

2006

Federal Preemption - State Dram Shop Legislation in Conflict with Federal Aviation Administration Regulations - The Supreme Court of Georgia Declines to Hold That the Airline Deregulation Act Mandates Preemption of the Georgia Dram Shop Act as It Applies to Carriers

Sarita Anne Smithee

Follow this and additional works at: <https://scholar.smu.edu/jalc>

Recommended Citation

Sarita Anne Smithee, *Federal Preemption - State Dram Shop Legislation in Conflict with Federal Aviation Administration Regulations - The Supreme Court of Georgia Declines to Hold That the Airline Deregulation Act Mandates Preemption of the Georgia Dram Shop Act as It Applies to Carriers*, 71 J. Air L. & Com. 75 (2006)
<https://scholar.smu.edu/jalc/vol71/iss1/6>

This Case Note is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

FEDERAL PREEMPTION—STATE DRAM SHOP LEGISLATION IN CONFLICT WITH FEDERAL AVIATION ADMINISTRATION REGULATIONS—THE SUPREME COURT OF GEORGIA DECLINES TO HOLD THAT THE AIRLINE DEREGULATION ACT MANDATES PREEMPTION OF THE GEORGIA DRAM SHOP ACT AS IT APPLIES TO AIR CARRIERS

SARITA ANNE SMITHEE*

A STATE LAW is preempted by a federal law when Congress expressly states that the federal law will have a preemptive effect, when such preemption may be inferred from a pervasive regulatory scheme, or when the state law conflicts with the federal law.¹ Absent an express statement by Congress that a federal law has preemptive effect, an inquiry must be made to discern either Congressional intent to enact a pervasive regulatory scheme or a direct enough conflict between state and federal law to warrant a finding of preemption.

State laws and federal regulations addressing similar issues invite consideration under preemption analysis. For example, the Georgia Dram Shop Act provides, in part, the following:

[A] person who willfully, knowingly, and unlawfully sells, furnishes, or serves alcoholic beverages to a person . . . who is in a state of noticeable intoxication, knowing that such person will soon be driving a motor vehicle, may become liable for injury or damage caused by or resulting from the intoxication of such minor or person when the sale, furnishing, or serving is the proximate cause of such injury or damage.²

However, a Federal Aviation Administration regulation, 14 C.F.R. § 121.575, provides that airline personnel may not serve

* B.A. Texas Tech University; J.D. Candidate, SMU Dedman School of Law, 2007. I would like to thank my friends and family for their support and encouragement.

¹ *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985); *Hodges v. Delta Airlines, Inc.*, 44 F.3d 334, 336 (5th Cir. 1995).

² GA. CODE ANN. § 51-1-40(b) (West 1998).

any alcoholic beverages aboard an aircraft to any person who appears to be intoxicated.³ The Airline Deregulation Act, enacted by Congress in 1978, provides, in part, that “[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 services of any air carrier”⁴ An issue is thus raised as to whether 14 C.F.R. § 121.575 and the Georgia Dram Shop Act are in conflict with each other or whether the Airline Deregulation Act is evidence of a federal regulatory scheme, if not an express statement mandating preemption of state tort law as it applies to air carriers.

In late 2005, however, the Supreme Court of Georgia erroneously held in *Delta Airlines, Inc. v. Townsend* that the question of federal preemption by the Airline Deregulation Act (“ADA”) was moot in the case of a non-passenger’s claim under the Georgia Dram Shop Act (“GDSA”) against an airline for allegedly serving an intoxicated passenger who was later involved in an automobile accident injuring the claimant.⁵ Despite the fact that 14 C.F.R. § 121.575 (“the FAA regulation”) and the GDSA address precisely the same issue, service of alcoholic beverages to intoxicated persons, the Supreme Court of Georgia gave no attention to potential conflicts between the FAA regulation and the GDSA or to congressional intent in enacting the ADA, instead choosing to address the merits of the claim under Georgia law.⁶ The Supreme Court of Georgia found that the burden of proof under Georgia law had not been met and ultimately elected not to reverse the Georgia Court of Appeals’ holding that the ADA did not mandate preemption of claims against air carriers under the GDSA.⁷

On March 29, 2001, Jack Townsend, a twenty-five-year-old college graduate on the verge of being certified to be a school teacher, was driving home in north Atlanta.⁸ A few hours earlier, James Serio, a fifty-year-old software salesman and youth minister, had been on a Delta flight from Milwaukee to Atlanta.⁹

³ 14 C.F.R. § 121.575 (2002).

