SUPREME COURT OF THE UNITED STATES

No. 93–1286

AMERICAN AIRLINES, INC., PETITIONER *v.* MYRON WOLENS ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

[January 18, 1995]

JUSTICE STEVENS, concurring in part and dissenting in part.

Although I agree with the majority that the Airline Deregulation Act of 1978 (ADA) does not pre-empt respondents' breach-of-contract claims, I do not agree with the Court's disposition of their consumer-fraud claims. In my opinion, private tort actions based on common-law negligence or fraud, or on a statutory prohibition against fraud, are not pre-empted. Under the broad (and in my opinion incorrect[1]) interpretation of the words “law . . . relating to rates, routes, or services” that the Court adopted in *Morales* v. *Trans World Airlines*, *Inc.*, 504 U. S. — (1992), direct state regulation of airline advertising is pre-empted; but I would not extend the holding of that case to embrace the private claims that respondents assert in this case.

Unlike the National Association of Attorneys General (NAAG) guidelines reviewed in *Morales*, the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) does not instruct the airlines about how they can market their services. Instead, it

[1]See *Morales* v. *Trans World Airlines, Inc*, 504 U. S. —, — –— (1992) (dissenting opinion) (slip op. 1–10).

merely requires all commercial enterprises—airlines included—to refrain from defrauding their customers. The *Morales* opinion said nothing about pre-empting general state laws prohibiting fraud. The majority's extension of the ADA's pre-emptive reach from airline-specific advertising standards to a general background rule of private conduct represents an alarming enlargement of *Morales*' holding.

I see no reason why a state law requiring an airline to honor its contractual commitments is any less a law relating to its rates and services than is a state law imposing a "duty not to make false statements of material fact or to conceal such facts." *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. —, — (1992) (slip op., at 22) (finding similar claim not to be pre-empted under Federal Cigarette Labeling and Advertising Act). In this case, the two claims are grounded upon the exact same conduct and would presumably have an identical impact upon American's rates, routes, and services. The majority correctly finds that Congress did not intend to pre-empt a claim that an airline breached a private agreement. I see no reason why the ADA should pre-empt a claim that the airline defrauded its customers in the making and performance of that very same agreement.

I would analogize the Consumer Fraud Act to a codification of common-law negligence rules. Under ordinary tort principles, every person has a duty to exercise reasonable care toward all other persons with whom he comes into contact. Presumably, if an airline were negligent in a way that somehow affected its rates, routes, or services,[2] and the victim of the airline's

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[2]Indeed, every judgment against an airline will have some effect on rates, routes, or services, at least at the margin. In response to adverse judgments, airlines may have to raise rates, or curtail routes or services, to make up for lost income.

negligence were to sue in state court, the majority would not hold all common-law negligence rules to be pre-empted by the ADA. See *ante*, at 11, n. 7. Like contract principles, the standard of ordinary care is a general background rule against which all individuals order their affairs. Surely Congress did not intend to give airlines free rein to commit negligent acts subject only to the supervision of the Department of Transportation, any more than it meant to allow airlines to breach contracts with impunity. See *ante*, at 10–13. And, if judge-made duties are not pre-empted, it would make little sense to find pre-emption of identical rules codified by the state legislature. The duty imposed by the Illinois Consumer Fraud Act is to refrain from committing fraud in commercial dealings—it is "the duty not to deceive." *Cipollone*, 505 U. S., at — (slip op., at 22). This is neither a novel nor a controversial proscription. It falls no more heavily upon airlines than upon any other business. It is no more or less a state-imposed "public policy" than a negligence rule. In sum, I see no difference between the duty to refrain from deception and the duty of reasonable care, and I see no meaningful difference between the enforcement of either duty and the enforcement of a private agreement.

The majority's extension of *Morales* is particularly untenable in light of the interpretive presumption against pre-emption. As in *Cipollone*, I believe there is insufficient evidence of congressional intent to supersede laws of general applicability to justify a finding that the ADA pre-empts either the contract or the fraud claim. *Cipollone*, 505 U. S., at — (slip op., at 20–23); see also *Morales*, 504 U. S., at — (slip op., at 2–3) (STEVENS, J., dissenting) (discussing presumption against pre-emption as an incident of federalism). Indeed, the presumption against pre-emption is especially appropriate to the ADA because Congress retained the "saving clause" preserving

state “remedies now existing at common law or by statute.” 49 U. S. C. App. §1506.

Accordingly, while I join the Court's disposition of the breach-of-contract claims, I would affirm the entire judgment of the Supreme Court of Illinois.