No. 11-728

IN THE

Supreme Court of the United States

AEROLEASE OF AMERICA, INC.,

Petitioner,

—v.—

JOHN K. VREELAND, Administrator Ad Litem for the Estate of JOSE MARTINEZ and the Personal Representative of the Estate of JOSE MARTINEZ, deceased,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

BRIEF FOR *AMICI CURIAE* AVIATION WORKING GROUP, AEROSPACE INDUSTRIES ASSOCIATION, AIRLINES FOR AMERICA, AIRCRAFT OWNERS AND PILOTS ASSOCIATION, EQUIPMENT LEASING AND FINANCE ASSOCIATION, GENERAL AVIATION MANUFACTURERS ASSOCIATION, NATIONAL BUSINESS AVIATION ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, AND REGIONAL AIRLINE ASSOCIATION IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICI CURIAE[1]

The Aviation Working Group (AWG), a not-for-profit entity, was formed in 1994 at the request of the International Institute for the Unification of Private Law, an intergovernmental organization made up of 63 member states, including the United States. AWG's objectives are to contribute to the development and acceptance of policies, laws, regulations, and rules that facilitate advanced international aviation financing and leasing. AWG's members comprise the major aviation manufacturers and a number of leading financial institutions involved in aviation finance, including most of the world's largest aviation-product leasing companies.[2]

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[1] In accord with Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for all parties received timely notice of AWG's intention to file this amicus brief, and consent to file was granted by all parties. Letters reflecting the parties' consent to the filing of this brief have been filed with the Court.

[2] The following are the members of AWG: Airbus; Boeing; AerCap; Aircastle; ATR; Aviation Capital Group; AWAS; BNP Paribas; BOC Aviation; Bombardier Aerospace; CIT; Citibank; DVB; Embraer; General Electric; Deutsche Bank; Goldman Sachs; International Lease Finance Corporation; JPMorgan; GE Capital Aviation Services; Macquarie; Mitsubishi Corporation; MRJ Mitsubishi Regional Jet; KfW IPEX-Bank; RBS Aerospace; Rolls-Royce; Morgan Stanley; SAFRAN; and United Technologies Corporation (Pratt & Whitney Division).

The Aerospace Industries Association of America, Inc. represents the nation's major aerospace and defense manufacturers. The members include every high-technology manufacturing segment of the United States aerospace and defense industry, from commercial aviation to avionics, to manned and unmanned defense systems, to space technologies and satellite communications.

Airlines for America, formerly known as Air Transport Association of America, Inc., is the only trade organization of the principal U.S. airlines. Its fundamental purpose is to foster a business and regulatory environment that ensures safe and secure air transportation and enables U.S. airlines to flourish, stimulating economic growth locally, nationally and internationally.

The Aircraft Owners and Pilots Association (AOPA) advocates on behalf of 400,000 members to protect the freedom to fly while keeping general aviation safe and affordable. AOPA educates pilots, nonpilots, and policymakers, and supports activities that ensure the long-term health of general aviation.

The Equipment Leasing and Finance Association (ELFA) represents companies in the equipment finance sector. ELFA has more than 550 members, including independent and captive leasing and finance companies, banks, financial services corporations, brokers/packagers, investment banks, manufacturers, and service providers.

The General Aviation Manufacturers Association represents more than 70 of the world's leading manufacturers of fixed-wing general aviation

airplanes, engines, avionics and components. In addition to building nearly all of the general aviation airplanes flying worldwide today, GAMA member companies also operate fleets of airplanes, fixed-based operations, pilot/technician training centers, and maintenance facilities worldwide.

The National Business Aviation Association provides assistance to its more than 8,000 member companies -- ranging from small family businesses to large U.S. corporations -- that operate general aviation aircraft in support of their businesses. Members also include on-demand air carriers, general aviation manufacturers, repair facilities, as well as financial institutions that provide leasing and other financial products for companies seeking to acquire general aviation aircraft.

The National Association of Manufacturers (NAM), is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding among policymakers, the media, and the general public about the vital role of manufacturing to America's economic future and living standards.

The Regional Airline Association (RAA) represents North American regional airlines, and the manufacturers of products and services supporting the regional airline industry, before Congress, DOT, FAA, and other federal agencies. RAA

has 31 member airlines and 280 associate members.

The decision below conflicts with a decision of the Seventh Circuit on an issue where national uniformity is imperative. All of the amici and their members -- airlines, business and general aviation aircraft operators, manufacturers, pilots, financiers and lessors -- constitute a broad spectrum of the industries that are affected by the decision below. Amici are uniquely well-suited to address the practical ramifications of the issues presented in this case and to communicate to the Court the real-world need for review and reversal of the Florida Supreme Court's decision.

