No. 09-2271

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

US AIRWAYS, INC.,

Plaintiff-Appellant,

v.

KELLY O'DONNELL and GARY TOMADA,
in their official capacities,

Defendants/Appellees.

On Appeal from the
United States District Court for the District of New Mexico
No. 07-cv-1235 (MCA/LFG) (Armijo, J.)

BRIEF OF TEN FORMER SECRETARIES OF THE DEPARTMENT OF TRANSPORTATION AS *AMICI CURIAE* IN SUPPORT OF APPELLANT

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STATEMENT OF INTEREST

Amici curiae are ten former Secretaries of the Department of Transportation (DOT) whose service spanned virtually the entire lifetime of the Department, from 1967 through last year. Alan S. Boyd was the first DOT Secretary, serving from the formation of the Department in 1967 until 1969, during the Presidency of Lyndon B. Johnson. William T. Coleman, Jr. was Secretary from 1975 to 1977, during the Presidency of Gerald R. Ford, Jr. Elizabeth H. Dole served as Secretary from 1983 to 1987, during the Presidency of Ronald W. Reagan. James H. Burnley IV was Secretary from 1987 to 1989, during the Presidency of Ronald W. Reagan. Samuel K. Skinner served as Secretary from 1989 to 1991, during the Presidency of George H. W. Bush. Andrew H. Card, Jr. was Secretary from 1992 to 1993, during the Presidency of George H. W. Bush. Federico F. Peña served as Secretary from 1993 to 1997, during the Presidency of William J. Clinton. Rodney E. Slater was Secretary from 1997 to 2001, during the Presidency of William J. Clinton. Norman Y. Minetta was Secretary from 2001 to 2006, during the Presidency of George W. Bush. Finally, Mary E. Peters served as Secretary from 2006 to 2009, during the Presidency of George W. Bush. DOT encompasses, *inter alia*, the Federal Aviation Administration (FAA), the National Highway Traffic Safety Administration, the

Federal Highway Administration, the Federal Motor Carrier Safety Administration, and, until March 1, 2003, the United States Coast Guard. *Amici* have devoted substantial parts of their professional careers before, during, and after their tenure as Secretary to setting, implementing, and enforcing federal transportation policy.

Amici offer a unique perspective on the issues in this case. To be sure, New Mexico has an interest in maintaining the safety of its roadways, and US Airways has an interest in maintaining the safety and efficiency of its flights. However, DOT Secretaries have a more global perspective, in part because DOT is responsible for setting transportation policy for both air and highway travel. As DOT Secretaries, *amici* spearheaded DOT's efforts to combat the risks of drinking and driving, and also to maximize the safety and efficiency of our Nation's air travel system.

Amici submit this brief because the District Court seriously misperceived the federal interest in uniform air safety regulation. Congress and DOT have made a considered judgment that an airplane flight — whether between two or more nations, between two or more States, or solely within a particular State — is neither the time nor the place for 50 separate States to enforce their own rules regarding whether and how to serve alcohol. Congress has broadly insulated air

carriers' services from state regulation, and DOT has concluded that uniform and measured regulation of onboard alcohol service is the best way to maximize travel safety. Forcing carriers and their employees to focus on identifying and complying with the myriad alcohol services rules applicable in each jurisdiction in which a carrier operates would artificially balkanize the air travel industry, impose undue and wholly impractical burdens on airlines, and jeopardize safety by distracting personnel from their central duty onboard aircraft: To ensure that the flight gets to its destination safely.

Counsel for all parties have consented to the filing of this brief.

ARGUMENT

I. CONGRESS AND DOT CAREFULLY CRAFTED A REGULATORY REGIME FOR UNIFORM REGULATION OF AIR SAFETY, INCLUDING ON-BOARD SERVICE OF ALCOHOL

A. CONGRESS HAS MANDATED THAT CARRIER RATES, ROUTES AND SERVICES ARE TO BE PRIMARILY MARKET-BASED, WHILE CARRIER SAFETY IS TO BE GOVERNED BY A SINGLE NATIONAL REGULATOR

Federal regulation of air travel is a quintessential exercise of the Government's authority under the Commerce Clause. *United States v. Lopez*, 517 U.S. 549, 558 (1997) ("aircraft" are "instrumentalities" of interstate commerce); *Ickes v. FAA*, 299 F.3d 260, 264 (3d Cir. 2002) ("It is beyond dispute that . . . the nation's navigable airspace . . . is a channel of interstate commerce."). Aviation is

inherently federal because airplanes traverse the country and even the globe, frequently crossing state lines en route to their final destinations. To prevent chaos, uniform federal rules — especially safety rules — are essential.

