

The Airline Deregulation Act of 1978: Preemption of State Law

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The U.S. Department of Transportation (DOT) has implemented a number of measures during the second Trump Administration to promote economic deregulation of the airline industry. For example, in November 2025, DOT [withdrew](#) an advance notice of proposed rulemaking on [airline passenger rights](#) initiated during the Biden Administration, which would have required airlines to provide cash compensation, meals, lodging, and other amenities to airline consumers experiencing significant flight disruptions. In July 2026, DOT issued a [notice of proposed rulemaking](#) to amend the agency’s existing rule on air fare advertising to provide “greater flexibility for regulated entities in how air fare is displayed.”

DOT’s recent deregulatory actions have drawn attention to the respective roles of the federal government and state governments in policing airline business practices. When Congress enacted the Airline Deregulation Act of 1978 (ADA), it included an express preemption provision “[t]o [ensure](#) that the States would not undo federal deregulation with regulation of their own.” That [provision](#), as amended, preempts state laws “related to” an airline’s “price, route, or service.” Under Supreme Court [precedent](#), the ADA’s preemption provision applies broadly and can preempt even generally applicable state laws that indirectly affect airline prices, routes, or services. This Legal Sidebar provides background on the ADA and its preemption provision, examines the provision’s scope, and discusses considerations for Congress.

Background

Prior to Congress enacting the ADA in 1978, federal law [subjected](#) the airline industry to a “system of detailed economic regulation” in which [airlines](#) “operate[d] like a public utility.” Under the Federal Aviation Act of 1958, the now-abolished Civil Aeronautics Board “[closely regulated](#)” air carrier prices, routes, and services. In enacting the ADA, Congress sought to “[plac\[e\]](#) maximum reliance on competitive market forces” and [encourage](#) “an air transportation system relying on actual and potential competition ... to provide efficiency, innovation, and low prices.” While the ADA scaled back federal control over airlines’ business practices, DOT still enforces [economic regulations](#) governing the airline industry, and DOT has [statutory authority](#) to prohibit airlines from engaging in unfair or deceptive practices and unfair methods of competition.

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Scope of the ADA's Preemption Provision

The [Supremacy Clause](#) of the U.S. Constitution (Article VI, clause 2) provides the basis for the doctrine of [federal preemption](#), under which “state laws that ‘interfere with, or are contrary to,’ federal law” are superseded. Federal law can preempt state law in multiple ways. Federal law may [impliedly preempt](#) state law, but Congress also may enact legislation with language [expressly preempting](#) state law, as it did in the ADA. The ADA's preemption provision is codified as amended at [49 U.S.C. § 41713\(b\)\(1\)](#) and provides as follows:

[A] State, political subdivision of a State, or political authority of at least 2 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 that may provide air transportation under this subpart.

The Supreme Court has emphasized that, regardless of the type of preemption at issue, Congress's intent is the “[ultimate touchstone](#)” of a statute's preemptive effect. In evaluating Congress's preemptive intent, courts look [primarily](#) to the statutory text itself.

The Court has interpreted the ADA's “related to” language as having an “[expansive](#)” scope. The Court has [held](#) that state laws are “related to” airline prices, routes, or services where the laws have either a “reference to” or “connection with” the prices, routes, or services. The ADA's preemption provision thus not only preempts state laws directly regulating airline prices, routes, or services, but also can preempt [generally applicable](#) state laws that have only an indirect effect on airlines, including [common-law rules](#) that states have not enacted in a statute.

While the Supreme Court has [recognized](#) that the phrase “related to” in the ADA “express[es] a broad preemptive purpose,” the Court has also emphasized limits on the phrase's preemptive scope when used in the ADA and other federal statutes. The Court has [cautioned](#) against strictly literal interpretations of “related to” preemption provisions. Rather than reading “related to” [language](#) “to the furthest stretch of its indeterminacy,” the Court has looked to Congress's [statutory objectives](#) as a guide to the scope of preemption under such provisions. The Court has thus [explained](#) that preemption under the ADA “occurs at least where state laws have a ‘significant impact’ related to Congress' deregulatory and pre-emption-related objectives,” and that some state laws [may](#) affect airline prices, routes, or services “in too tenuous, remote, or peripheral a manner” to give rise to preemption.

