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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

AIR TRANSPORT ASSOCIATION
OF AMERICA, INC.,

Plaintiff,

v.

ANDREW CUOMO, IN HIS OFFICIAL
CAPACITY AS ATTORNEY GENERAL
OF THE STATE OF NEW YORK, AND
MINDY A. BOCKSTEIN, IN HER OFFICIAL
CAPACITY AS CHAIRPERSON AND
EXECUTIVE DIRECTOR OF THE
NEW YORK STATE CONSUMER
PROTECTION BOARD,

Defendants.

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1. Plaintiff Air Transport Association of America, Inc. (“ATA”), on behalf of its member air carriers, brings this action for declaratory and injunctive relief, seeking to prohibit enforcement of an unconstitutional state law. Congress has expressly provided that States “may not enact or enforce a law...related to a price, route, or service of an air carrier....” 49 U.S.C. §41713(b)(1). As the United States Supreme Court has observed, Congress wrote this express preemption provision “to 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). Despite this express and well-settled federal prohibition against state laws regulating the services of air carriers, the State of New York recently enacted a law that specifically and directly regulates the services provided by air carriers at all airports within the state. At issue here is precisely the danger that Congress sought to prevent - the prospect of overlapping and/or inconsistent regulation of air carriers by the federal government and each of the fifty states, with each state imposing its own requirements, prohibitions, and standards on air carriers.

Jurisdiction and Venue

2. This Court has jurisdiction of this action (a) under 28 U.S.C. §1331, since the case arises under (i) the Supremacy Clause of the Constitution of the United States, Article VI, clause 2; (ii) the Interstate Commerce clause of the Constitution of the United States, Article I, Section 8; and (iii) a law of the United States, the Airline Deregulation Act of 1978 ("ADA"), 49 U.S.C. §41713(b)(1); (b) under 28 U.S.C. §1337, since the matter in controversy arises under an Act of Congress regulating commerce, the ADA; and (c) under 28 U.S.C. §§ 2201 and 2202, since this is an actual controversy in which Plaintiff seeks declaratory judgment.

3. Venue is proper in this District under 28 U.S.C. §1391(b), because defendants are residents of, are found within, and have agents within, or transact their affairs in this District, and

the activities giving rise to this action – the enactment of the unconstitutional legislation -- occurred in this District.

The Parties

4. Plaintiff ATA is the principal trade and service organization of the United States scheduled airline industry. ATA's members are ABX Air, Alaska Airlines, American Airlines, ASTAR Air Cargo, Atlas Air, Continental Airlines, Delta Air Lines, Evergreen International Airlines, FedEx Corp., Hawaiian Airlines, JetBlue Airways, Midwest Airlines, Northwest Airlines, Southwest Airlines, United Airlines, UPS Airlines, and US Airways. Associate members are Air Canada, Air Jamaica, and Mexicana. ATA's members account for more than 90% of the passenger and cargo traffic carried annually by U.S. scheduled air carriers. ATA and its members have an interest in preserving the safe and efficient operation of all air carriers and the consistent enforcement of unitary federal regulation of air carriers subject to the Federal Aviation Act, as amended by the Airline Deregulation Act of 1978.

5. As of October 1, 2007, ATA's passenger carrier members operated approximately 6000 flights each week departing from nine different airports in New York State, including Albany International Airport.

6. ATA brings this action of behalf of its members under the doctrine of representational standing in that (a) its members would otherwise have standing to bring this action in their own right; (b) the interests ATA seeks to protect are germane to the organization's purpose; and (c) neither the claims asserted nor the relief requested require the participation of individualized members in the action. *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333 (1977).

7. Defendant Andrew Cuomo is the Attorney General of the State of New York, sued in his official capacity. Defendant Cuomo is the official of the State of New York designated by the law at issue herein to pursue remedies for failure to comply with said law. Defendant Cuomo's office address is The Capitol, Albany, New York 12224-0341.

8. Defendant Mindy A. Bockstein is Chairperson and Executive Director of the New York State Consumer Protection Board, sued in her official capacity. Defendant Bockstein's office address is 5 Empire State Plaza, Suite 2101, Albany, New York 12223.