Pursuant to its Commerce Clause powers, Congress established a two-fold scheme for regulating air travel. First, in the Airline Deregulation Act of 1978 (ADA), Pub. L. No. 95-504, 92 Stat. 1705, Congress deregulated the airline industry in large part, determining that "maximum reliance on competitive market forces" would best further the national goals of "efficiency, innovation, and low prices" as well as provide "variety and quality of . . . air transportation services." 49 U.S.C. §§ 40101(a)(6), (a)(12). "To ensure that the States would not undo federal deregulation with regulation of their own," *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992), Congress included in the ADA an express preemption provision barring state laws "relating to a price, route, *or service* of an air carrier." 49 U.S.C. § 41713(b)(1) (emphasis added). This preemption provision is "conspicuous for its breadth." *Morales*, 504 U.S. at 384.

In addition to precluding States from regulating air carriers' services, Congress determined that a single regulator — DOT — should regulate air safety. No function of DOT, and no responsibility of its Secretary, is more important than ensuring safety in the Nation's transportation system. H.R. Doc.

399, 89th Cong., 2d Sess. 5 (1966); *see* 49 U.S.C. § 101(a). Congress has mandated that when implementing aviation policy, the Secretary must "assig[n] and maintai[n] safety as the highest priority," in part by "maintain[ing] the safety vigilance that has evolved in air transportation and air commerce and has come to be expected" by the public. § 40101(a)(1), (a)(3).

B. DOT Regulates Onboard Alcohol Service to Promote Air Safety

Onboard alcohol service is not only a service, it is a service that raises safety concerns, and thus falls well within FAA's exclusive authority to promulgate uniform safety standards.

1. DOT Regulates Virtually All Aspects of Airline Safety.

Congress broadly empowered the FAA Administrator to promulgate regulations and minimum standards for "practices, methods, and procedure[s] the Administrator finds necessary for safety in air commerce and national security." 49 U.S.C. § 44701(a)(5). Exercising that authority, FAA has issued numerous regulations "addressing virtually all areas of air safety," *Air Transp. Ass'n of Am., Inc. v. Cuomo*, 520 F.3d 218, 224 (2d Cir. 2008), which collectively fill a large portion of Title 14 of the Code of Federal Regulations. *See* 14 C.F.R. Pts. 91, 119, 121, 135. Notwithstanding FAA's pervasive regulation of air safety, the District Court below suggested that FAA's authority is limited to promulgating "exclusive and complete

rules for the physical and mechanical operation of aircraft." (Mem. Op. and Order at 21 (Sept. 30, 2009) ("District Court Order").) That reflects a fundamental misunderstanding of the federal laws and regulations relating to air safety, as well as DOT's implementation of those laws and regulations.

The "practices, methods, and procedure[s]" that contribute to the safety of a flight, 49 U.S.C. § 44701(a)(5), are by no means limited to rules about the "physical and mechanical operation of aircraft" (District Court Order at 21). Even when an aircraft's "physical and mechanical operation" is flawless, serious safety concerns may arise from the actions or inactions of persons onboard the aircraft. FAA's safety regulations have long reflected that reality.

For example, FAA regulations require carrier personnel to have rigorous training concerning matters that may occur in flight. FAA imposes detailed certification requirements on pilots, copilots and other non-pilot airmen, flight instructors, and ground instructors. *See* 14 C.F.R. Pts. 60–65. FAA requires flight attendants to have training in, *inter alia*, (1) the location, function, and operation of emergency equipment; (2) the handling of emergency situations, including rapid loss of cabin pressure, in-flight fires, "[d]itching and other evacuation," and "[h]ijacking"; (3) "[d]onning, use, and inflation of individual flotation"; and (4) for crewmembers serving above 25,000 feet, instruction in respiration, hypoxia,

physical phenomena and incidents of decompression. 14 C.F.R. § 121.417(b)(2), (b)(3), (e); *see also* 14 C.F.R. §§ 121.404, 121.405, 121.421, 121.427, 121.433. This training seeks to ensure that all carrier personnel onboard an aircraft are focused, even during an emergency, on the primary task at hand: getting the aircraft and its passengers and crew to its destination safely.

