No. 12-462

In the Supreme Court of the United States

NORTHWEST, INC., a Minnesota corporation and wholly-owned subsidiary of Delta Air Lines, Inc., and DELTA AIR LINES, INC., a Delaware corporation,
Petitioners,

v.

RABBI S. BINYOMIN GINSBERG, as an individual consumer, and on behalf of all others similarly situated,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* AIRLINES FOR AMERICA AND AMERICAN TRUCKING ASSOCIATIONS, INC. IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULE

OTHER

BRIEF OF AMICI CURIAE AIRLINES FOR AMERICA AND AMERICAN TRUCKING ASSOCIATIONS, INC., IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

INTEREST OF AMICI CURIAE

Air Transport Association of America, Inc., d.b.a. Airlines for America ("A4A") is the trade organization of the principal U.S. airlines, which together with their affiliates transport more than ninety percent of U.S. airline passenger and cargo traffic.[1] Those members are Alaska Airlines, Inc.; American Airlines, Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corporation; Hawaiian Airlines, Inc.; JetBlue Airways Corp.; Southwest Airlines Co.; United Continental Holdings, Inc.; United Parcel Service Co.; US Airways, Inc.; and Air Canada, which is an associate member.[2]

A4A is a District of Columbia corporation with its principal place of business in the District of Columbia. The A4A does not issue stock, and no publicly held company controls more than 10% of A4A.

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[1] Pursuant to Supreme Court Rule 37, amici state that no counsel for a party authored this brief in whole or in part, and no one other than amici curiae, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Further, amici state that counsel of record for all parties received notice at least ten days prior to the due date of A4A's intention to file this brief. Letters from the parties consenting to the filing of this brief have been filed with the Clerk of the Court.

[2] A4A also has a number of airline-related industry partners and members, a list of which is available at www.airlines.org/Pages/Members.aspx.

The mission of A4A is to foster a business and regulatory environment that ensures safe and secure air transportation while permitting U.S. airlines to flourish, thus stimulating economic growth locally, nationally, and internationally. As part of that mission, A4A seeks to identify, highlight, and challenge laws and government policies that impose inappropriate regulatory burdens or unfairly impinge on the free operation of the marketplace for the services of its members. Throughout its seventy-five year history, A4A has been actively involved in the development of the law applicable to commercial air transportation by advocating common industry positions on policy and legal issues of importance to its members. A4A has frequently participated as amicus curiae before this Court and other courts. In particular, A4A has participated as a party and as amicus curiae in litigation relating to the preemption provision of the Airline Deregulation Act of 1978 ("ADA"), Pub. L. No. 95-504, § 4(a), 92 Stat. 1705, 1708 (1978) (currently codified, as amended, at 49 U.S.C. § 41713(b)(1)).

Proper application of ADA preemption is of critical importance to A4A's members, which rely on ADA preemption to prevent state and local governments, and judicial systems, from constructing a complicated, inconsistent patchwork of regulation. The ADA accomplishes this fundamental goal by prohibiting states and localities from enacting or enforcing laws or regulations "related to" the prices, routes, or services of an airline. Carriers routinely rely on nationally uniform rules governing interstate transportation by air in structuring their business dealings with a variety of third parties, just as Congress envisioned they would. Uncertainty created by inconsistent judicial

rulings regarding the scope of ADA preemption undermines the ability of A4A members to operate efficiently, innovate, plan and make informed decisions about their business relationships. Exposing carriers to local jury verdicts relating to airline prices, routes, or services, as allowed by the Ninth Circuit, would create such uncertainty and conflicts with decisions from this Court and other circuits. Accordingly, authoritative resolution of that conflict by this Court is crucial to A4A's members.

American Trucking Associations, Inc. ("ATA") is the national association of the trucking industry. Its direct membership includes approximately 2,000 trucking companies and in conjunction with 50 affiliated state trucking organizations, it represents over 30,000 motor carriers of every size, type, and class of motor carrier operation. The motor carriers represented by ATA haul a significant portion of the freight transported by truck in the United States and virtually all of them operate in interstate commerce among the states. ATA regularly represents the common interests of the trucking industry in courts throughout the nation, including on numerous occasions before this Court.

