No. 18-1140

In The

Supreme Court of the United States

AVCO CORPORATION,
Petitioner,

v.

JILL SIKKELEE,
Respondent.

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

BRIEF OF DRI – THE VOICE OF THE DEFENSE BAR AS *AMICUS CURIAE* SUPPORTING PETITIONER

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STATEMENT OF INTEREST[1]

Amicus curiae DRI – The Voice of the Defense Bar (www.dri.org) is an international organization composed of approximately 20,000 attorneys who defend the interests of industries, businesses, and individuals in civil litigation. DRI's mission includes enhancing the skills, effectiveness, and professionalism of the civil defense bar; promoting appreciation of the role of defense lawyers in the civil justice system; anticipating and addressing substantive and procedural issues germane to defense lawyers and their clients; and advocating for fairness, consistency, and predictability in the civil justice system; among other objectives.

To help foster these objectives, DRI participates as *amicus curiae* in carefully selected Supreme Court cases presenting questions that significantly affect civil defense attorneys, their clients, and the conduct of civil litigation. Indeed, DRI has for years participated as *amicus curiae* on a host of issues of

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[1] In accordance with Supreme Court Rule 37.6, *amicus curiae* DRI-The Voice of the Defense Bar certifies that no counsel for a party authored this brief in whole or part, and that no party or counsel other than the *amicus curiae* and its counsel made a monetary contribution intended to fund preparation or submission of this brief. As required by Supreme Court Rule 37.2(a), the parties' counsel of record received timely notice of *amicus curiae*'s intent to file this brief. The petitioner's and respondent's counsel of record have consented to the filing of this brief.

interest to its membership, including in cases involving federal preemption issues, as this case raises. *E.g.*, *CTS Corp. v. Waldburger*, 573 U.S. 1 (2014) (involving preemption with respect to the interplay between state limitations periods and federal environmental law); *Mutual Pharm. Co. v. Bartlett*, 570 U.S. 472 (2013) (addressing preemption of state design-defect claims).

As the petitioner's brief sets out: "This case presents a question of 'paramount federal importance': whether the Federal Aviation Act preempts state-law design-defect claims." (Pet. Br. at 2 (citing U.S. Br. at 1, *Cleveland v. Piper Aircraft Corp.*, 985 F.2d 1438 (10th Cir. 1993), *cert denied*, 510 U.S. 908 (1993)). As such, this case is of direct and compelling interest to scores of DRI constituents, which include both attorneys practicing in these fields, as well as members of the aviation industry. Their collective experience offers an informed perspective on the negative consequences that may result from a lack of clarity and consistency in the law on preemption with respect to aviation product-liability actions.

But the import and impact of the adjudication of this case at hand goes beyond merely the aviation field. Rather, the lower court rulings—which looked to and relied on precedent involving the pharmaceutical industry, automotive industry, and others—evince the interconnected nature of preemption jurisprudence across multiple industries and fields. *E.g.*, *Sikkelee v. Precision Airmotive Corp.*, 822 F.3d 680, 711 & n.17 (3d Cir. 2016) (Pet. App. 163a, 198a–200a & n.17) (*Sikkelee I*) (relying on cases from the automotive and

boating industries to conclude that "cases in the transportation context support that aircraft design and manufacture claims are not field preempted"); *Sikkelee v. Precision Airmotive Corp.*, 907 F. 3d 701, 712–14 (2018), *reh'g denied* (Dec. 11, 2018) (Pet. App. 1a, 17a–21a) (*Sikkelee II*) (discussing at length and relying on cases from the pharmaceutical industry).

For example, the more recent of the two appealed-from Third Circuit decisions here, (Pet. App. 1a), interpreted and applied the doctrine of impossibility preemption to impose a new standard that is in stark contrast to that which this Court articulated in the pharmaceutical cases *PLIVA, Inc. v. Mensing*, 564 U.S. 604 (2011), and *Mutual Pharmaceutical Co. v. Bartlett*, 570 U.S. 472 (2013). DRI's members across numerous practice areas—aviation, pharmaceutical, and others—have a compelling interest in seeing the Third Circuit's new standard is rejected and this Court's precedent from *PLIVA* and *Bartlett* is reaffirmed.