⁴ 49 U.S.C.A. § 41713(b)(4)(A) (West 1997). The ADA amended the Federal Aviation Act of 1958.

⁵ *Delta Airlines, Inc. v. Townsend*, 614 S.E.2d 745, 749 (Ga. 2005).

⁶ *Id.*

⁷ *Id.*

⁸ Bill Rankin, *Delta Liable for Drunken Driver?*, ATLANTA JOURNAL-CONSTITUTION, Apr. 19, 2005, at A1.

⁹ *Id.*

While Serio was enjoying his first-class seat on the two-hour trip, Delta flight attendants allegedly served him more than six glasses of red wine.¹⁰ Tragically, on March 29, 2001 at 10:30 p.m., James Serio was driving home from the Atlanta airport and crossed the center line of the road, striking Jack Townsend's car head-on.¹¹ Townsend was severely injured and sued not only Serio but Delta Airlines as well.¹² Serio pleaded guilty to drunk driving, and Delta faced potential liability under both federal aviation law and the GDSA.¹³

Townsend first elected to proceed under the GDSA and common law negligence.¹⁴ Delta moved to dismiss, arguing that the GDSA did not apply to interstate airline flights; Townsend then amended his complaint to add a claim for a violation of the applicable FAA regulation, 14 C.F.R. § 121.575.¹⁵ Delta responded by removing the case to a federal court which, because the FAA regulation provided no remedy for non-passengers injured by an airline's service of alcohol to intoxicated passengers, dismissed the federal claim and remanded the case to superior court in Georgia for adjudication of the remaining state law claims.¹⁶ The superior court held that the GDSA had no application to an airline's service of alcohol on an interstate flight because such an application would give the state law improper extraterritorial effect and thus dismissed Townsend's GDSA claim, sending the matter back to the Georgia Court of Appeals for a new trial to determine whether Delta had violated the FAA regulation.¹⁷

The court of appeals reversed, holding that reading the complaint in the light most favorable to Townsend would not necessarily result in giving the GDSA extraterritorial effect.¹⁸ The court of appeals then addressed the issue of federal preemption in discussing whether the ADA mandated preemption of the GDSA, finding no express or implied preemption of Townsend's claim and, because they both ultimately prohibit the ser-

¹⁰ *Id.*

¹¹ *Id.*

¹² Bill Rankin, *Delta Cleared in Alcohol Suit*, ATLANTA JOURNAL-CONSTITUTION, June 17, 2005, at F1.

¹³ *Id.*

¹⁴ See *Townsend v. Delta Airlines, Inc.*, 605 S.E.2d 54, 55-56 (Ga. Ct. App. 2004); 14 C.F.R. § 121.575 (2002).

¹⁵ *Townsend v. Delta Airlines, Inc.*, 605 S.E.2d at 55-56.

¹⁶ *Id.* at 56.

¹⁷ *Id.*

¹⁸ *Id.* at 56-57.

vice of alcoholic beverages to intoxicated persons, no conflict between the FAA regulation and the GDSA.¹⁹ The court of appeals held that the GDSA preempted Townsend's remaining state law claims and allowed Townsend to proceed only with respect to his claim under the GDSA.²⁰

The issues facing the Supreme Court of Georgia were whether the court of appeals was correct in holding that Townsend's claim under the GDSA was not preempted by the ADA and, if so, whether his stated claim was viable. The court, in addressing the merits of Townsend's claim under an extremely strict construction of the GDSA, side-stepped the issue of federal preemption by holding that Townsend failed to meet his burden of proof under Georgia law, thereby holding that the question of federal preemption was moot.²¹

The Supreme Court of Georgia was incorrect in holding that the federal preemption question was moot in this case because there is clearly a conflict between the FAA regulation and the GDSA. Both the federal regulation and the state statute address precisely the same issue: the service of alcoholic beverages to intoxicated persons.²² The ADA is part of a federal deregulatory scheme, and, under the Supremacy Clause, state laws that are inconsistent with that scheme are subject to federal preemption.²³ Moreover, the ADA itself contains an express preemption provision that prevents the enforcement of state laws directly affecting airlines' rates, routes, and services.²⁴ The GDSA, as it applies to the aviation industry, affects airline services and, therefore, claims brought against an airline under the GDSA are subject to preemption by the ADA.

Congress enacted the ADA in an effort to increase efficiency and quality in the air carrier industry through competition in the market, freeing airlines from restrictive state regulation.²⁵ Thus, state legislation directed toward the airline industry that is inconsistent with this purpose is subject to preemption under the Supremacy Clause.²⁶ Even if the ADA did not contain an

¹⁹ *Id.* at 57.