ATA is a District of Columbia non-profit corporation with its headquarters and principal place of business in Arlington, Virginia. ATA does not issue stock, and no publicly held company controls more than 10% of ATA.

ATA has a strong interest in the resolution of this case because the preemption provision that governs the trucking industry, introduced in the 1994 Federal Aviation Administration Authorization Act ("FAAAA"), is identical to that governing the airline industry, and

the interpretation and application of both provisions share a common jurisprudence. *See, e.g.*, *Rowe v. N.H. Motor Trans. Ass'n*, 552 U.S. 364, 370 (2008).[3] The national trucking industry is of massive size and scope and is an essential pillar of the American economy and lifestyle. To efficiently and competitively undertake the millions of daily shipments on which the U.S. economy depends, trucking companies need to employ uniform procedures free of individualized state regulatory requirements that impede the free flow of trucking commerce. An overarching federal regulatory network accompanied by strong federal preemption allows the trucking industry to meet the needs of the American economy. Thus, ATA and its members have a direct and immediate interest in the Court's decision of this matter.

BACKGROUND AND SUMMARY OF ARGUMENT

In the Airline Deregulation Act ("ADA") Congress expressly provided that "no State or political subdivision thereof . . . shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier having authority to provide

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[3] ATA is currently seeking a writ of certiorari from this Court in another case from the Ninth Circuit, involving the scope of that preemption provision. *American Trucking Assns v. City of Los Angeles*, No. 11-798 (pet. for cert. filed Dec. 23, 2011). In that case, as here, the Ninth Circuit articulated a narrow view of federal preemption that is at odds with Congress's deregulatory intent, and incompatible with this Court's instructions concerning FAAAA and ADA preemption.

air transportation." Pub. L. No. 95-504, § 4(a), 92 Stat. 1705, 1708 (1978) (currently codified at 49 U.S.C. § 41713(b)(1).[4]

On three separate occasions, this Court has interpreted the ADA preemption provision, each time noting its breadth. In the first case, *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992), the Court held that the provision of the ADA "express[es] a broad pre-emptive purpose" and prohibits all state laws "relating to" the rates, routes or services of an air carrier. This "broadly worded" provision "displaces all state laws that fall within its sphere, even including state laws that are consistent with [the federal Act's] substantive requirements.'" *Id.* at 387. The law's purpose, the Court said, was "[t]o ensure that the States would not undo federal deregulation with regulation of their own . . . ." *Id.* at 378.

Congress expressly endorsed the holding in *Morales* in 1994 when it enacted the recodified Title 49, noting that it "did not intend to alter the broad preemption interpretation adopted by the United States Supreme Court in Morales . . . ." H.R. Conf. Rep. No. 103-677 at p. 83 (1994).

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[4] In 1994 Congress re-codified the language, without making substantive changes. Among other changes, the phrase "a price, route, or service" was substituted for "rates, routes, or services." *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 223 n.1 (1995). That year, Congress also introduced a parallel preemption provision prohibiting states from enacting laws related to a motor carrier's prices, routes, and services. Federal Aviation Administration Authorization Act, Pub. L. No. 103-305, tit. VI, § 601(c), 108 Stat. 1569, 1605 (1994).

In *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995), the Court reiterated the broad sweep of the ADA's preemption provision. The Court concluded that "the ban on enacting or enforcing any law 'relating to rates, routes, or services,' is most sensibly read, in light of the ADA's overarching deregulatory purpose, to mean States may not seek to impose their own public policies or theories of competition or regulation on the operations of an air carrier." *Id.* at 229, n.5.

In the years after *Morales* and *Wolens*, lower courts grappled with the issue of whether the ADA preempted state laws of general application, such as tort law or employment discrimination law. In other words, while it might have been clear that a state could not require an airline to serve coffee to its passengers, there remained a question as to whether an airline might be liable under state tort law if a flight attendant spilled hot coffee on a passenger.

