**STATE OF MAINE**
**SUPREME JUDICIAL COURT**
**SITTING AS THE LAW COURT**

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**LAW COURT DOCKET NO. CUM-2024-101**

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**CAMPBELL CLEGG AND JENNIE CLEGG**

**Appellants**

**v.**

**AMERICAN AIRLINES, INC.**

**Appellee**

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**On Appeal from Decision of the Superior Court (Cumberland County)**

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# BRIEF OF APPELLANTS CAMPBELL CLEGG AND JENNIE CLEGG

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## I. INTRODUCTION

This appeal concerns an airline's failure to honor its contract with a customer. The position of Appellants Jennie and Campbell Clegg ("the Cleggs" or "Appellants") is simple: when Appellants purchased tickets from American Airlines, a contract was formed which required American Airlines to allow the Cleggs to board the flight they purchased tickets for. When American Airlines failed to do so, they breached that contract.

In an astonishingly broad interpretation of federal law, American Airlines argued, and the Superior Court agreed, that the Airline Deregulation Act of 1978 (the "ADA") essentially gives the airlines free reign to take money from consumers and provide nothing in return. American Airlines argues that the ADA fully and completely preempts Appellants' claims for the state law causes of action of breach of contract and fraud. However, preemption cannot give an airline license to breach its contract with a consumer. Although the ADA gives a broad leash to airlines in the name of promoting competitive market forces, it cannot go so far as to allow an airline to deny boarding without refund for no reason at all.

## II. STATEMENT OF FACTS

In 2022, Appellants purchased five first-class round-trip tickets from American Airlines ("AA") to fly from Albany to San Francisco on May 14, 2022 and return on May 21, 2022 for themselves, their two adult daughters, and their son-

in-law. App. 008-009, 044. The night before their outbound flight, Appellants attempted to check in for their flight from Albany to San Francisco multiple times but were unable to do so. App. 010. The three other ticket holders were able to check in. App. 011. The outbound flight was scheduled to depart at 6:04 a.m. App. 010. On the morning of their flight, Appellants together with the other travelers in the party arrived at the airport at 4:47 a.m. and reached the ticket counter at some time prior to 5:00 a.m. App. 010.

When attempting to check-in at the ticket counter, an AA agent advised Appellants that while she could see the reservation and see that seats had been assigned to the Appellants, AA's computer system would not let her complete the check-in process. App. 010. For reasons unknown and not shared with Appellants, AA was never able to check Appellants in to their flight and/or issue boarding passes. App. 034, 053-054. On the advice of the AA agent, Appellants ultimately booked a one-way flight with a different airline, assured by the agent that the AA return flight would not be affected as long as the agent/AA did not rebook their flight. App. 010-011. The original outbound flight to San Francisco proceeded without Appellants, their assigned seats empty for the flight, but with the other members of Appellants' traveling party. App. 011.

On May 20, 2022, the night before Appellants' return flight, Appellants received an email from AA prompting them to check-in for the return flight. App.

011. However, when they tried to check in online, they received an error message and were unable to check in. App. 011. Appellants called AA and were advised that despite the email prompt and the assurances from AA in Albany, their return tickets had been canceled because they did not board their outbound flight. App. 011. Appellants had never received notice that their return flights had been canceled prior to this conversation with AA. App. 011.

AA's Travel itinerary policy states that if a customer does "not show up for one segment of [his/her] itinerary, [AA] may cancel [the customer's] reservations on all remaining flight segments." App. 057. AA's Contract of Carriage (the "COC") also provides the following responsibilities and obligations owed by AA:

> Our responsibilities when there are schedule / operations changes
> When there are changes or cancellations that affect your trip, we'll try to contact you in advance to rebook another flight or move you to a similar seat or cabin, though we can't make any guarantees.
>
> […]
>
> If we or our airline partner fails to operate or delays your arrival more than 4 hours, our sole obligation is to refund the remaining ticket value and any optional fees according to our involuntary refunds policy, subject to our policy for rebooking your delayed / canceled flight.
>
> […]
>
> Compensation for involuntary denied boarding
>
> DOT rules determine how much you're compensated based on how late you'll be to your stopover or destination. Our goal is to get you to your next scheduled stopover or final destination as soon as possible, so we may offer flights on other airlines and non-air travel such as by train. If

> your flight is oversold and you're not allowed to board, we'll give you a check or travel credit the same day at the airport or mail it within 24 hours.