I. The Florida Supreme Court Has Created a Split of Authority Regarding the Preemptive Scope of 49 U.S.C. § 44112(b) That Will Encourage Airplane Accident Litigation in Florida and Any State That Chooses to Follow Florida.

The express language of 49 U.S.C. § 44112(b) protects a lessor, owner, or secured party from liability for personal injury, death, or property loss on land or water caused by a civil aircraft, aircraft engine, or propeller except when the aircraft, engine, or propeller is in the actual possession or control of the lessor, owner, or secured party.

49 U.S.C. § 44112(b) provides:

> (b) Liability. – A lessor, owner, or secured party is liable for personal injury, death, or property loss or damage on land or water only when a civil aircraft, aircraft engine, or propeller is in the actual possession or control of the lessor, owner, or secured party, and the personal injury, death, or property loss or damage occurs because of –
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> (1) the aircraft, engine, or propeller; or
>
> (2) the flight of, or an object falling from, the aircraft, engine, or propeller.

Under that plain text, when an aircraft crashes there can "only" be liability for a lessor or secured party if the lessor or secured party had "actual possession or control" of the aircraft. The statute's scope covers liability for "personal injury, death, or

property loss or damage on land or water." When an aircraft falls from the sky to the ground or water and there is injury, that type of accident is clearly within the scope of the statute. The type of accident in this case is expressly within that scope. Congress certainly intended to cover all such accidents.

The Florida Supreme Court held that the statute's reference to "on land" means only injury to someone underneath a falling airplane. That is an absurd narrowing of the statute. It contravenes the text and obvious purpose of the statute and conflicts with the decision of the Seventh Circuit in *Matei v. Cessna Aircraft Co.*, 35 F.3d 1142 (7th Cir. 1994). The Seventh Circuit affirmed a district court's holding that the federal statute preempts state law liability for the death of a person *on board an aircraft* that crashed. Accordingly, this case presents an important federal question on which a direct conflict exists.

A. The Conflict Between *Vreeland* and *Matei*.

The facts of *Vreeland* and *Matei* are not distinguishable. *Matei* involved a wrongful-death claim by the estate of a pilot who died when his aircraft crashed shortly after take-off. The alleged proximate cause of the crash was a failure of the instrument control lighting system. Under the terms of a lease from the owner to the pilot's employer, the owner retained no control over the aircraft. *Id.* at 1143. The owner had no knowledge of the alleged defects at the time he transferred

possession; and the owner had no possession or control of the aircraft at the time of the crash. *Id.* On those facts, the district court granted summary judgment in favor of the owner because the federal statute "was enacted in order to remove any doubt concerning the lessor's liability" and because the federal statute "preempts any contrary state law." *Matei v. Cessna Aircraft Co.*, No. 88 C 10536, 1990 WL 43351, at *5 (N.D. Ill. Mar. 30, 1990).[3]

In affirming the district court, the Seventh Circuit's analysis focused on a fact that the statutory language makes pivotal: the absence of possession or control by the lessor. 35 F.3d at 1144. If the lessor was not in actual possession or control, there can be no liability.

The facts here are not materially distinguishable from *Matei*. Here, the pilot and a passenger on board an aircraft were killed when the aircraft crashed. The aircraft had been leased to a third party for a period of one year. The representative of the passenger's estate brought suit against the owner claiming, *inter alia*, that the owner was vicariously liable for the pilot's negligence. Despite the owner's lack of possession and control, the Florida Supreme Court held that 49 U.S.C. § 44112 did not preempt the claim and that the owner could be held vicariously liable.

Vreeland and *Matei* pose a classic conflict of authority: diametrically opposite results on indistinguishable facts. The Florida Supreme

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[3] The statute at issue in *Matei*, 49 U.S.C. § 1404, was clarified and recodified in 1994 as 49 U.S.C. § 44112.

Court's reading of the statute cannot be reconciled with the judgment in *Matei*. There can be no doubt that, on the record presented here, the Seventh Circuit would have reached a conclusion that differed from the Florida Supreme Court.[4]

B. The Florida Supreme Court Mistakenly Found an Ambiguity in the Statutory Text and Then Used a Snippet of Legislative History to Limit the Scope of the Statute Dramatically.