These cases eventually led to two major lines of authority among the Circuit Courts in which the courts diverged over the definition of "service" in the ADA preemption provision. In one line, several circuits opted for a broader reading, holding that "service" included ticketing, boarding procedures, provision of food and drink, and baggage handling as well as transportation itself. See, e.g., *Branche v. Airtran Airways, Inc.*, 342 F.3d 1248, 1257 (11th Cir. 2003); *Hodges v. Delta Airlines, Inc.*, 44 F.3d 334, 336 (5th Cir. 1995) (en banc); *Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1433 (7th Cir. 1996).

At the other end of the spectrum, the Ninth Circuit, in *Charas v. Trans World Airlines*, 160 F.3d 1259 (1998), held that "service" referred only to the transportation itself, as in "daily service from Los Angeles to New York." *See also, Taj Mahal Travel, Inc. v. Delta Airlines, Inc.*, 164 F.3d 186 (3d Cir. 1998).

Any doubt on the reach of the ADA preemption provision was resolved when this Court unanimously held in *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364 (2008), that the Federal Aviation Administration Authorization Act ("FAAAA") preempted a Maine law regulating in-state tobacco shipments. Because the FAAAA preemption clause was patterned after and identical to the ADA language, the Court applied ADA precedent and held that the Maine law was preempted in light of *Morales*.

In *Rowe*, the Court noted that Maine's law would frustrate Congress's preemptive purpose because it "could easily lead to a patchwork of state service-determining laws." *Id.* at 373. The Court also held the ADA does not allow exceptions or exemptions because of the type of state law, or the salutary purpose for the state law's enactment. *Id.* at 373-75.

Rowe should have put an end to the debate over the scope of the ADA preemption provision. *Rowe* implicitly called into question the continuing validity of the *Charas* line of cases because the result in *Rowe* cannot be squared with the narrow definition of "service" found in *Charas*. While the Court did not explicitly define "service" under the ADA preemption provision, it is clear that the Maine regulations at issue there, addressing aspects of the motor carrier's delivery

service, affected something other than carrier prices and routes. Two circuits have concluded that the narrow definition of "service" in *Charas* cannot survive *Rowe. Air Transport Ass'n v. Cuomo*, 520 F.3d 218, 223 (2d Cir. 2008); *DiFiore v. American Airlines, Inc.*, 646 F. 3d 81, 88 (1st Cir. 2011).

The Ninth Circuit, however, continues to apply its parsimonious reading of the ADA provision. The case below is not the only instance of this intransigence. For example, in *American Trucking Assns v. City of Los Angeles,* 660 F.3d 384 (9th Cir. 2011), *petition for cert. filed* (U.S. Dec. 23, 2011) (No. 11-798), the Ninth Circuit created a market participant exception to FAAAA preemption, again following *Charas* and its progeny to narrowly circumscribe the definition of "service." 660 F.3d at 401. In another post-*Rowe* case, *Ventress v. Japan Air Lines*, 603 F.3d 676, 682 (9th Cir. 2010), the Ninth Circuit, holding that the ADA does not preempt state whistle-blower claim, noted that the circuit "has adopted a relatively narrow definition of "service."

The case below is the most recent example of the Ninth Circuit's proclivity to create exceptions to the ADA preemption provision. In addition to its insistence on applying *Charas*, the Ninth Circuit also misread *Wolens* and established a categorical exception for claims alleging a breach of the implied covenant of good faith and fair dealing. In so doing, the Ninth Circuit, in conflict with *Wolens* and decisions in other circuits, created a loophole that threatens to swallow the ADA preemption provision. If this loophole is allowed to stand, juries throughout the vast Ninth Circuit will be free to apply their own form of

regulation to airline prices, routes, and services (and, by extension, to those of motor carriers). The result would be the patchwork of local regulation that Congress prohibited when it deregulated the airline industry.

Review of the Ninth Circuit's decision by this Court is needed to resolve this conflict, clarify the scope of ADA and FAAAA preemption, and establish a single, national preemption standard under these acts. This conflict, on an important and recurring issue of federal law, is intolerable. As Congress recognized in passing the ADA and FAAAA, airlines and motor carriers, by the very nature of their operations, need a single, reliable standard in order to permit vigorous competition and to operate efficiently, safely, and effectively in the public interest.