As any person who has flown in an aircraft knows, FAA safety regulations also require passengers to use seat belts when the sign is lit, forbid passengers from smoking, forbid passengers from tampering with the lavatory smoke detector, and require the familiar pre-takeoff briefing regarding the use of seat belts, the "location and operation of emergency exits," and "emergency evacuation procedures." 14 C.F.R. §§ 121.317, 121.583.

FAA regulation of air safety is so pervasive that several courts of appeal have held that FAA has occupied the field, leaving no room for any additional safety regulation. *Montalvo v. Spirit Airlines*, 508 F.3d 464, 472–73 (9th Cir. 2007); *Greene v. B.F. Goodrich Avionics Sys.*, 409 F.3d 784, 795 (6th Cir. 2005); *Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363, 365 (3d Cir. 1999). And in all events, *amici* are aware of no appellate court holding that a State is free to set standards regarding any onboard service relating to airline safety, including alcohol service.

2. DOT Regulates Onboard Alcohol Service to Further Its Strong Interest in Maintaining Air Safety

"[T]he combination of intoxication and air travel [can] lead to dangerous consequences." *United States v. Jenny*, 7 F.3d 953, 957 (10th Cir. 1993). To combat this dangerous mixture, FAA has promulgated regulations relating to drinking and flying. The District Court dismissed the federal interest in these matters as only "incidental," which it supported by asserting that only one FAA regulation relates to alcohol, 14 C.F.R. § 121.575, while several New Mexico laws relate to alcohol. (District Court Order at 22.) But preemption analysis is not a counting exercise, and the federal interest here is anything but incidental.

At the outset, merely counting regulations is surely not an appropriate way to determine the strength of a governmental interest. Even if it were, the District Court miscounted. The one regulation the District Court identified is not a single "thou shalt not"; it contains multiple prohibitions, including prohibitions against drinking alcohol not served by the carrier; permitting a person who appears to be intoxicated to board an aircraft; and serving alcohol to a passenger who appears to be intoxicated, has access to a dangerous weapon, or is escorting a person or being escorted in certain circumstances. 14 C.F.R. § 121.575(a)-(c). In addition, other FAA regulations overlooked by the District Court prohibit covered employees, including pilots, from (1) reporting to work with a 0.04% or higher blood alcohol

content; (2) consuming any alcohol within eight hours of reporting to work; or (3) consuming any alcohol while on duty. 14 C.F.R. § 121.458. Other FAA regulations subject covered employees to mandatory alcohol testing. 14 C.F.R. § 121.459. *See also* 14 C.F.R. Pt. 121, Appx. J (outlining standards for alcohol misuse prevention programs).

And regardless of the number of regulations, the District Court was simply wrong to dismiss as "incidental" the federal interest in regulating onboard alcohol service to passengers. The federal government determined long ago that intoxication increases the risk that a passenger will cause an onboard disturbance. That may impact flight safety both directly, such as when an intoxicated passenger assaults a flight attendant or seeks to open the cabin door, and indirectly, such as when a disturbance distracts flight attendants — and even pilots — from performing their duties. *See Drinking & Serving of Alcoholic Beverages Aboard Air Carrier Aircraft*, 24 Fed. Reg. 5424, 5424 (July 3, 1959); *In re Trans World Airlines*, FAA Order No. 98-11, 1998 WL 348026 (June 11, 1998) (intoxicated passenger caused disturbance that forced pilot to leave his post three times). Indeed, the New Mexico defendants themselves state that "73% of all passenger misconduct incidence reports submitted by airlines to the FAA are for

alcohol-related incidents." (Doc. 67, N.M. Memo in Supp. of Mot. for Sum. J. at 12 (Oct. 31, 2008) ("N.M. S.J. Memo").)

Alcohol-related passenger misconduct also gives rise to a national security problem: By occupying flight attendants and pilots who respond to the disturbance, alcohol-related misconduct diminishes their capacity to perform their security-related duties. If a terrorist wished to strike, a disturbance that occupied the attention of flight personnel would provide the perfect time to do so. The federal interest in avoiding alcohol-related misconduct is obviously strong, and arises directly — not incidentally — from the federal interest in protecting citizens while they travel on aircraft.

