

**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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**REPLY BRIEF OF APPELLANTS CAMPBELL CLEGG AND JENNIE  
CLEGG**

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**Lee H. Bals, Bar No. 3412  
K. Blair Johnson, Bar No. 10406  
MARCUS|CLEGG  
16 Middle Street, Unit 501  
Portland, ME 04101  
(207) 828-8000  
lhb@marcusclegg.com  
kbj@marcusclegg.com**

**Attorneys for Appellants  
Campbell Clegg and Jennie Clegg**

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## I. INTRODUCTION

The fundamental error of American Airlines, Inc.'s ("Appellee" or "AA") argument is that AA clearly breached its own contract, making Appellants Jennie and Campbell Clegg's ("Appellants" or the "Cleggs") claims fall within the *Wolens* exception. For that same reason, Appellants' claims have no regulatory impact on AA's policy and procedures. Appellants' claims do not challenge AA's policy and procedures nor the ADA. Appellants' claims simply concern AA's breach of its fundamental agreement with Appellants: to provide boarding and flight passage in exchange for the purchase of a ticket. AA did not do this, nor has it provided a legitimate reason for that failure.

For those reasons, as discussed in greater detail below, 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.

## II. ANALYSIS AND RESPONSES

The Cleggs reiterate their argument that the claims do not have a regulatory argument and that the Superior Court erred in declining to consider the same.

AA falsely proffers in its Brief that Appellants did not raise the argument that their claims had no regulatory effect. However, that argument is part and parcel of any ADA preemption argument. As stated in their opposition to the motion for summary judgment before the trial court, "[e]ven if a state law claim has some

‘connection with, or reference to’ an airlines’...services that would bring it within the scope of the ADA, it will nevertheless not be preempted unless it has a ‘forbidden significant effect’ on the same by interfering with the operation of the deregulated airline industry.” App. 047 (citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384, 388 (1992)).

AA also argues that because ADA preemption is broad, any challenge to ticketing, check-in and/or boarding services is preempted. However, the Cleggs do not challenge any regulations or policies related to these services, but simply argue that once an airline establishes those regulations, that airline must follow them. And AA fails to provide any explanation for why they did not.

AA cites a slew of cases in its brief to support its contention that the Cleggs’ claim challenges ticketing and boarding procedures and is therefore preempted by the ADA. However, each of these cases are inapposite; in each case the airline had a policy or procedure-based reason for cancelling or changing a flight, or the passengers themselves cancelled their own flight.<sup>1</sup> In the cited cases where an

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<sup>1</sup> *Travel All Over the World v. Kingdom Saudi Arabia*, 73 F3d 1423, 1433 (7th Cir. 1996) (ticket cancellation related to delay caused by foul weather); *Delta Airlines, Inc. v. Black*, 116 S. W. 3d 745, 754-56 (Tex. 2003) (passenger not denied boarding); *Galbut v. American Airlines, Inc.*, 27 F.Supp.2d 146 (E.D.N.Y. 1997) (passenger not denied boarding and dispute related to apparently fraudulent or stolen upgrade coupons); *Williams v. Express Airlines, I, Inc.*, 825 F.Supp. 831 (W.D. Tenn. 1993) (passenger issued boarding pass but denial of boarding related to plaintiff’s physical disability); *Ruta v. Delta Airlines, Inc.*, 322 F.Supp. 2d 391 (S.D.N.Y.2004) (removal of plaintiff from aircraft related to his intoxication and violent and disruptive behavior); *Lawal v. British Airways, LLC*, 812 F.Supp. 713 (E.D. Tex. 1992) (denial of boarding related to apparently fraudulent or stolen ticket); *Cuomo*, 520 F.3d 218 (claim related to denial of food and drink during

individual passenger was denied boarding, the airline similarly had a policy or procedure based reason for that denial. Here, as stated, there is no policy, procedure, or rule to support AA's failure to issue the boarding passes. Nor did Appellants cancel their own flights.