REASONS FOR GRANTING THE PETITION

I. The Ninth Circuit Continues To Frustrate The Congressional Goal Of Deregulation By Narrowing The ADA Preemption Provision

The decision below was incorrect for a number of reasons, all of which combine to create a narrow view of ADA preemption, which cannot be squared with the controlling decisions of this Court, and which undermines the Congressional goal of deregulation.

A. The Ninth Circuit applied an incorrectly narrow interpretation of the ADA preemption provision.

The decision below makes clear that the Ninth Circuit continues to view the ADA preemption provision through an exceedingly narrow prism, at times completely misreading this Court's teachings.

For example, the circuit court said that in *Morales*, this Court "cabined its holding to those laws that actually have a *direct effect* on rates, routes, or services" and that the Court "went to great lengths to make clear that its holding was narrow and that the ADA only preempts laws that have a *direct effect* on pricing." *Ginsberg v. Northwest, Inc.*, 695 F.3d 873, 877 (9th Cir. 2012) (emphasis added).

This characterization is flatly inconsistent with the plain language of *Morales*, where this Court noted that the language used by Congress in the ADA "express[es] a broad preemptive purpose," has a "broad scope" and "expansive sweep," and is both "deliberately expansive" and "conspicuous for its breadth." 504 U.S. at 383-84.

Morales also did not apply a "direct effect" standard. Instead, this Court held that the ADA preempts any state law having a connection with or reference to an airline's prices, routes, or services, unless that connection or reference is "too tenuous, remote, or peripheral . . . to have preemptive effect." *Id.* at 384, 390.

Clearly, *Morales* did not limit ADA preemption to local regulation that has a "direct effect on pricing." At

issue in *Morales* was not a state attempt to set airline prices. Instead, it was an attempt by state attorneys general to establish guidelines for *advertising about* airline prices. The justification for the states' effort was to avoid deceptive practices in airline price advertising. This Court held that regulation of advertising was "related to" price and therefore preempted. 504 U.S. at 388.

The Ninth Circuit's characterization of *Morales* is also inconsistent with *Rowe*, in which this Court described the *Morales* decision as holding that preemption "may occur even if a state law's effect on rates, routes, or services 'is only indirect'" 552 U.S. at 370. In *Rowe*, this Court emphasized that state actions having a connection with, or reference to carrier prices, routes, or services are preempted. *Id*. There was no requirement that the action have a "direct effect." In fact, the Court noted that the regulation in question was "less 'direct' than it might be[.]" *Id.* at 372. The "relevant inquiry is the effect of the local law," and preemption can occur where the regulation is "direct or indirect[.]" *Id*. at 373.

As discussed *supra,* it is widely recognized outside the Ninth Circuit that the narrow reading of ADA preemption in *Charas* and its progeny is not viable after *Rowe.* As Petitioners herein note, the First and Second Circuit Courts of Appeal and the United States Department of Transportation agree that *Charas* is in conflict with *Rowe.* Pet. at 27-28. See also, Order 2012-1-18, January 23, 2012, Hawaii Inspection Fee Proceeding, Docket DOT-OST-2010-0243 ("[W]e reject Hawaii's contention that the term service in the ADA preemption provision should be construed narrowly

under Ninth Circuit cases such as Charas" and citing to *Rowe* and *ATA v. Cuomo*).

B. The Ninth Circuit misapplied the *Wolens* holding.

In *Wolens,* this Court held that a breach of contract action that seeks only to enforce an airline's self-imposed obligations was not preempted by the ADA even though the action related to an airline's prices. 513 U.S. at 222. In reaching that result, the Court noted that local regulation affecting non-essential airline matters—such as frequent flier programs—are sufficiently "related to" air carriers' prices, routes and services as to be preempted by the ADA. *Id*. at 226-28. The Court also held that the ADA "confines courts, in breach-of-contract actions, to the parties' bargain, with no enlargement or enhancement based on state laws or policies external to the agreement" *Id*. at 232-33. In sum, this Court held, states "may not seek to impose their own public policies or theories of competition or regulation on the operations of an air carrier," whether by statute or common law or equitable contract doctrines. *Id*. at 229 n.5.