Other *amici*, particularly those from the aviation sector, are appropriately positioned to address the importance of Supreme Court review of this matter with respect specifically to its impact on aviation product-liability actions, as well as to highlight the substantive errors in the circuit court's holdings, with which DRI agrees. Meanwhile, DRI, with its broad-based constituency spanning numerous federally regulated industries, is well-positioned to impress upon the Court the importance of review of this matter across a broader range of substantive practice areas. And it is with this broader-ranging

perspective that DRI and its members express their interest in and support for this Court granting the petition for certiorari, so that the Court may (1) reaffirm its established case law with respect to impossibility preemption, and (2) further develop and define the body of law on field preemption.

SUMMARY OF ARGUMENT

The Court should grant the petition for a writ of certiorari because the Third Circuit's two opinions relating to impossibility and field preemption in this aviation product-liability litigation introduce significant conflicts with this Court's precedent and among other circuits, and introduce confusion and uncertainty.

As to impossibility preemption from *Sikkelee II*, the Third Circuit's holding conflicts with this Court's pronouncements on the proper analysis and application of this doctrine as set out in *PLIVA* and *Bartlett*, which requires reaffirmation of those holdings. As it stands, the Third Circuit's holding on impossibility preemption is inconsistent with other circuits' applications of this Court's precedent. Indeed, the dissent recognized that the majority opinion improperly took a "piecemeal approach to the Supreme Court's impossibility preemption precedents [from *PLIVA*, *Bartlett*, and also *Wyeth v. Levine*, 555 U.S. 555 (2009)] without considering it in the aggregate." (Pet. App. 28a (Roth, J., dissenting, in part).) Denying further review of the Third Circuit's impossibility holding will leave these conflicts and the resultant uncertainty intact, to the detriment of

product manufacturers and federally regulated businesses who depend on predictability to make decisions. Litigants likewise require consistent and correct application of this Court's precedent, including in the area of preemption as applied to product-liability and alleged safety-related claims. The Third Circuit's ruling here with respect to impossibility preemption, however, was neither correct nor consistent.

As to its ruling on field preemption in *Sikkelee I*, the Third Circuit's ruling likewise presents conflicts with other circuits (not to mention the views of the Federal Aviation Administration (FAA)), who have expressed that "Congress intended to occupy the entire field of air safety and thereby preempt state regulation of that field." *E.g.*, *Goodspeed Airport, LLC v. E. Haddam Inland Wetlands & Watercourses Comm'n*, 634 F.3d 206, 210 (2d Cir. 2011). Moreover, review presents the opportunity to develop and expand on established law to clarify and confirm that the doctrine of field preemption applies with respect to aviation design-defect claims in particular. Without review, confusion will persist among courts and litigants alike in aviation matters, not to mention among entities in other arenas whose products and industries are properly subject to field preemption.

In short, this case presents a valuable opportunity to provide much needed consistency and predictability not just with respect to this one case, but for product liability litigants and jurists in general. The Court should grant the petition for a writ of certiorari.

ARGUMENT

I. THE COURT SHOULD GRANT THE PETITION FOR CERTIORARI TO BRING CONSISTENCY AND PREDICTABILITY ON PREEMPTION WITH RESPECT TO PRODUCT LIABILITY CLAIMS.

"No issue in modern products liability law is more important, or more inscrutable, than the doctrine of federal preemption." David G. Owen, *Federal Preemption of Product Liability Claims*, 55 S.C. L. Rev. 411, 412 (2003). While there have been more pronouncements from this Court on the doctrine of preemption since Professor Owen wrote this, the statement nonetheless remains true. Indeed, the Third Circuit's two decisions on impossibility preemption and, before that, field preemption are positive proof of this reality.