3. DOT Determined Long Ago that Measured Regulation of Alcohol Service on Planes Is More Effective at Reducing In-Flight Disturbances than Prohibition

FAA's regulations of onboard alcohol service are "drawn not only to bar what they prohibit but to allow what they permit." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 380 (2000). As the government has explained, the requirements set forth in 14 C.F.R. § 121.575 are targeted at preventing the specific problem of intoxicated passengers becoming "disorder[ly]," and thereby "endanger[ing] the safety of the aircraft." 24 Fed. Reg. at 5424. FAA found that such disturbances "had been caused either by passengers who had consumed a

considerable quantity of alcoholic beverages prior to boarding the plane, or by those who drank from their own bottles during the course of the flight." *Drinking & Serving of Alcoholic Beverages*, 25 Fed. Reg. 168, 169 (Jan. 9, 1960). FAA was also concerned that disturbances could arise if a carrier served alcohol to a passenger who was already intoxicated. 24 Fed. Reg. at 5424. Accordingly, FAA prohibited these twin dangers: Passengers may not consume their own personal supply of alcohol while on board, and carriers may not serve or board any passenger who appears intoxicated. 14 C.F.R. § 121.575(a)–(c).

Crucially, FAA carefully considered — but ultimately rejected — proposals to go further and to ban onboard alcohol consumption completely. 25 Fed. Reg. at 169. FAA noted the "generally accepted fact" that "flat prohibition has not proven successful in preventing consumption of alcoholic beverages." *Id*. And it found that a total ban could actually undermine its interest in ensuring flight safety: "[P]assengers who wish to drink might either do so to excess in advance of the flight, knowing that they could not obtain a drink aboard an aircraft, or would be encouraged to engage in surreptitious drinking from their own supply after boarding." *Id*. FAA thus determined that more extensive regulation would be counterproductive. The best way to minimize disturbances caused by intoxicated passengers, FAA found, was to bring the issue out into the open so that it could be

effectively regulated — *i.e.*, to allow airlines generally to serve alcoholic beverages, consistent with consumer expectations, while forbidding alcohol service in the circumstances that presented the greatest risks. 14 C.F.R. § 121.575(a)–(c).[1] State laws like New Mexico's can jeopardize air safety by impairing that balance.

4. DOT Actively Enforces Its Air Safety Regulations Relating to Onboard Alcohol Service

Amici can personally attest that, as the sole regulator in this arena, DOT takes very seriously its obligation to minimize onboard disturbances related to alcohol abuse. DOT has repeatedly taken enforcement action against carriers that boarded or served a passenger who appeared intoxicated. *E.g.*, *In re Northwest Airlines, Inc.*, No. FAA-2002-11310-219, 2003 WL 23097587 (Oct. 1, 2003) (assessing civil penalty on carrier for serving a passenger who appeared intoxicated); *In re Northwest Airlines, Inc.*, No. FAA-02-12487-4, 2003 WL 23097629 (April 22, 2003) (boarding); *In re Trans World Airlines*, 1998 WL 348026 (boarding and serving).

[1] FAA's reporting requirements further reflect careful calibration. FAA regulations require carriers to report within five days (1) "the refusal of any person" to comply with the rule forbidding consumption of one's personal alcohol supply, which FAA found to pose the greatest risk of a disturbance; or (2) "any disturbance caused by a person who appears to be intoxicated aboard any of its aircraft." 14 C.F.R. § 121.575(d). FAA again considered — but rejected — a more stringent reporting requirement, in part because "the minimum time required to process these reports" would create an undue burden on carriers and flight attendants. *Boarding of Air Carrier Aircraft by Persons Appearing Intoxicated*, 26 Fed. Reg. 9905, 9906 (Oct. 21, 1961).

In addition, DOT has vigorously pursued intoxicated passengers who caused disturbances, directly or indirectly threatening the safety of the flight. For example, *In re Vergara*, FAA No. CP05SO0055, 2006 WL 2700827 (Sept. 14, 2006), involved a prosecution of an intoxicated passenger who assaulted a flight attendant, forcing another attendant to respond and thus "to give up his normal duty of watching the boarding door to ensure that no stowaways came aboard." Similarly, *FAA v. Brians*, FAA No. CP02WP0007, 2003 WL 23119332 (July 14, 2003), involved a prosecution of a passenger whose intoxication required the drawn-out attention of one flight attendant, forcing the other attendant "to perform alone the tasks that the [two] attendants usually shared." *Id*. at *2. As FAA found, "[t]hese circumstances undermined the safety of the flight. A medical emergency at that point, for example, would have presented a serious problem." *Id*. *See also In re Kennedy*, No. FAA 2002-11682-4, 2002 WL 32341301, at *1 (Apr. 12, 2002) (pilot forced to leave his post twice to deal with disturbance by intoxicated passenger); *In re Trans World Airlines*, 1998 WL 348026, at *2 (pilot forced to leave his post three times).