The Court repeatedly stressed that such claims must be limited to the parties' bargain, and cannot be based on external policies or regulation. *See, e.g., id*. at 228 (ADA allows suits "seeking recovery solely for the airline's alleged breach of its own, self-imposed undertakings"); *id*. ("terms and conditions airlines offer and passengers accept are privately-ordered obligations"); *id*. at 229 ("[a] remedy confined to a contract's terms simply holds parties to their agreements").

The Court recognized that "'[s]ome state-law principles of contract law . . . might well be preempted to the extent they seek to effectuate the State's public policies, rather than the intent of the parties.'" *Id*. at 233 n.8 (quoting *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 529 (1992)). And, the Court found a fraud act claim preempted because statute "does not simply give effect to bargains offered by the airlines and accepted by airline customers"). *Id.* at 228.

In the decision below, however, the Ninth Circuit ignored these limitations and allowed an implied covenant claim to proceed, despite the fact that such a claim necessarily is based on state law policies rather than the parties' bargained-for terms. Incredibly, the Ninth Circuit also found that the claim, which involved the plaintiff's participation in the airline's frequent flyer program, did not "relate to" prices or services. 695 F.3d at 881. Such a finding cannot possibly be squared with *Wolens*, which applied ADA preemption in the identical context – claims relating to a frequent flyer program. 513 U.S. at 227.

The Ninth Circuit's categorical exception for implied covenant claims also conflicts with decisions of several circuits. *Buck v. Am. Airlines, Inc.*, 476 F.3d 29, 34-37 (1st Cir. 2007) (finding plaintiffs' implied covenant of good faith claim, among other state law claims, preempted by the ADA); *United Airlines, Inc. v. Mesa Airlines, Inc.*, 219 F.3d 605, 609-10 (7th Cir. 2000) (finding fraudulent inducement claim preempted because it "is not . . . a request to enforce the parties' bargains" but is instead "a plea for the court to replace those bargains with something else"); *Data Manufacturing, Inc. v. United Parcel Serv.*, 557 F.3d

849, 853-54 (8th Cir. 2009) (preempting state law claims based on implied contractual obligations).

C. In reaching its holding, the Ninth Circuit erroneously applied a saving clause.

The Ninth Circuit cited to the Federal Aviation Act "savings clause" to support its holding that implied covenant claims are categorically exempted from ADA preemption: "Additionally, that Congress did not intend to preempt state common law contract claims is evident from another provision: the savings clause, which preserves common law remedies." 695 F.3d at 879.

In reaching this conclusion, the Ninth Circuit ignored the fact that this Court rejected a similar argument in *Morales,* calling the 'saving' clause a "relic of the pre-ADA/no preemption regime" and noting that a "general 'remedies' saving clause cannot be allowed to supersede the specific substantive pre-emption provision. . . [W]e do not believe Congress intended to undermine this carefully drawn statute through a general saving clause." 504 U.S. at 384-5. (citations omitted).

The Ninth Circuit cites to *Wolens* as supporting its view of the saving clause because *Wolens* found contract claims not preempted. 695 F.3d at 880. But the Court did not use the saving clause as the basis for allowing the contract claim to proceed. In fact, the opposite is true. The Court held that another common law remedy – fraud – was preempted. 513 U.S. at 228. The Court had no difficulty prohibiting that common law action despite the saving clause. The Ninth Circuit ignores that distinction.

II. The Ninth Circuit Decision Will Allow Local Regulation Of Airline Prices, Routes, And Services.

As shown *supra,* allowing local communities to impose external obligations or policies through the vehicle of an implied covenant claim would run afoul of *Morales* and *Wolens.*

Allowing local juries, through verdicts on implied covenant claims, to impose their own notions of how airlines should be run will inevitably lead to a patchwork of rules regarding airline prices, routes, and services. This is precisely what Congress forbade when it deregulated the airline and trucking industries. "[T]o interpret the federal law to permit these, and similar, state requirements could easily lead to a patchwork of state service-determining laws, rules, and regulations. That state regulatory patchwork is inconsistent with Congress' major legislative effort to leave such decisions, where federally unregulated, to the competitive marketplace." *Rowe*, 552 U.S. at 373. For this reason, the issue in this case is of significant importance to the airline and trucking industries, and to interstate commerce in general.