App. 014, 046.

The COC provides 400% of one-way fare (max of $1,550) for a 2+ hour arrival delay within the US. App. 046. The COC's provision on involuntary refunds further provides: "If you are due a refund because…we refused to let you fly for reasons other than your violation of this contract, we will refund you the full amount of the ticket and any extras if travel hasn't started." App. 015.

With regard to check-in, the COC provides:

> When it comes to checking in and arriving at the airport, earlier is better. Give yourself extra time if you're checking bags or traveling internationally.
>
> Check-in times
>
> […]
>
> In most cities, you must be checked in:
>
> • At least 45 minutes before scheduled departure, for flights within the U.S.

App. 009. The COC also advises "Our recommended arrival times are meant to allow plenty of time to check in (with or without bags) and clear security before scheduled departure." App. 009. Within the U.S., the COC recommends arriving "at least 2 hours" before scheduled departure. App. 009. Notably, the COC *requires* check in

at least 45 minutes before scheduled departure but only *recommends* arriving two hours before schedule departure.

To date, and contrary to the express terms of the COC, AA has paid no refund to Appellants for their purchased tickets. App. 011.

Appellants filed a lawsuit against AA bringing claims for breach of contract, fraud, and breach of the Maine Unfair Trade Practices Act. App. 012. On September 29, 2023, AA moved for summary judgment on all three claims on the basis that (1) the ADA federally preempted all three claims because they related to "rates, routes, or services of an air carrier…" and (2) the exception to federal preemption did not apply because AA did not violate the COC applicable to Appellants' tickets. App. 025-026. Appellants opposed the motion for summary judgment on the grounds that the claims did not sufficiently relate to "rates, routes, or services of an air carrier…" under the ADA and even if they did, federal preemption did not apply because AA breached its own contract. App. 043.

The Maine Superior Court granted AA's motion for summary judgment, holding summarily that the ADA expressly preempted Appellants' claims because they all related to ticketing. App. 016. The Court also held that the exception to preemption did not apply because AA breached no terms of its COC, deciding that Appellants "were denied boarding because they failed to arrive at the ticket counter

early enough to complete the check-in process and check their bags as required by the COC." App. 015.

## III. STATEMENT OF ISSUES PRESENTED

1. Whether the trial court erred in its evaluation of whether the ADA expressly preempts Appellants' claims; and

2. Whether the trial court erred in holding no exception to ADA preemption applied.

## IV. STANDARD OF REVIEW

The trial court's rulings holding that the ADA preempts all of Appellant's claims is a legal conclusion reviewed *de novo*. *Howard v. White*, 2024 ME 9, ¶ 7, 308 A.3d 213, 216 ("Issues of statutory interpretation are questions of law, which we review de novo."); *see also Lyman v. Huber*, 2010 ME 139, ¶ 19, 10 A.3d 707, 711 n.2. ("We review the court's factual findings for clear error and its legal conclusions de novo.")

## V. SUMMARY OF ARGUMENT

The Superior Court erred in granting AA's Motion for Summary Judgment for two reasons.

First, the Superior Court erred in its evaluation of express preemption under the ADA because it did not complete the proper analysis and ignored the policy purposes behind the ADA. Evaluation of the issue is twofold: first, a court must decide whether the causes of action are predicated on a "law, regulation, or other provision having the force and effect of law,"; and second, a court must decide if the

claims are sufficiently "related to" an air carrier's prices routes, or services to warrant preemption. *Brown v. United Airlines, Inc.*, 720 F.3d 60, 63 (1st Cir. 2013). Because the ADA's preemption clause was intended to prevent states from regulating airline operations "so that competitive market forces could function," the second part of this twofold analysis requires a court to consider whether the state law claim has a regulatory effect. *Taj Mahal Travel, Inc. v. Delta Airlines, Inc.*, 164 F.3d 186, 194 (3d Cir. 1998) (citing *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995). The Superior Court did not consider whether the Cleggs' claims had a regulatory effect, making its holding that the claims relate to ticketing conclusory. As explained in further detail below in reference to applicable case law, the Cleggs' claims do *not* have a regulatory effect, and are therefore not preempted.