The decision of the Florida Supreme Court flouts the statutory language and invites precisely the sort of litigation Congress intended to preclude. By its express terms, the statute allows liability against an owner, lessor, or secured party *only* when the aircraft is in the actual possession or control of the owner, lessor, or secured party. Nothing in the express language of the statute, or of the predecessor statutes, 49 U.S.C. § 1404 and section 504 of the Civil Aeronautics Act, suggests

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[4] Consistent with the statutory language and with the holdings of the district court and court of appeals in *Matei*, other federal district courts have noted the preemptive effect of the federal statute. *See In re Lawrence W. Inlow Accident*, No. IP 99-0830-C H/G, 2001 WL 331625 (S.D. Ind. Feb. 7, 2001) (holding that 49 U.S.C. § 44112 precluded liability of sublessor of helicopter following death of passenger hit in head with rotor while disembarking); *Esheva v. Siberia Airlines*, 499 F. Supp. 2d 493, 499 n.4 (S.D.N.Y. 2007) (stating in dicta that aircraft lessor would be "absolutely immune for such liability in the United States" for claims of derivative liability brought on behalf of passengers of an airplane that crashed).

that Congress intended to limit the preemptive effect.[5]

Even though personal injury "on land" is clearly covered by the statute, and even though the accident itself involved an airplane falling to the earth, the Florida Supreme Court concluded that Congress's reference to injury "on land" was ambiguous. It then analyzed a portion of legislative history to carve out a limitation that lacks any foundation in the statutory language. Ultimately, the Florida Supreme Court's anomalous result depends on inserting the word "underneath" into the statute and then using that word to create a distinction that Congress's actual language does not support. Pet. App. 21 ("the limitation on liability would apply only to individuals and property that are *underneath* the aircraft during its flight, ascent, or descent") (emphasis added).

The Florida Supreme Court completely misunderstood why the words "on land or water" appear in the statute. Congress did not employ these words to make a distinction between casualties to persons underneath the aircraft or on board an aircraft. Rather, Congress was responding to the language of various model state laws that sought to hold third parties liable

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[5] The language of 49 U.S.C. § 44112(b) was originally codified in section 504 of the Civil Aeronautics Act in 1948 and recodified in its exact wording as 49 U.S.C. § 1404 in 1958. The 1994 recodification clarified that the protection extended to all owners, not just security owners. Pet. App. 120.

vicariously. Congress drafted the preemptive scope of the statute to track the language of those laws.

The petition for certiorari addresses the legislative history at considerable length. It ought to be irrelevant given the clarity of the statutory text, but if it is considered at all, proper consideration shows that the Florida Supreme Court was mistaken.

The statute was enacted in 1948. The legislative history references two potential sources of then current law that might have been interpreted to create vicarious liability for lessors.[6] First, it references Section 1(26) of the Civil Aeronautics Act (a federal statute), which deemed anyone who authorized the operation of the aircraft to be "engaged in the operation of aircraft." Obviously a non-possessory and non-controlling owner or lessor that was "deemed to be engaged in operation of aircraft" faced potential liability for that operation.

The second source of potential liability for lessors, also referenced in the legislative history, was a model law that some states were adopting: Section 5 of the Uniform Aeronautics Act (proposed in 1922). Some states today still have that provision on the books (pages 14-15, *infra*). Section 5 of the model law provided that an aircraft owner was "absolutely liable for injuries to persons or property on the land or water beneath, caused by the ascent, descent or flight of the aircraft, or the dropping or falling of any object therefrom, whether such owner was negligent or not." Pet. App. 138.

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[6] H.R. Rep. No. 80-2091 (1948), at Pet. App. 62.

In ensuring that neither the Civil Aeronautics Act nor the model Uniform Aeronautics Act or other laws could be potential sources of liability for owners and lessors without possession or control, Congress expressly chose language that both tracked and was broader than the scope of Section 5 of the Uniform Aeronautics Act. Specifically, Congress omitted the word "beneath" that appears in Section 5. The Florida Supreme Court decision judicially repeals this Congressional choice by inserting the word "underneath" into the statute as part of an improper judicial gloss.

Congress's stated intention was to eliminate the Civil Aeronautics Act, Uniform Aeronautics Act, and similar laws as possible sources of liability by precluding any construction of those laws that might impose on owners, lessors, and secured parties "liability for damages caused by the operation of such aircraft even though they have no control over the operation of the aircraft."[7] Congress's purpose could not be any more certain and unambiguous: "This bill would remove this doubt by providing clearly that such persons have no liability under such circumstances."[8]

The broad preemptive scope is subject to only one limitation. The one limitation expressed in the statute -- and the one limitation on which the courts focused in *Matei* -- is the phrase, "unless such aircraft is in the actual possession or control of such person." Whether a plaintiff's claim is

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[7] H.R. Rep. No. 80-2091 (1948), at Pet. App. 62.