The nature of the subject matter at hand—whether the Federal Aviation Act preempts state-law design-defect claims—presents a compelling case for review; namely, preemption and the proper roles of lay juries versus regulatory agencies as they relate to product design and public safety, both in the aviation context and beyond. As one commentator observed, "public safety can suffer when products and services are regulated in an *ad hoc* fashion through individual lawsuits involving unique facts and often highly sympathetic plaintiffs. Thousands of individuals who may have benefited from a drug, medical device, or other product are not in court." Victor E. Schwartz & Cary Silverman, *Preemption of State Common Law by*

Federal Agency Action: Striking the Appropriate Balance that Protects Public Safety, 84 Tulane L. Rev. 1203, 1204 (2010). On the other hand, standards "developed and product approvals reached by experts at agencies charged with the delicate risk-benefit and risk-risk balancing are often critical to effectively regulating products. These decisions should be given due deference." *Id.*

This case presents the opportunity to reaffirm this Court's precedent on impossibility preemption in *PLIVA* and *Bartlett* and to provide guidance on its application in other analogous contexts, such as this aviation context. Review also presents a much-needed opportunity to bring consistency and predictability to field preemption, both with respect to aviation as well as other industries subject to analogous federal oversight and control. The Court should seize this opportunity to do just that.

A. The Third Circuit's interpretation and application of impossibility preemption conflict with this Court's precedent.

The Third Circuit's most recent decision addressed implied-conflict preemption under the branch of that doctrine known as impossibility preemption, wherein claims are preempted when "compliance with both federal and state regulations is a physical impossibility." *Arizona v. United States*, 467 U.S. 387, 399 (2012) (citing *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1963)). In particular, the Third Circuit essentially resolved that

the claims against the defendant manufacturer here were not barred under this doctrine because it had not shown that the FAA "would not have allowed it to change the engine's design," which the court held to be the standard for impossibility. (Pet. App. 3a.) However, engaging in this level of analysis was a fundamental error at the outset, as it misinterpreted, misapplied, and directly conflicted with this Court's prior holdings on impossibility preemption.

Under this Court's precedent—primarily, *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 623–24 (2011)—the analysis should have begun *and ended* with the question of whether federal agency approval was preliminarily required to implement a proposed design change (irrespective of whether approval ultimately would be granted or denied). Indeed, in *PLIVA*, the Court stated clearly: "The question for 'impossibility [preemption] is whether the private party could *independently* do under federal law what state law requires of it." *Id.* at 620 (emphasis added). "To decide these cases," the Court explained, "it is enough to hold that when a party cannot satisfy its state duties *without the Federal Government's special permission and assistance*, which is dependent on the exercise of judgment by a federal agency, that party cannot independently satisfy those state duties for pre-emption purposes." *Id*. at 623 (emphasis added).

That was the case here, as the petitioner showed that it could not implement proposed design changes without first obtaining FAA approval. The FAA may ultimately have granted that approval. Or it may not have. But that speculative result is not

determinative for the preemption analysis. Rather, under *PLIVA*, the bare fact that a manufacturer would require federal agency approval for a proposed design change triggers the applicability of impossibility preemption. Nothing more was required. The Third Circuit, however, eschewed *PLIVA*, as well as the later similar holding in *Mutual Pharmaceutical Co. v. Bartlett*, 570 U.S. 472 (2013), in favor of *Wyeth v. Levine*, 555 U.S. 555 (2009), which it held this case was "more like" because the manufacturer here had the "freedom to request changes" to its design—*despite* FAA approval being required to implement proposed design changes. (*See* Pet. App. 20a–21a, 21a n.11.)

The Third Circuit's analysis of impossibility preemption conflicts directly with this Court's precedent in *PLIVA* and *Bartlett*, which in and of itself warrants review and reversal. Indeed, the undermining of this Court's preemption jurisprudence as developed in the pharmaceutical context has significant repercussions not only in that industry, but also across an array of regulated industries—including the aviation industry and others—who rely on faithful, consistent interpretation of this established preemption precedent.

The Third Circuit's holding also conflicts with other circuits, which further necessitates review. For example, consistent with *PLIVA*, other circuits have properly resolved that impossibility preemption exists where a manufacturer is unable to independently alter its product's design—such as to conform with a plaintiff's proposed alternative design—without prior federal agency approval. *Gustavsen v. Alcon Labs.*,

Inc., 903 F.3d 1 (1st Cir. 2018) (affirming dismissal based on impossibility-conflict preemption under *PLIVA* and *Wyeth*, and holding that if "a private party (such as the manufacturers [defendants] here) cannot comply with state law without first obtaining the approval of a federal regulatory agency, then the application of that law to that private party is preempted"); *also, e.g.*, *Fulgenzi v. PLIVA, Inc.*, 711 F.3d 578, 584 (6th Cir. 2013) (interpreting *PLIVA* and *Wyeth* as holding that the key question is " 'whether the private party could independently' comply with its state duty—without relying on the prior exercise of federal-agency discretion"); *Guilbeau v. Pfizer Inc.*, 880 F.3d 304, 318 (7th Cir. 2018) (following *PLIVA* and concluding, "[s]ince *unilateral* changes to Depo-T's label were not possible, state-law claims alleging a failure to take that action are preempted.") (emphasis added).