The Facts

9. The New York State Legislature passed, and on August 1, 2007, the Governor of New York, Eliot Spitzer, signed into law, New York Senate Bill No. 5050-C. The new law (hereinafter the "NY Statute") is to become effective on January 1, 2008, and is codified at Article 20, Section 553(2)(d) of the New York Executive Law, and Article 14 A, Section 251-F-J of the New York General Business Law. A copy of the NY Statute is attached to this Complaint as Exhibit A.

10. Among other things, the NY Statute purports to regulate the services of air carriers "regulated by the Federal Aviation Administration that conduct scheduled passenger air transportation." Sec. 251-F (1). The NY Statute purports to require that (a) when scheduled flights are delayed more than three hours after passenger boarding, "the carrier shall ensure that passengers are provided as needed" with certain services deemed appropriate by the New York legislature (Sec. 251-G(1)); and (b) all carriers "shall provide clear and conspicuous notice on consumer complaint contact information by providing forms and/or causing signs to be posted at all service desks and other appropriate areas as necessary in their respective areas in the airport"

containing certain required information, “in such form and manner as the [New York State] airline consumer advocate shall prescribe....” (Sec. 251-G(2)).

11. Sec. 251-H establishes an Office of Airline Consumer Advocate within the New York State Consumer Protection Board (“Board”), which is empowered, among other things, to investigate complaints of violations of the NY Statute. Such investigation may include requiring the airlines to produce documents, including trade secret and proprietary business information. Sec. 251-H(2)(d) of the NY Statute authorizes the Attorney General of the State of New York to recover a civil penalty of up to one thousand dollars per passenger per violation of the provisions of Sec. 251-G. The Attorney General is also authorized to seek reimbursement of the Board’s expenses and attorneys’ fees.

12. The provisions of the NY Statute identified in paragraphs 10 and 11, supra, constitute an attempt by the State of New York to regulate the services provided by passenger air carriers. As such, those provisions of the NY Statute violate the provision of the ADA, now codified at 49 U.S.C. §41713(b)(1), which expressly provides that the States “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...”

13. Section 5 of the NY Statute provides that “This act shall take effect on the first of January next succeeding the date on which it shall have become a law...” Thus, the effective date of the NY Statute is January 1, 2008. As of that date, Plaintiff’s member carriers will be required to have in place at every airport in the State of New York the resources and signage necessary to be in compliance with the law, or risk civil penalties.

14. The Congress of the United States was explicit about its intentions in enacting the preemption provisions of the Airline Deregulation Act, *i.e.* to “prevent conflicts and inconsistent

regulations.” H. Report No, 95-1211 at 16. The Supreme Court in *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992), held that the use of the words “related to” in the preemption provisions of the ADA “express a broad pre-emptive purpose” and prohibit all state laws “relating to” the rates, routes or services of an air carrier. Indeed, Congress expressly endorsed the holding in *Morales* in 1994 when it enacted the recodified Title 49 into positive law, 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).

15. The preemption clause of the Airline Deregulation Act reflects the long-standing federal policy of preempting the field of aviation regulation. As Justice Jackson recognized in the early days of commercial aviation:

Congress has recognized the national responsibility for regulating air commerce. Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxies onto a runway it is caught up in an elaborate and detailed system of controls. It takes off only by instruction from the control tower, it travels on prescribed beams, it may be diverted from its intended landing, and it obeys signals and orders. Its privileges, rights, and protection, so far as transit is concerned, it owes to the Federal Government alone and not to any state government.

Northwest Airlines, Inc., v. State of Minnesota, 322 U.S. 292, 303 (1944) (J. Jackson, concurring).

16. The NY Statute is not a law of general applicability which has only an incidental effect on air carriers; it is a law directed exclusively at air carriers, with the express purpose of requiring the provision of certain services to passengers on flights delayed on the ground after leaving an airport gate. There is thus no question that the NY Statute challenged herein constitutes an attempt to regulate the “services” of an air carrier. Yet the Supreme Court has

already confirmed that “[t]he ADA’s preemption clause...stops States from imposing their own substantive standards with respect to rates, routes, or services...” *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 232 (1995). In *Wolens*, the Supreme Court specifically noted the “potential for intrusive regulation of airline business practices inherent in state consumer protection legislation...” 513 U.S. at 227-8. Courts both within and outside this Circuit have repeatedly held that on-board activities are clearly included in the term “services” for purposes of the ADA preemption clause. *See, e.g., Rombom v. United Air Lines, Inc.*, 867 F. Supp. 214 (S.D.N.Y. 1994) (District Judge Sotomayor establishing a three-prong test to determine whether state tort actions relating to airline services are preempted).