[8] *Id.*

premised on a theory of statutory liability, vicarious liability, absolute liability, negligent entrustment, or any other doctrine that would impose liability on an aircraft owner, lessor, or secured party lacking actual possession or control, the statute provides unambiguously for the same result: full protection of that owner, lessor, or secured party from liability.

In this case, the express statutory language is clear and should have obviated any examination of legislative history. *See Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119 (2001); *Ratzlaf v. United States*, 510 U.S. 135, 147-48 (1994). Having erred in resorting to legislative history at all, the Florida Supreme Court misconstrued Congressional intent. As a result, the decision below re-writes the statute in a way that is antithetical to the stated legislative purpose of precluding liability in precisely these circumstances.

II. The Decision of the Florida Supreme Court Creates Uncertainty in an Industry That Depends on Lessors and Secured Parties Who Are Not in Possession or Control of the Aircraft Asset.

The conflict created by the Florida Supreme Court's decision has substantial practical ramifications for owners, lessors, and secured parties given the predominant role of leasing and financing arrangements in the aviation industry and the increasing number of leased and financed aircraft. The conflict in authority created by the

decision below disrupts economic expectations and injects a measure of uncertainty into a vital segment of the aviation industry represented by the amici: operators and owners of all sizes of aircraft, manufacturers, financiers and lessors of commercial, business and general aviation aircraft, and pilots.

Estimates of the world's commercial fleet range from 13,000 to 17,000 aircraft. In the United States alone, the commercial fleet was estimated at 7,096 in 2010 and is expected to continue to grow.[9] The leasing market has grown concomitantly. The fleet of the leasing firms grew from 5,757 aircraft in 2008 to 6,180 aircraft in 2009, and is expected to reach 8,646 aircraft in 2015.[10]

The importance of national uniformity is underscored by the breadth of private and commercial operations, and the federal and state lawsuits arising from casualties therefrom, which a survey of court dockets reveals as more than 340 over the past five years. Lessors, passive owners, and financing entities do not have control over the

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[9] U.S. Dep't of Transp., *FAA Aerospace Forecast Fiscal Years 2011-2031*, at 23, 43, *available at* http://www.faa.gov/about/office_org/headquarters_offices/apl/aviation_forecasts/aerospace_forecasts/20112031/media/2011%20Forecast%20Doc.pdf.

[10] Frost & Sullivan, *Falling Interest Rates Buoy Outlook for the World Aircraft Leasing Market, Finds Frost & Sullivan* (June 23, 2010), *available at* http://www.frost.com/prod/servlet/pressrelease.pag?docid=204937620.

geographic operations of their aircraft. As Congress discerned and concluded, a uniform rule precluding liability is essential for owners, lessors, or secured parties who lack possession and control of the aircraft, its location, or its operation.[11] That standard has, for years, provided the economic underpinning for aircraft leasing and financing transactions.

Consistent with the clearly expressed Congressional intent, most claims from aviation accidents are resolved without involving these remote owners, lessors, and secured parties, who are not properly subject to liability under the correct scope of the federal statute. Any inconsistency in the application of the federal statute -- which the decision of the Florida Supreme Court surely engenders -- materially alters that landscape.

State vicarious liability laws that might serve to impose liability on owners, lessors, and secured parties not in actual possession or control of the aircraft asset are not a thing of the past. In addition to the common law dangerous instrumentality doctrine in Florida, several states have vicarious liability statutes in effect. Six other states continue to impose liability under Section 5 of the Uniform Aeronautics Act or a similar statute

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[11] H.R. Rep. No. 80-2091 (1948), at Pet. App. 62, 67 ("The relief thus provided . . . is necessary to encourage such persons to participate in the financing of aircraft purchases.").

without any regard to possession or control.[12] Three states have a similar provision with an exception for "a chattel mortgagee, conditional vendor or trustee under an equipment trust,"[13] and five others exempt "a bona fide bailor or lessor of such aircraft, whether gratuitously or for hire, or a mortgagee, conditional seller, trustee for creditors of such aircraft, or other persons having a security title only."[14] Four states have somewhat different vicarious liability statutes that apply to owners of aircraft without exempting lessors or owners not in possession and control.[15]

The potential application of these state laws, especially if more jurisdictions adopt the rationale of the Florida Supreme Court, will inevitably lead to forum-shopping by plaintiffs, especially where the only basis for a court's jurisdiction is the presence of an owner, lessor, or secured party in the state. Such a result is undesirable since it creates the very uncertainty that Congress intended to eliminate by enacting the statute.