In other words, other circuits properly follow *PLIVA* and *Bartlett* to resolve that "impossibility" in this context means merely when a federal regulatory scheme requires agency approval to affect a proposed design change—impossibility does *not* require the manufacturer to show the agency ultimately would have rejected the proposed change. Yet, the Third Circuit held the latter, directly in conflict with this Court's precedent and with other circuits.

That the decision below requires review and reversal is further shown by the inconsistency with which the Third Circuit has addressed this issue, including within this same litigation. Primarily, Judge Roth's dissent aptly explained that *Wyeth*,

PLIVA, and *Bartlett* present what is and should be applied as "a cohesive standard: when federal regulations prevent a manufacturer from altering its product without prior agency approval, design defect claims are preempted; when federal regulations allow a manufacturer to independently alter its product without such prior approval, design defect claims ordinarily are not preempted." (Pet. App. 29a–30a (Roth, J., dissenting, in part).) Yet the *Sikkelee II* majority rejected this "cohesive standard" in favor of what Judge Roth properly characterized as a "piecemeal approach." (Pet. App. 28a–29a.) The stark disagreement between the majority and the dissent necessarily leaves manufacturers and practitioners rightly confused about the state of the law on impossibility-preemption doctrine.

Additionally, the Third Circuit's opinion moved the goalposts on impossibility analysis from its own earlier opinion. (*See* Pet. App. 163a (*Sikkelee I*).) In *Sikkelee I*, the Third Circuit rejected the notion that a manufacturer must present evidence that the agency would actually reject a proposed design change to show impossibility, writing: "For, even if an alternative design aspect would improve safety, the mere 'possibility' that the FAA would approve a hypothetical application for an alteration does not make it possible to comply with both federal and state requirements" because, as the Court observed in *PLIVA*, "if that were enough, conflict preemption would be 'all but meaningless.'" (Pet. App. 205a (quoting *PLIVA*, 564 U.S. at 621).) Indeed, the Third Circuit more accurately distilled the impossibility-preemption analysis as being whether the

manufacturer has "the ability to make some *unilateral* changes . . . *without additional regulatory preapproval*." (Pet. App. 203a (emphasis added).) This statement was consistent with *PLIVA* and its articulation of an understandable, reliable, objective standard.

But in its *Sikkelee II* opinion just two years later, the Third Circuit applied a different standard—retreating from its prior position, and instead setting the bar on impossibility preemption as requiring the manufacturer to show *actual* impossibility in the form of FAA rejection of proposed design changes. (Pet. App. 22a (discussing how the "FAA likely would have approved a change," and there was "no evidence in the record showing the FAA would not have approved a change to the carburetor's screws or attachment system").) In other words, contrary to *PLIVA* and even contrary to its own prior holding in this case, the Third Circuit in *Sikkelee II* rendered impossibility preemption "all but meaningless." (Pet. App. 205a.)

Sikkelee II does not properly reflect the standard this Court announced in *PLIVA* and *Bartlett*, nor the cohesive standard set forth in those cases along with *Wyeth*. Nor is it consistent with the interpretation and application of that law across other circuits. Instead, *Sikkelee II*'s holding with respect to impossibility preemption introduces conflict, confusion, and inconsistency into this area of law. The Court should take this opportunity to resolve this conflict with its own precedent and with sister-circuit interpretations, which properly follow *PLIVA* and *Bartlett*.

B. The Third Circuit's interpretation and application of field preemption likewise present conflicts among the circuits and with the FAA, introduce uncertainty in this area, and merit further review.

Under the doctrine of field preemption, "States are precluded from regulating conduct in a field that Congress, . . . has determined must be regulated by its exclusive governance." *Arizona*, 567 U.S. at 398 (citing *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 115 (1992) (Souter J. dissenting)). This includes situations in which it can "be inferred from a framework of regulation 'so pervasive . . . that Congress left no room for the States to supplement it'" or where a federal interest is "so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Id.* at 399 (quoting *Rice v. Santa Fe Elev. Corp.*, 331 U.S. 218, 230 (1947); citing *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990)).