Second, the Superior Court erred in finding the *Wolens* exception does not apply to these facts. As explained below, the Superior Court appears to have concluded that the boarding passes were not issued because of the time that the Cleggs arrived at the airport but there is absolutely no evidence to support that conclusion. In point of fact, what the Superior Court ignored is that it was AA, not the Cleggs, that breached the terms of the COC by failing to issue the boarding passes.

## VI. ARGUMENT

### A. Legislative History

The ADA is a federal law that expressly preempts state efforts to regulate the prices, routes, and services of certain air carriers. *See* 49 U.S.C. § 41713(b)(1). Prior to enactment of the ADA, the airline industry was subject to regulation and oversight by both federal and state government. *Air Evac EMS, Inc. v. Cheatham*, 910 F.3d 751, 755 (4th Cir. 2018) (citing *Federal Aviation Act of 1958*, Pub. L. No. 85-726, § 302(k); H.R. Rep. No. 85-2360, at 14 (1958)). In 1978, Congress enacted the ADA as an effort to encourage a reliance on free market forces, remove entry barriers, and allow prices to respond to consumer demand. *See id.* at 755. Under the ADA, any efforts by a state to regulate the prices, routes, or services of air travel are preempted by federal regulation and oversight: "[A] State ... may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart." 49 U.S.C. § 41713(b)(1).

The ADA's preemption clause was intended to prevent states from regulating airline operations "so that competitive market forces could function." *Taj Mahal Travel, Inc.*, 164 F.3d at 194. "The ADA freed the airlines of some federal regulation by significantly limiting the government's power to control most of the business practices of airlines." Hannah Foote, *Delayed Flights and Delayed Rights: It Is Time*

*for the United States to Follow the European Union's Lead and Enact More Regulations to Protect Airline Passengers*, 88 J. AIR L. & COM. 919, 925 (2023).

**B. Appellants' Claims Do Not Have A Regulatory Effect.**

In holding that the ADA expressly preempted Appellants' claims, the Superior Court erred in declining to consider whether the claims had a regulatory effect.

As stated above, the ADA expressly preempts any claims that relate to "a price, route, or service of an air carrier..." to prevent states from regulating airline operations in the name of encouraging competitive market forces. *See* 49 U.S.C. § 41713(b)(1). Therefore, the proper inquiry in determining whether the ADA preempts a state law claim is to determine whether the state law invoked has a regulatory effect. *Taj Mahal Travel, Inc*, 164 F.3d at 194 (3d Cir. 1998). State laws are not pre-empted by the ADA if the connection to price, route, or service is too tenuous, remote, or peripheral to have pre-emptive effect. *Cintron v. JetBlue Airways Corporation*, 324 F. Supp. 3d 248, 252 (D. Mass. 2018).

*Hall v. Delta Air Lines, Inc.* is illustrative. No. 2:16-CV-00417-JAW, 2018 WL 1570788, at *1 (D. Me. Mar. 30, 2018). In *Hall*, a plaintiff suffering from muscular dystrophy was injured in two separate instances when by Delta contractors assisting the plaintiff in boarding and disembarking flights. *Id.* at *3. Delta argued that the ADA expressly preempted Halls' claims since they related to services

assisting passengers in boarding. *Id.* at *10. The U.S. District Court for the District of Maine disagreed, noting:

> The Halls' claims do not challenge processes or procedures or the way services are delivered. They simply complain about how services were delivered during the 2015 and 2016 incidents—namely, negligently. They do not seek to upend the practices of Delta or the airline industry as a whole. Rather they seek compensation for the harm inflicted upon them. Hence, any effect of their claims on air carrier service would be far too "tenuous, remote, or peripheral" to make them subject to the preemption provision of the ADA.

*Id.* at *18. As in *Hall*, Appellants' claims do not challenge American Airlines processes or procedures for delivery of its ticketing, check-in, and boarding services are delivered as a general matter. Appellants' claims *do* challenge the way those services were delivered in May of 2022 – that is, not at all. The fact that AA itself admits the reasons it was unable to check in and board Appellants on the flights they purchased tickets for was "unknown"[1] points to the reality that something – unrelated to any actions Appellants did or did not take – malfunctioned relative to *Appellants*' tickets in May of 2022 specifically. App. 034, 053-054.