The lack of regulatory effect here is clear by virtue of the absence of any policy or procedure based reason for AA's failure to issue a boarding pass and failure to issue any refund to Appellants. By their own admission, AA does not know *why* its agents were unable to issue a boarding pass.

AA clearly breached its contract with Appellants. AA, by its own admission, does not know why it was unable to check in and issue boarding passes to Appellants. Despite this failure, AA did not issue a refund to the Appellants.

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delay, not failure to issue a ticket or boarding pass); *Farah v. Continental Airlines, Inc.*, 574 F.Supp. 2d 356 (E.D.N.Y. 2008) (passenger asked to move from one first class seat to another, not denied boarding); *Flaster/Greenberg P.C. v. Brendan Airways, LLC*, 2000 WL 1652456 (D.N.J. 2009) (airline cancelled flight 5 months prior to flight and issued a refund); *Shulick v. United Airlines*, 2012 WL 315483 (E.D. Penn. 2012)(flights cancelled due to blizzard); *Shipwash v. United Airlines, Inc.*, 28 F.Supp. 3d 740 (E.D. Tenn. 2014) (entire flight cancelled); *Howell v. Alaska Airlines, Inc.*, 99 Wash. App. 646 (2000) (plaintiffs all cancelled their own tickets of their own accord for various personal reasons and were not refunded the ticket); *Banga v. Gundumolgula*, 2013 WL 3804046 (E.D. Cal. July 19, 2013)( Plaintiff canceled her own flight due to a surgery); *Madorsky v. Spirit Airlines*, 2012 WL 6049095 (E.D. Mich. 2012)(claims not related to denial of boarding); *Boon Ins. Agency, Inc. v. Am Airlines, Inc.*, 17 S.W.3d 52, 58-59 (Tex. App. 2000) (Class action related to refunds for unused tickets – not related to denial of boarding); *Statland*, 998 F.2d 539 (Claim related to plaintiff's own cancellation of flight and lack of refund); *Blackner v. Continental Airlines*, 311 N.J.Super. 10, 709 A.2d 258 (1998) (Plaintiff lost return ticket, return ticket replaced and honored but charged a \$60 replacement fee); *Leonard v. Northwest Airlines*, 605 N.W.2d 425 (Minn.Ct.App.2000) (plaintiff rebooked flights and charged an additional fee for reissuing tickets, not denied boarding).

Although an airline may have a valid reason for denying boarding to a passenger, as demonstrated by the legion of cases cited by AA in its Brief, there is no such valid reason here. Therefore, AA's failure to render the bargained for service to Appellants – that is, a boarding pass and passage in exchange for the purchase price of a ticket – causes these claims to fall within the *Wolens* exception.

### III. CONCLUSION

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

Dated: July 23, 2024

/s/ Lee H. Bals

Lee H. Bals, Bar No. 3412

K. Blair Johnson, Bar No. 10406

Attorney for Appellants

MARCUS|CLEGG

16 Middle Street, Unit 501

Portland, ME 04101

(207) 828-8000

lhb@marcusclegg.com

kbj@marcusclegg.com



## CERTIFICATE OF SERVICE

I, Lee. H. Bals, hereby certify that on this 23<sup>rd</sup> day of July, 2024, two copies of the Reply Brief of Appellants Jennie Clegg and Campbell Clegg were served by depositing the same in the United States Mail, postage prepaid, addressed as follows, and, as set forth below, by electronic mail:

William N. Smart, Esq.

[wsmart@morrisonmahoney.com](mailto:wsmart@morrisonmahoney.com)

Tory A. Weigand, Esq.

[tweigand@morrisonmahoney.com](mailto:tweigand@morrisonmahoney.com)

Morrison Mahoney, LLP  
650 Elm Street, Suite 201  
Manchester, NH 03101

/s/ Lee H. Bals \_\_\_\_\_

Lee H. Bals, Bar No. 3412