The petitioner's brief aptly demonstrates the errors in the Third Circuit's field-preemption holding. (Pet. Br. at 31.) But even more importantly from DRI's perspective, the petitioner's brief reflects the conflict in field-preemption jurisprudence—or at least the significant confusion across the circuits—following and as a result of the Third Circuit's holding. Further, it shows that the impact of this holding goes well beyond this case and beyond the field of aviation law, and extends into other areas in which field preemption is or may be at play. (*Id.* at 23–31 (citing cases

addressing field preemption across an array of products and industries, including the railroad and shipping industries).

Remedying the error and resolving the inconsistency and confusion resulting from the Third Circuit's decision is critically important to DRI and its members. For example, as the Second and Tenth Circuits have pronounced, Congress intended to occupy the entire field of aviation safety and thereby preempt state regulation. (*Id.* at 26–27 (citing *Goodspeed Airport, LLC v. East Haddam Inland Wetlands & Watercourses Comm'n*, 634 F.3d 206 (2d Cir. 2011); *US Airways, Inc. v. O'Donnell*, 627 F.3d 1318 (10th Cir. 2010)). *Sikkelee I* purported to be consistent with these holdings, with the Third Circuit asserting that despite these pronouncements, "to date, the Courts of Appeals have held that aviation products liability claims are not preempted, although they have taken a variety of different approaches to reach that result," citing, among others, the Sixth Circuit's *Greene v. B.F. Goodrich Avionics Sys., Inc.*, 409 F.3d 784, 795 (6th Cir. 2005), as support. (Pet. App. 209a.) The Third Circuit's reliance on *Greene*, however, further reveals the inconsistency and confusion on this issue, which *Sikkelee I* only served to exacerbate.

In *Greene*, a product-liability case involving an allegedly defective gyroscope in an attitude indicator (or "artificial horizon") that caused a fatal helicopter crash, the Sixth Circuit expressly adopted the Third Circuit's reasoning in one if its earlier field-preemption decisions, *Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363 (3d Cir. 1999). Following the Third

Circuit's lead in *Abdullah*, the *Greene* court concluded "that federal law establishes the standards of care in the field of aviation safety and thus preempts the field from state regulation"—thereby *barring* the plaintiff's product-liability warnings claim there. 409 F.3d at 795 (6th Cir. 2005). In so holding, the Sixth Circuit summarized the Third Circuit in *Abdullah* as having "joined other circuits in recognizing that Congress intended aviation safety to be exclusively federal in nature." *Id.* at 794. And while *Greene* followed *Abdullah* to apply field preemption to bar a product-liability/failure-to-warn claim, the Third Circuit in *Sikkelee I* nonetheless confusingly pronounced that *Abdullah* "does not govern products liability claims like those at issue here," and that "no federal appellate court has held an aviation products liability claim to be subject to a federal standard of care or otherwise field preempted," and reversed dismissal as to all of the respondent's product-liability claims, including the claim for failure to warn. (Pet. App. 176a & 211a–212a.) *Greene*, however, said otherwise—indeed, the warnings claim which *Greene* followed *Abdullah* to bar under field preemption *was* an aviation product-liability claim. *Greene*, 409 F.3d at 786, 795 (stating "[t]his is a products liability case arising out of a helicopter accident," and affirming that the "district court did not err in concluding that federal law preempted Greene's state-law failure to warn claim"). *Greene* cannot be reconciled with the Third Circuit's decision here.

Other circuits have also issued similarly broad statements concerning the scope of aviation field preemption, while also appearing to qualify those

statements, which only further adds to the confusion. For example, in *Witty v. Delta Air Lines, Inc.*, 366 F.3d 380, 384 (5th Cir. 2004), the Fifth Circuit held that both field preemption and conflict preemption applied to bar the plaintiff's claim that the airline should have issued her a warning concerning possible risk of developing deep-vein thrombosis during air travel. In holding that claim to be preempted, the court first observed that the "FAA not only authorizes but affirmatively directs the Administrator of the Federal Aviation Administration to promulgate air safety standards and regulations, including standards and regulations relating to *aircraft design*," as well as warnings. 366 F.3d at 384 (emphasis added). However, despite this broad statement, the court also expressed its "intent to decide this case narrowly by addressing the precise issues before" it. *Id.* at 385.