²⁰ *Id.*

²¹ *Delta Airlines, Inc. v. Townsend*, 614 S.E.2d 745, 749 (Ga. 2005).

²² GA. CODE ANN. § 51-1-40(b) (West 1998); 14 C.F.R. § 121.575 (2002).

²³ U.S. CONST. art. VI, cl. 2.

²⁴ 49 U.S.C.A. § 41713(b)(4)(A) (West 1997).

²⁵ See *Charas v. Trans World Airlines, Inc.*, 160 F.3d 1259, 1262 (9th Cir. 1998).

²⁶ U.S. CONST. art. VI, cl. 2; *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992); *Perez v. Campbell*, 402 U.S. 637, 652 (1971).

express preemption provision, the Georgia Court of Appeals was mistaken in claiming that there is no conflict between the GDSA and the FAA regulation because Congress intended to foreclose state interference in the deregulation of the airline industry by enacting the ADA.²⁷ The court of appeals held that because both the statute and the regulation ultimately prohibit the same activity, they are consistent and preemption is not mandated.²⁸ However, the determination of whether a state statute is in conflict with a federal statute and is thus invalid under the Supremacy Clause, is essentially a two-step process involving, first, the construction of each statute and, second, addressing the constitutional question of potential conflict.²⁹

Under this analysis, a court must examine both the stated purpose and the effect of each statute.³⁰ Any state legislation that frustrates the full effectiveness of federal law is preempted constitutionally by the Supremacy Clause.³¹ In analyzing whether there is a conflict, “the task . . . is to determine whether state regulation is consistent with the structure and purpose of the federal statute as a whole.”³² There is a sufficient conflict when the state law has a direct and substantial impact on the federal scheme.³³ Allowing state courts to adjudicate claims brought against airlines under a state’s dram shop legislation is plainly inconsistent with the broader federal purpose of deregulation of the airline industry embodied in the ADA.³⁴

To further safeguard against a state’s undoing of federal deregulation with regulation of its own, the ADA expressly prevents the states from interfering with its deregulatory scheme by way of a broad preemption provision, which provides that “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.”³⁵ The Supreme Court of the United States has interpreted this language in expansive fashion to mean that the ADA mandates preemption of any “[s]tate enforcement actions having a connection with or reference to air-

²⁷ *Townsend v. Delta Airlines, Inc.*, 605 S.E.2d 54, 58 (Ga. Ct. App. 2004).

²⁸ *Id.*

²⁹ U.S. CONST. art. VI, cl. 2; *Perez*, 402 U.S. at 644.

³⁰ *Perez*, 402 U.S. at 652.

³¹ *Id.*

³² *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992).

³³ *Id.* at 107.

³⁴ *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992).

³⁵ *Id.* at 378-79; 49 U.S.C. § 41713(b)(1) (West Supp. 1999).

line 'rates, routes, or services.'"³⁶ This preemptive effect applies unless the state action in question affects airline rates, routes, or services in "too tenuous, remote, or peripheral a manner."³⁷

Townsend's state law claims unquestionably relied on the enforcement of a state law. Townsend was not seeking recovery solely for Delta's breach of its self-imposed undertakings in a way that would amount to Georgia's failure to enforce its own laws.³⁸ Townsend's claim is, rather, that Delta violated Georgia common and statutory law by its service of alcohol to passengers.³⁹ This claim "cannot be adjudicated without resort to outside sources of law," and it is, therefore, subject to preemption by the ADA if it relates to airline rates, routes, or services in more than a tenuous, remote, or peripheral manner.⁴⁰

The court of appeals found that there was no federal preemption based on the second part of the inquiry, deciding that the state law claim under the GDSA did not relate to an airline's rate, route, or service in more than an overly tenuous, remote, or peripheral manner.⁴¹ Admittedly, courts have struggled to define which airline services Congress intended to preempt in enacting the ADA; however, Townsend's claim involves Delta's in-flight beverage service, which is plainly within the range of services airlines routinely provide to their passengers.⁴² As the Fifth Circuit has held, an airline's provision of food and drink is "appurtenant and necessarily included with the contract of carriage between the passenger or shipper and the airline."⁴³ In support of its holding, the Fifth Circuit relied on the ADA's legislative history and cited the following Civil Aeronautics Board comment regarding the scope of ADA preemption: "preemption extends to all of the economic factors that go into the provi-

³⁶ *Morales*, 504 U.S. at 384.

³⁷ *Id.* at 390; *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 229 (1995); *Smith v. Comair, Inc.*, 134 F.3d 254, 257 (4th Cir. 1998).