17. Even if well-intentioned, state laws such as the NY Statute at issue herein threaten to impose a multitude of inconsistent requirements on air carriers which operate in many different states each and every day. Moreover, the NY Statute could interfere with aircraft and airport operations that are under the control of the Federal Aviation Administration.

18. The members of Plaintiff ATA will suffer injury if enforcement of the challenged provisions of the NY Statute is not enjoined. ATA’s members face the prospect of significant civil penalties for violations of this unconstitutional law. As in *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992), Plaintiff’s members here are “faced with a Hobson’s choice: continually violate [state] law and expose themselves to potentially huge liability; or violate the law once as a test case and suffer the injury of obeying the law during the pendency of the proceedings and any further review.” The ability of the air carrier members of ATA to provide efficient and reliable service to the traveling public would be undermined, rather than enhanced, if air carriers are to be subject to multiple forms of regulation at the instance of each of the fifty states.

19. Enforcement of the challenged provisions of the NY Statute would constitute an impermissible burden and restriction on interstate and foreign commerce by the State of New York.

20. Plaintiff's member carriers have no adequate remedy at law. If an injunction is granted, the Defendants will not suffer any cognizable harm. Defendants cannot claim injury from an order compelling them to comply with pre-existing Federal law. Far greater injury will be inflicted upon the member carriers of the Plaintiff, their employees and the traveling public by the refusal to grant the relief sought herein than Defendants will suffer by the grant of the declaratory and injunctive relief requested.

**Count One: Violation of the Preemption Provisions of the
Airline Deregulation Act of 1978**

21. Plaintiff repeats and realleges paragraphs 1 through 20 of this Complaint as though fully set forth herein.

22. The provisions of the NY Statute identified in paragraphs 10 and 11 above are invalid and unenforceable because they violate the express prohibition of the preemption provisions of the Airline Deregulation Act of 1978, now codified at 49 U.S.C. §41713(b)(1).

Count Two: Violation of the Supremacy Clause of the U.S. Constitution

23. Plaintiff repeats and realleges paragraphs 1 through 20 of this Complaint as though fully set forth herein.

24. The provisions of the NY Statute identified in paragraphs 10 and 11 above are invalid and unenforceable because they violate the Supremacy Clause of the Constitution of the United State, Article VI.

Count Three: Violation of the Commerce Clause of the U.S. Constitution

25. Plaintiff repeats and realleges paragraphs 1 through 20 of this Complaint as though fully set forth herein.

26. The provisions of the NY Statute identified in paragraphs 10 and 11 above are invalid and unenforceable because they violate the Commerce Clause of the Constitution of the United State, Article I, Section 8.

Prayer for Relief

WHEREFORE, Plaintiff ATA, on behalf of its members, prays that this Court:

I. Issue a Declaratory Judgment that the provisions of the NY Statute complained of herein are invalid and unenforceable because they are preempted by the Constitution and laws of the United States, and

II. Issue a preliminary injunction, the same to be made permanent on final judgment:

A. Restraining and enjoining the defendants, their agents and employees, and all persons acting in concert or participation with them, from, in any manner or by any means, enforcing or seeking to enforce the provisions of the NY Statute determined by this Court to be invalid and preempted by federal law, and

B. Requiring the defendants to issue such notices, and take such steps as shall be necessary and appropriate to carry into effect the substance and intent of paragraph "A" hereof, including but not limited to, the requirement that defendants publicly withdraw and rescind any orders, directions, requests or suggestions to officers or agents of the State of New York to enforce the provisions of the NY Statute determined by this Court to be preempted by federal law, and

III. Grant such other, further or different relief as to which the plaintiff may be entitled.


Dated: October 17, 2007

Respectfully submitted,

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