This Court has recognized that the coercive effect of a jury award of damages is tantamount to regulation: "regulation can be as effectively exerted through an award of damages as through some form of preventative relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy." *San Diego Bldg. Trades Council v. Garmon,* 359 U.S. 236, 247 (1959)).

In the ADA preemption context, the First Circuit noted the risk to uniform regulation of airlines posed by allowing juries to apply inexact standards such as good faith and fair dealing: "it is hard to imagine that Congress would have been happier if, absent detailed guidelines or a law targeting carriers, the states in *Morales, Wolens,* and *Rowe* simply let the jury condemn the same carrier conduct by applying broader statutory terms (*e.g.,* 'unfair' competition or 'deceptive' practices, *Wolens,* 513 U.S. at 227)." *DiFiore v. Amer. Airlines, supra,* 646 F.3d at 87.

In fact, local jury verdicts in implied covenant cases relating to airline prices, routes, or services could be even worse than direct regulation by the state because the prospect of non-uniform regulation would be multiplied exponentially. The First Circuit recognized this when it noted, "[i]f anything, the problem of diverse regimes is even greater than merely allowing fifty states to impose restrictions of their own. In Massachusetts, individual juries would effectively design their own detailed, ad hoc compliance schemes . . ." *Id.* at 88.

That the categorical exemption for implied covenant claims will lead to a patchwork of non-uniform local regulation cannot be disputed. As noted *supra,* several circuits have rejected such an exemption. Further, there is a great deal of variation among the States as to the applicability, nature, and extent of implied covenant claims. See Pet. At 19.

Uniformity of application of the law regarding ADA preemption is extremely important to the airline industry. As Justice O'Connor noted several years

before the Supreme Court decided *Rowe*, "Because airline companies operate across state lines, the divergent pre-emption rules formulated by the Courts of Appeals currently operate to expose the airlines to inconsistent state regulations." *Northwest Airlines v. Duncan*, 121 S. Ct. 650, 651 (2000) (O'Connor, J., dissenting from denial of certiorari in a case questioning the viability of *Charas*). While much progress towards uniformity of application of ADA preemption has been made since Justice O'Connor wrote those words, that progress has occurred outside the confines of the Ninth Circuit. This newest loophole opened by the Ninth Circuit would exacerbate the problem and all but guarantee inconsistent local regulation of airline prices and services.

The issues posed by this case are of vital concern to A4A's and ATA's members. First, because each of A4A's members, and many of ATA's members, do business in the Ninth Circuit, this persisting failure to recognize the broad reach of ADA and FAAAA preemption – a matter of federal law fundamental to the operations of the airline and trucking business – creates unacceptable uncertainty and confusion. More than anything else, A4A's and ATA's members seek a single, clear, and reliable rule of law to which they can look for purposes of planning and compliance.

Second, the substantive rule of law embraced by the Ninth Circuit cedes to every local community the authority to dictate to A4A's and ATA's members matters of service and price related conduct. This reading of the ADA subjects the airlines to precisely the sort of varying, even incompatible, obligations that Congress attempted to avoid when it passed the ADA

(and would do the same to motor carriers under the parallel FAAAA preemption provision). Airlines simply cannot compete as Congress intended, or function as efficient, affordable tools of interstate commerce, if their services or prices are subject to the indirect regulatory dictates of local juries.

CONCLUSION

The prospect of state and local regulations that affect airline prices and services, subject to the shifting political whims of each locality airlines serve, is precisely the danger that led Congress to adopt the ADA's broad preemption provision. Whether accomplished through local legislation, regulation, or a jury verdict, the effect is the same. Without federal preemption, "[t]he likelihood of multiple, inconsistent rules would be a dagger pointed at the heart of commerce—and the rule applied might come literally to depend on which way the wind was blowing." *British Airways Bd. v. Port Authority of New York*, 558 F.2d 75, 83 (2d Cir. 1977). Amici curiae Airlines for America and American Trucking Associations, Inc., respectfully urge this Court to grant the petition for writ of certiorari.

Respectfully submitted,

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