The Ninth Circuit adds to the confusion and uncertainty. In *Montalvo v. Spirit Airlines*, it stated that "the regulations enacted by the Federal Aviation Administration, read in conjunction with the [Federal Aviation Act] itself, sufficiently demonstrate an intent to occupy *exclusively the entire field of aviation safety* and carry out Congress' *intent to preempt all state law in this field*," and that the "purpose, history, and language of the FAA lead us to conclude that Congress intended to have a single, uniform system for regulating aviation safety.", 508 F.3d 464, 471 (9th Cir. 2007) (emphasis added). In so doing, it adopted "the Third Circuit's broad, historical approach" pronounced in *Abdullah* "to hold that federal law generally establishes the applicable standards of care in the field of aviation safety." *Id.* at 468 (citing

Abdullah, 181 F.3d at 367–68; comparing with *Witty*, 366 F.3d at 384–86). Yet the Third Circuit in *Sikkelee I* now appears to say that, contrary to the Ninth Circuit's reading in *Montalvo*, *Abdullah*'s holding was not "broad." (Pet. App. 175a–176a (qualifying the "broad terms" in which the Third Circuit in *Abdullah* had stated that "the Federal Aviation Act preempted the 'field of aviation safety' ").)

Further compounding this uncertainty and confusion is the fact that *Sikkelee I* rejected the FAA's own position on the scope of field preemption in aviation. Indeed, the FAA took "the position that the [Federal Aviation] Act and these [FAA] regulations so pervasively occupy the field of design safety that, consistent with *Abdullah,* they require state tort suits that survive a conflict preemption analysis to proceed under 'federal standards of care found in the Federal Aviation Act and its implementing regulations.'" (Pet. App. 184a.) The Third Circuit, however, rejected that position. (Pet. App. 188a–189a.)

The inconsistency and confusion evinced by *Sikkelee I*'s holding on field preemption is not limited to the circuit-court level. To the contrary, courts at the state level likewise wrestle with the issue of the proper scope and role of field preemption with respect to claims involving aviation safety. *See, e.g.*, *Estate of Becker v. Avco Corp.*, 387 P.3d 1066 (Wash. 2017) (concluding FAA regulations did not preempt state law and reversing *Estate of Becker v. Avco Corp*., 365 P.3d 1273 (Wash. Ct. App. 2015) (holding that federal aviation law preempted an airplane design-defect claim)). Review here will afford an opportunity for the

Court to speak clearly and definitively on this important issue of national concern, for the benefit of courts and litigants at all levels.

The resolution of this confusion and division on the scope of field preemption when it comes to aviation product-liability claims is sufficient on its own to warrant review. Moreover, proper consideration and resolution of this issue will impact not only aviation law, but other arenas as to which Congress has similarly expressed an intent to occupy the field.

Further militating in favor of review is that the Third Circuit's holding also rests on its interpretation of key subordinate preemption concepts, whose proper and consistent development are critical to this body of law. For example, *Sikkelee I* invoked the so-called "presumption against preemption," which the Third Circuit held applied to this aviation-safety claim. (Pet. App. 180a–181a.) This holding appears squarely contrary to that of the Tenth Circuit in *US Airways*, wherein that court found "the field of aviation safety 'has long been dominated by federal interests,' " and, as a result, held that "the presumption against preemption does not apply . . . . ." 627 F.3d at 1325 (internal citations omitted). As this Court is aware, the doctrine of the presumption against preemption is often poorly understood and misapplied. Review will afford the opportunity to clarify whether such a presumption properly lies in this field, to the benefit of litigants and jurists alike practicing in this area.

* * * * *

The proper and consistent interpretation and application of the principles governing federal preemption are of vital interest to DRI's members and their clients, across myriad regulated industries. That interest extends beyond merely the context of aviation, into virtually all industries that are regulated by federal agencies, including but not limited to, the medical device and pharmaceutical industries. Granting review here would provide the opportunity for much-needed guidance as well as consistency on these issues, resulting in far greater predictability of outcomes, to the betterment of litigation and business decision-making by DRI's members and their clients.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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