a-half statute, by making it more expensive to hire workers. Indeed, if a state has a law barring employers from enslaving their workers and forcing them to work for no pay, that law would also be preempted by the ADA under the decision below, because it too would increase the cost of labor.

The Rhode Island Supreme Court should not have gone down this road. The ADA simply does not exempt airlines from state and local wage regulation, even though such laws make it more expensive to hire employees.

If there were any doubt on this point, it would be dispelled by the fact that the federal minimum wage statute—the Fair Labor Standards Act—explicitly authorizes states and municipalities to establish "a minimum wage higher than the minimum wage established under this chapter." 29 U.S.C. § 218(a). The ADA could not preempt state and local wage regulation without repealing this provision as to airline employees. When Congress enacted the ADA, however, it gave no indication of intending any such repeal.

Below, Delta argued that Rhode Island's time-and-a-half statute differs from other state and local wage laws because it originated as a "Blue Law" to encourage the observance of Sunday as a day of rest. But the ADA does not distinguish among state laws on this basis. The time-and-a-half statute's only effect on airlines is to make it more expensive to hire workers on Sundays and holidays. Like other state and local wage laws, it is not preempted by the ADA.

"Pre-emption of employment standards 'within the traditional police power of the State' 'should not lightly inferred.'" *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252 (1994) (quoting *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 21 (1987)). The decision below is an egregiously mistaken interpretation of the Airline Deregulation Act that creates a conflict among the lower courts. This Court should grant certiorari and reverse.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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