The concern that the decision below may encourage forum shopping is not hypothetical. On

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[12] Del. Code Ann. tit. 2, § 305; Haw. Rev. Stat.§ 263-5; Idaho Code Ann. § 21-205; Md. Code Ann., Transp. § 5-1005; Minn. Stat. § 360.012(4); Vt. Stat. Ann. tit. 5, § 479.

[13] Nev. Rev. Stat. § 493.060; N.J. Stat. Ann. § 6-2-7; S.C. Code Ann. § 55-3-60.

[14]Ark. Code Ann. § 27-116-303; N.D. Cent. Code § 2-03-05; 74 Pa. Cons. Stat. Ann. § 5502; S.D. Codified Laws § 50-13-6; Tenn. Code Ann. § 42-1-105.

[15] Cal. Pub. Util. Code § 21404; Ga. Code Ann. § 6-2-8; R.I. Gen. Laws § 1-4-3; Wis. Stat. § 114.05.

the very issue presented in this case, experience teaches that plaintiffs flock to state courts that welcome the claims federal law bars. Indeed, the results may vary depending on whether a case is filed and proceeds in a state or federal court. Despite the holding in *Matei,* some Illinois state courts have permitted causes of action in circumstances where the federal court found that Illinois law was preempted. In 1999, the Illinois Appellate Court rejected the proposition that state personal injury claims are preempted by the federal statute based on the mistaken premise that Congress "found state damages remedies to be compatible with aviation safety standards." *See Retzler v. Pratt & Whitney*, 723 N.E.2d 345, 352 (Ill. App. Ct. 1999), *appeal den'd*, 729 N.E.2d 504 (Ill. 2000) (Table, No. 88918). Following that rationale, another Illinois trial court held in conclusory fashion that the Federal Aviation Act does not preempt state law claims against aircraft lessors. *See Layug v. AAR Parts Trading, Inc.*, No. 00 L 9599, 2003 WL 25744436 (Ill. Cir. Ct. Cook Cty. May 16, 2003).[16]

By inviting more lawsuits against a new set of potential defendants, the decision below will raise the transactional costs of litigation throughout the industry. New categories of parties will need to retain attorneys, conduct their own discovery, be subjected to discovery, and burden the courts with

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[16] *See* Geoff Kass & Violet O'Brien, *Aircraft Crashes: Should Aircraft Lessors Be Held Liable?*, 74 J. Air L. & Com. 845 (2009), for a further discussion of *Layug* and other relevant case law.

additional pleadings, motions, and proceedings. In the event of a trial, the presence of these parties will further complicate and prolong the already complex aviation trial. Even without adverse judgments, insurance costs will rise. In addition, the threat of adverse judgments will create a new and important risk to the lessors and financial parties, which risk will then need to be assessed to determine whether continued activity in this business is worthwhile. All of this expense and risk ultimately results in increased costs to an industry that Congress has repeatedly found is vital to the United States economy and in need of special protection from precisely these costs.[17]

Aside from the direct costs of litigation and adverse judgments, the uncertainty created by the decision below will have a stark economic impact. If it is not reversed, the ruling of the Florida Supreme Court could reconfigure the financial

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[17] The legislative history of the statute at issue highlights these protections. *See* H.R. Rep. No. 80-2091 (1948), at Pet. App. 62 ("The relief thus provided from potential unjust and discriminatory liability is necessary to encourage such persons to participate in the financing of aircraft purchases"); H.R. Rep. No. 86-445 (1959), at Pet. App. 67 ("The purpose of this legislation is to facilitate the leasing or separate financing of propellers and aircraft engines needed to modernize the nation's civil aircraft fleet"). So too, the legislative history of section 1110 of the Bankruptcy Code and its predecessor statutes demonstrates Congressional intent to encourage aircraft financing transactions. As discussed in H.R. Rep. No. 103-33(I) (1993), the legislative history of Section 1110 "reveals a series of Congressional determinations to enact bankruptcy protections to encourage aircraft financing transactions."

equation of leasing and financing transactions. Until now, all parties to those transactions could rely on the essentially settled understanding that the federal statute protected owners, lessors, and secured parties in these circumstances. With the greater threat of expanded liability now presented by a decision of the highest court of one of the States, the economic assumptions underlying those transactions will have to be recalculated. Recalculation will lead inevitably to increased costs throughout the industry and the likely withdrawal of at least some current participants in the aviation leasing and finance markets, having a corresponding effect on the ability of manufacturers to sell and airlines and others to buy aircraft products. Since Congress was perfectly clear in its determination to encourage financing and leasing of aircraft and to prevent state laws from providing disparate treatment, this Court should step in now to assure fidelity to the statutory mandate.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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