³⁸ *Wolens*, 513 U.S. at 228.

³⁹ *Delta Airlines, Inc. v. Townsend*, 614 S.E.2d 745, 747 (Ga. 2005).

⁴⁰ *See Wolens*, 513 U.S. at 233; *Smith*, 134 F.3d at 257.

⁴¹ *See Townsend v. Delta Airlines, Inc.*, 605 S.E.2d 54, 58 (Ga. Ct. App. 2004).

⁴² *Compare Charas v. Trans World Airlines, Inc.*, 160 F.3d 1259, 1265-66 (9th Cir.1998) (en banc) (holding that "service" in the ADA's pre-emption provision, "when juxtaposed to 'rates' and 'routes,' refers to such things as the frequency and scheduling of transportation, and to the selection of markets to or from which transportation is provided"), *with Hodges v. Delta Airlines, Inc.*, 44 F.3d 334, 336 (5th Cir. 1995) (en banc) (holding that "services" includes items such as ticketing, boarding procedures, provision of food and drink, and baggage handling).

⁴³ *Hodges*, 44 F.3d at 336.

sion of the *quid pro quo* for passenger's [sic] fare."⁴⁴ Indeed, in Delta's case, the procurement of alcoholic beverages is a service for which most of its passengers are charged an additional fee; it is a contractual exchange between the passenger and the air carrier much like that between a bartender and customer, only this bar happens to have wings.⁴⁵

Furthermore, Townsend's claim clearly "relates" to this airline service in a manner that is neither tenuous, remote, nor peripheral. Townsend's complaint is that Georgia common and statutory law prohibit the manner in which Delta provided beverage service to its passengers; thus, Georgia law would, in effect, control the way airlines must provide this service.⁴⁶ The nexus between the state law and the airline service could scarcely be more evident. Moreover, the Supreme Court of Georgia's supposition that the Georgia General Assembly did not intend the GDSA to address the airline industry is irrelevant under preemption analysis.⁴⁷ The Supreme Court of the United States plainly rejected the idea that "only state laws specifically addressed to the airline industry are preempted, whereas the ADA imposes no constraints on laws of general applicability."⁴⁸ Ultimately, when a cause of action is brought under a state's dram shop act as it applies to an airline service, preemption is mandated by the ADA.

The preclusion of federal question jurisdiction is the probable result of allowing the co-existence of a state statute and federal regulation addressing the same issue. A federal court would have to exercise adjudication of the federal claim under federal question jurisdiction, but it would have the option of rejecting a motion to remove a state action filed under its dram shop act.⁴⁹ If a federal court refuses to remove the state action, an air carrier could be forced to litigate matters that should be preempted under the federal statute in state court. This is problematic because dram shop legislation differs considerably from state to state.⁵⁰ Air carriers providing interstate flight ser-

⁴⁴ *Id.* at 337 (citing 44 Fed. Reg. 9948, 9951 (Feb. 15, 1979)).

⁴⁵ Delta Airlines Beverage Service, http://www.delta.com/traveling_checkin/inflight_services/food/index.jsp (last visited Oct. 12, 2005).

⁴⁶ Delta Airlines, Inc. v. Townsend, 614 S.E.2d 745, 747 (Ga. 2005).

⁴⁷ *Id.* at 749.

⁴⁸ Morales v. Trans World Airlines, Inc., 504 U.S. 374, 386 (1992).

⁴⁹ 28 U.S.C.A. § 1331 (West 1993); 28 U.S.C.A. § 1367(c) (West 1993).

⁵⁰ For example, three elements must be met under the Georgia statute before liability attaches: (1) alcohol must be served to an intoxicated person, (2) the server must know that the person will soon be driving, and (3) the service of

vice would have no way of knowing under which state statute they might eventually be sued and, likewise, no way of knowing which procedures to undertake before serving alcohol to protect themselves from suit. The ADA was enacted in large part to prevent this confusion by providing a uniform framework of liability.⁵¹ Ultimately, the Supreme Court of Georgia should have ruled that claims against airlines arising under the GDSA are preempted by the ADA instead of addressing the merits of Townsend's claim and inviting future claimants to waste judicial resources by improperly litigating federal matters in state court.

alcohol must have been the proximate cause of the resulting injury. GA. CODE ANN. § 51-1-40(b) (West 1998). In contrast, the California statute only requires service of alcohol to a noticeably intoxicated individual to establish liability. CAL. BUS. & PROF. CODE § 25602 (West 2003).

⁵¹ See *Morales*, 504 U.S. at 378.