Determining whether the ADA preempts a particular state law can involve [difficult](#) interpretive questions and require fact-intensive, [case-by-case analysis](#). In addition to questions over the scope of the ADA's “related to” language, the preemption provision's use of the term “services” has posed interpretive challenges for courts, and federal courts of appeals have split over the meaning of the term. [Most](#) federal courts of appeals that have interpreted the meaning of “service” in the ADA have concluded that the term encompasses not only the provision of transportation, but also other features or amenities that passengers bargain for or anticipate as part of their transaction with the airline, such as boarding procedures, provision of food and drink, and baggage handling. In contrast, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) has adopted a [narrower](#) definition of “service.” [According](#) to the Ninth Circuit, “the word ‘service’ in ... the ADA's preemption clause ... refer[s] to the prices, schedules, origins and destinations of the point-to-point transportation of passengers, cargo, or mail ... [and] was not intended to include an airline's provision of in-flight beverages, personal assistance to passengers, the handling of luggage, and similar amenities.” The U.S. Court of Appeals for the Third Circuit (Third Circuit) has [favorably described](#) the Ninth Circuit's narrower interpretation, but lower courts [debate](#) whether the Third Circuit has adopted the Ninth Circuit's interpretation.

Application of the ADA's Preemption Provision to Different Categories of State Laws

Below are selected examples of how courts have applied the ADA's preemption provision in certain state law contexts. The examples include each of the Supreme Court's decisions to date applying the ADA's preemption provision (*Morales v. Trans World Airlines, Inc.*; *American Airlines, Inc. v. Wolens*; and *Northwest, Inc. v. Ginsberg*), as well as selected decisions of federal courts of appeals. Additionally, the Supreme Court has provided [relevant guidance](#) on the ADA's preemption provision in [cases](#) interpreting a similarly worded [provision](#) governing motor carriers in the Federal Aviation Administration Authorization Act of 1994 (FAAAA). The examples include one of the Court's FAAAA preemption decisions.

Consumer Protection Law

The Supreme Court has recognized that the ADA can broadly preempt the enforcement of state consumer protection laws against airlines. In *Morales v. Trans World Airlines, Inc.*, the Court [held](#) that the ADA preempted states from "prohibiting allegedly deceptive airline fare advertisements through enforcement of their general consumer protection statutes." A group of airlines had sued state attorneys general to block them from enforcing guidelines that purported to "explain in detail how existing state laws apply to air fare advertising and frequent flyer programs." In the majority opinion authored by Justice Scalia, the Court [rejected](#) the argument that the ADA only preempts states from "actually prescribing" airline prices, routes, or services, and imposes "no constraints on laws of general applicability" that do not target the airline industry. In the Court's view, the state restrictions on airline fare advertisements had a "forbidden significant effect upon fares" because the restrictions would significantly limit the airlines' "[ability](#) to market their product," and thus, [as a matter of economics](#), would have a "significant impact upon the fares they charge."

Three dissenting Justices in *Morales* [objected](#) to the Court's broad interpretation of the ADA's preemption provision. Focusing on the ADA's legislative history, the dissent concluded that Congress intended to preempt state laws that relate "directly" to airline prices, routes, or services, but not generally applicable advertising laws that only "indirectly" relate to airline prices.

The Supreme Court also addressed the ADA's preemption of a consumer protection law in *American Airlines, Inc. v. Wolens*. In *Wolens*, members of an American Airlines' frequent-flyer program had sued American because its retroactive changes to the program's terms allegedly violated an Illinois consumer fraud statute and constituted a breach of contract. In a majority opinion authored by Justice Ginsberg, the Court held that the ADA preempted the consumer fraud claims, but not (as discussed below) the contract claims. The Court [explained](#) that the consumer fraud law did not "simply give effect to bargains offered by the airlines and accepted by airline customers," but instead "serve[d] as a means to guide and police the marketing practices of the airlines." In the Court's view, the state consumer fraud law [demonstrated](#) the "potential for intrusive regulation of airline business practices inherent in state consumer protection legislation." Justice Stevens [dissented](#) with respect to preemption of the consumer fraud claim and argued that the ADA does not preempt generally applicable laws.

Contract Law

In the *Wolens* case described above, the Supreme Court also [held](#) that the ADA did not preempt the plaintiffs' state-law breach of contract claims alleging that the airline violated the terms of its agreement with passengers. The Court [reasoned](#) that the terms and conditions the airline offered to passengers were "privately ordered obligations 'and thus d[id] not amount to a State's "enact[ment] or enforce[ment] [of] any law, ... regulation, ... or other provision having the force and effect of law" within the meaning of

[the preemption provision].” The Court explained that, although “the ADA’s preemption prescription bars state-imposed regulation of air carriers,” it does not protect airlines from lawsuits “seeking recovery solely for the airline’s alleged breach of its own, self-imposed undertakings.” In a [dissenting opinion](#) joined by Justice Thomas, Justice O’Connor argued that the ADA preempts state contract law “where the terms of a private contract relate to airline rates and services, and those terms can only be enforced *through state law*.”