These enforcement actions highlight the seriousness of the governmental interest in effectively regulating in-flight alcohol consumption to promote air safety — an interest that is even more obvious in the wake of September 11th —

and underscore that there is no regulatory vacuum for state regulation to fill. They also serve as examples of something *amici* know personally from their experience at DOT: Travel safety issues, including alcohol-related issues, are priorities that the Department actively pursues.

II. THE DISTRICT COURT'S ORDER WOULD REPLACE UNIFORM REGULATION CHOSEN BY CONGRESS AND DOT WITH A PATCHWORK OF STATE AND LOCAL CONTROL

The District Court concluded that state regulation of on-board alcohol service would not have "a significant impact related to Congress' deregulatory and pre-emption related objectives." (District Court Order at 6 (quoting *Rowe v. N.H. Motor Transp. Ass'n*, 128 S. Ct. 989, 995 (2008)). That is clearly wrong. State regulation in this area would upset the carefully crafted balance discussed above by allowing state and local governments to impose on carriers their own varying rules as to the service of alcohol — even on airplanes that are merely "in [the State's] airspace." (District Court Order at 13.) That could jeopardize passengers' safety in at least two important ways: requiring airlines to follow different rules from the ones that FAA has determined to be the most protective of safety; and diverting airlines' and flight attendants' attention away from more pressing matters as they tried to learn, remember, and apply the laws of different States

and localities on different flights, and even within a single interstate or international flight as the plane progressed from one jurisdiction to the next.

New Mexico law requires any retailer of alcohol, including any person "selling alcoholic beverages [on] airplanes within the state," to obtain a state liquor license. N.M. Stat. §§ 60-6A-1 to 60-6A-5, 6A-9(A). Every person who serves alcohol in New Mexico must obtain alcohol service training, covering six enumerated subjects, including "state laws concerning liquor licensure, liquor liability issues and driving under the influence of … liquor." *Id.* § 60-6E-4, -5. New Mexico has also denied US Airways' application for a liquor license. (District Court Order at 3.) The net effect is that New Mexico has banned US Airways from serving alcohol on any airplane within New Mexico. § 60-6A-9(A).

Essentially, New Mexico has made a judgment that FAA's regulation of onboard alcohol service is not strict enough, and thus it seeks to replace FAA's measured regulations with New Mexico's detailed and stringent rules and enforcement schemes. But after "careful investigation and study," 25 Fed. Reg. at 169, FAA made "a deliberate effort to steer a middle path," *Crosby*, 530 U.S. at 378. FAA determined that stricter regulation of onboard alcohol service, including outright prohibition, would undermine flight safety by creating perverse

incentives for people to drink excessively before getting onboard or to drink their own alcohol surreptitiously while onboard. 25 Fed. Reg. at 169.

New Mexico's law further stands as an obstacle to the achievement of federal objectives by requiring all flight attendants serving alcohol within New Mexico to take New Mexico's alcohol training course for bartenders and other servers. The New Mexico defendants emphasized the importance of this training, suggesting that FAA had somehow failed by not prescribing a specific "curriculum for alcohol service training." (N.M. S.J. Memo at 12.) *Amici* former DOT Secretaries in no way discount New Mexico's concern with alcohol consumption and its relationship to motor vehicle safety. This is a very serious matter, and *amici* support state laws requiring alcohol training of bartenders and other servers.

But flight attendants are not bartenders. Flight attendants may serve drinks, but they also have more significant responsibilities to ensure that an aircraft — often loaded with hundreds of passengers — gets to its destination safely and on time. In any event, DOT regulations already require extensive training, including training on "[p]assenger handling." 14 C.F.R. § 121.421(a)(1)(ii); *see also id.* §§ 121.404, 121.405, 415, 427. And DOT must approve, in advance, each airline's training program. 14 C.F.R. § 121.405. Requiring flight attendants

to undergo further training focusing more heavily on alcohol service, or more specifically on the varying laws of different States, would impose an undue burden on the airlines and their employees. And such a requirement would divert flight attendants' attention away from the safety issues on which FAA wants them to focus. Quite simply, when an aircraft is full of passengers, it is neither the time nor the place for a State to impose its own rules relating to alcohol service.