Indeed, the Ninth Circuit defines "service" narrowly. *Schoene v. Spirit Airlines, Inc.*, No. 3:22-CV-1568-SI, 2024 WL 1329056, at *3 (D. Or. Mar. 28, 2024) (citing *Nat'l Fed'n of the Blind v. United Airlines Inc.*, 813 F.3d 718, 727-28

[1] Appellee has never been able to explain why Appellants were unable to check in to their outbound flight but the other three members of their party were, stating in its *Memorandum in Support of Motion for Summary Judgment* that "[t]he reasons why Plaintiffs' check in did not go smoothly is partially unknown…" App. 034.

(9th Cir. 2016). At least one court has held that claims arising from an airline's denial of transport are not categorically deemed to relate to the service of an air carrier for purposes of preemption under the act. *Id.* at *3.

Accordingly, the Superior Court erred in failing to give proper consideration to the proper inquiry in evaluating express ADA preemption – that is, whether Appellants claims had a regulatory effect.

**C. American Airlines Breached Its Own Contract**

The Superior Court held the *Wolens* exception does not apply because the AA did not violate any term of its contract of carriage. As explained by the Superior Court, "an exception to preemption applies for breach of a 'self-imposed undertaking' under *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 228 (1995). App. 013. Essentially, the ADA cannot shelter an airline for breaching a private contract between two parties. *Onoh v. Nw. Airlines, Inc.* 613 F.3d 596, 600 (5th Cir. 2010).

Per the Court's reading of American Airlines' Contract of Carriage applicable to this case, there is no term that obligates AA "to issue a refund in any particular circumstance." App. 015. Rather, the COC "simply explains will be refunded *if* you are due a refund." App. 015. (emphasis in original).

Regardless of how broad a leash the ADA gives airlines, a contract of carriage's terms cannot be read to permit the airline to sell to a consumer a ticket

without any concrete obligation to honor that ticket purchase. To do so creates an unenforceable illusory contract – the ADA cannot allow an airline to draft a contract so malleable that a consumer can pay for a ticket and receive nothing in return.[2]

Moreover, the Court partially based its holding regarding the *Wolens* exception on its finding that the Appellants arrived too late for check-in per the COC's requirements, seemingly implying that AA's denial of boarding and refund was justified based on Appellants' own violation of the COC. App. 015. This finding is inaccurate. The COC only "requires" check-in to occur 45 minutes before scheduled departure; it does not otherwise require a specific arrival time, only *recommending* that a passenger arrive two hours early.

The Cleggs arrived at the airport over an hour before the scheduled departure time. App. 010. That the Cleggs arrived in sufficient time is established by the undisputed fact that the three other ticket holders received boarding passes and were on the flight. App. 011. The Cleggs clearly breached no term of the COC. Therefore, any conclusion that AA was justified in denying Appellants the ability to check-in and board their flight based on the Cleggs' violation of the COC is clearly erroneous and not supported by anything in the record. Unlike recent cases where an airline denied the passenger boarding due to the passenger's refusal to comply with airline

[2] Furthermore, to posit that the ADA eliminates any rights a consumer has to seek redress when an airline takes money and provides nothing in return would make the ADA patently unconstitutional because it would deprive consumers, like the Cleggs, of property without due process.

mask policies, there is no such violation by the Appellants justifying AA's actions. *See, e.g. Reinbold v. Alaska Airlines*, No. 3:23-CV-00087-JMK, 2024 WL 553552, at *1 (D. Alaska Feb. 12, 2024) (denying breach of contract claim of passenger who refused to wear a mask because the ADA gives airlines right to refuse transport to a passenger it decides is inimical to safety); *see also Abadi v. Am. Airlines, Inc.*, No. 23-CV-4033 (LJL), 2024 WL 1346437 (S.D.N.Y. Mar. 29, 2024). Again, AA did not fail to issue a boarding pass based on anything that the Cleggs did, or did not, do. By its own admission, AA has no idea why no boarding passes were issued.

It is therefore clear that AA breached its own contract when it denied Appellants check-in to their flight and the Superior Court erred in holding the *Wolens* exception does not apply to this case.

## VII. CONCLUSION

For the above reasons, the Superior Court's Order must be reversed.

Dated: May 14, 2024

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## CERTIFICATE OF SERVICE

I, Lee. H. Bals, hereby certify that on this 14th day of May, 2024, two copies of the Brief of Appellants Jennie Clegg and Campbell Clegg and one copy of the Appendix were served by depositing the same in the United States Mail, postage prepaid, addressed as follows, and, as set forth below, by electronic mail:

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