The Supreme Court addressed preemption of state contract laws again in [Northwest, Inc. v. Ginsberg](#), where the Court unanimously [held](#) that the ADA preempts state common-law contract claims that seek to “enlarge the contractual obligations that the parties voluntarily adopt[ed].” The plaintiff’s lawsuit against Northwest had [alleged](#), among other things, that the airline breached an implied covenant of good faith and fair dealing under Minnesota contract law by revoking his frequent flyer membership “in a way that contravened his reasonable expectations.” In support of its conclusion that the implied-covenant claim sought to enforce a state-imposed obligation, the Court [noted](#) that Minnesota law did not permit contracting parties to agree not to be bound by the implied covenant, and that Minnesota law excluded certain types of contract claims from the implied covenant for policy reasons.

Employment Law

A number of federal appellate courts have [concluded](#) that generally applicable state employment laws are often too tenuously connected to airline prices, routes, and services to fall within the ADA’s preemption provision. Examples of state employment laws that some courts have held not preempted under the ADA include [racial discrimination](#) laws, [wage](#) laws, [meal and rest break](#) laws, and [whistleblower](#) laws.

Courts have, however, held in some circumstances that the ADA preempted a generally applicable employment law. For instance, in [DiFiore v. American Airlines, Inc.](#), the U.S. Court of Appeals for the First Circuit held that the ADA preempted a Massachusetts law regulating tips for service employees. The tips law prohibited employers from taking [fees](#) “that a patron or other consumer would reasonably expect to be given to a ... service employee ... in lieu of, or in addition to, a tip.” American Airlines charged passengers a \$2 fee for each bag checked with the [skycaps](#) at Boston’s Logan Airport, and the skycaps brought a lawsuit alleging that the fee violated the tips law.

In concluding that the ADA preempted the tips law, the court reasoned that preemption under the ADA [distinguishes](#) between laws that regulate “merely how the airline behaves as an employer or proprietor,” and laws that regulate “how an airline service is performed and how its price is displayed to customers.” In the court’s view, because complying with the tips law would [require](#) the airline to change the way it provided curbside check-in service or how it advertised the price for that service, the law did not “simply regulate the employment relationship between the skycaps and the airline.”

Public Health Law

The FAAAA’s [preemption provision](#) for motor carriers of property provides that no state may enact or enforce laws “related to a price, route, or service of any motor carrier ... with respect to the transportation of property.” In [Rowe v. New Hampshire Motor Transport Association](#), the Supreme Court applied its ADA preemption precedents in holding that a Maine law regulating the delivery of tobacco products to customers impermissibly “related to” a motor carrier’s “service” and was therefore preempted under the FAAAA. The challenged law [required](#), among other things, that tobacco retailers use only delivery services that provided a specified age-verification service.

In concluding that the FAAAA preempted the state law, the Court rejected Maine’s primary argument that state [public health](#) laws are categorically outside the scope of the preemption provision. The Court [concluded](#) that Maine’s law would have a “‘significant’ and adverse ‘impact’” on the FAAAA’s “pre-

emption-related objectives” because the law would substitute the state’s “own governmental commands for ‘competitive market forces’ in determining (to a significant degree) the services that motor carriers will provide.” The Court also [emphasized](#) that if each state were permitted to require carriers to provide a special recipient-verification service, the “state regulatory patchwork” that could ensue would be “inconsistent with Congress’ major legislative effort to leave such decisions, where federally unregulated, to the competitive marketplace.”

Considerations for Congress

In recent years, some [advocacy groups](#) and [state officials](#) have proposed amending the ADA’s preemption provision to give states a larger role in policing airlines, particularly with respect to consumer protection issues. In 2022, for instance, the [National Association of Attorneys General](#) sent a [letter](#) to Congress arguing that DOT does not adequately protect [airline consumers](#) and that Congress should enact legislation authorizing states to enforce state and federal consumer protection laws against airlines.

In contrast, Congress has also considered proposals to amend the ADA’s preemption provision to explicitly preempt state laws related to additional subjects beyond airline prices, routes, and services. For instance, a [withdrawn](#) amendment to the FAA Reauthorization Act of 2018 would have [amended](#) the preemption provision to explicitly preempt state laws related to “the pay or scheduling of the flight crew of an air carrier.” An airline industry group advocating for broad preemption under the ADA has argued [that](#) “[p]reemption of patchwork state regulation has helped create a cost-effective and efficient transportation network throughout the United States.”

Congress may choose to monitor how courts apply the ADA’s preemption provision and evaluate whether the scope of state laws preempted under the ADA aligns with Congress’s determination of the appropriate balance of federal and state authority over regulating airline business practices. Congress could amend the ADA’s preemption provision to narrow, expand, or otherwise clarify its scope.

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