Given the uniquely interstate nature of air travel, the effects of a 50-State patchwork of varying and potentially conflicting regulations would be grave. Most domestic flights take off and land in different States and many flights touch down in more than two States. *See, e.g.*, US Airways Route Map.[2] For example, this case involves daily flights back and forth between Phoenix, Arizona and Albuquerque, New Mexico. (*See* District Court Order at 2.) Under the District Court's opinion, both States would be free to impose their own unique alcohol service regulations on the flight. To comply with each State's rules, flight attendants would need to be trained (and perhaps certified) in the rules applicable in that jurisdiction before providing passengers with onboard alcohol service. Congress enacted the ADA to prevent precisely this kind of "patchwork of state service-determining laws, rules, and regulations." *Rowe,* 128 S. Ct. at 996.

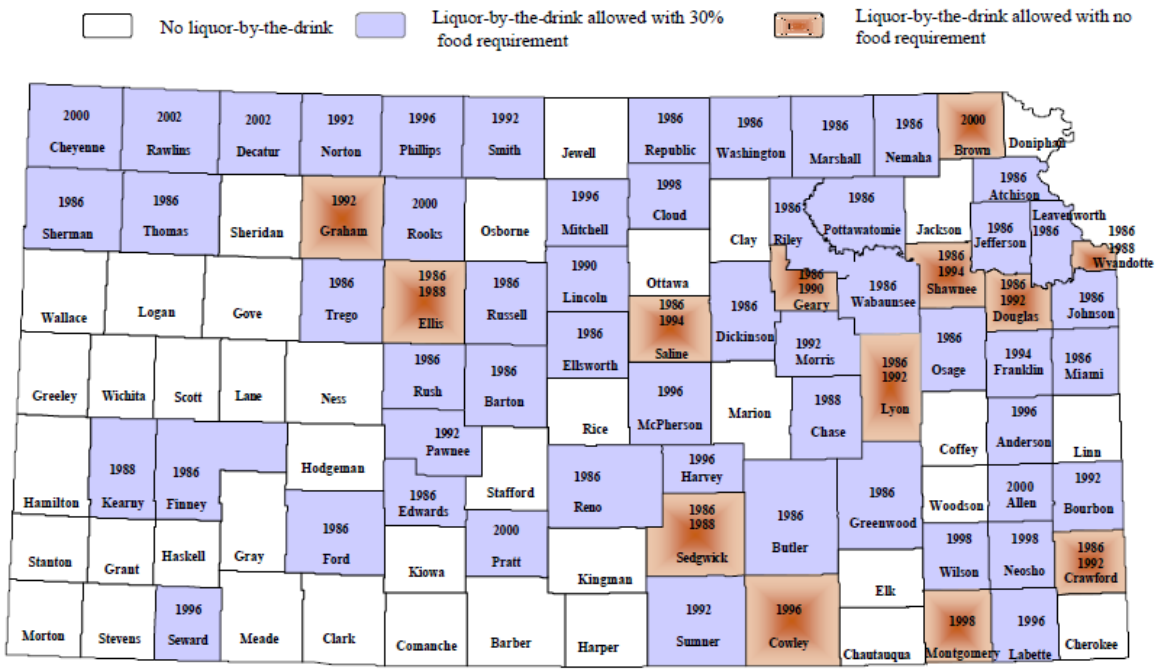
[2] http://www.usairways.com/en-US/routemap.html

To make matters worse, the District Court's preemption analysis does not turn on whether the aircraft ever lands in a State. (*See* District Court Order at 13 ("New Mexico has the authority to control US Airways' distribution of alcohol in airplanes that are in New Mexico airspace . . . .").) The implication of this position is that a State could regulate alcohol service on an aircraft flying overhead — even if the aircraft never landed. Under such a regime, flight attendants' attention would be diverted away from more important matters as they tried to determine which State they were flying over at any given time, and what the rules of that State may be.

The patchwork problem is further aggravated by the fact that many States allow counties or municipalities to set more stringent alcohol service policies — and even to forbid alcohol service entirely. *See, e.g.*, Alaska Stat. § 04.11.491(a); Conn. Gen. Stat. §§ 30-9, 30-10; Fla. Stat. § 567.01; Me. Rev. Stat. Ann. tit. 28-A, §§ 121, 123; Miss. Code § 67-1-3; Tenn. Code Ann. §§ 57-3-102, -106. Airlines thus could be forced to comply not only with the laws of 50 different States, but also with the laws of hundreds of different localities.

A map of the county-by-county drinking laws in Kansas illustrates the gravity of the problem:

Figure 1 - Kansas Municipal Alcohol Service Laws[3]



Kansas contains dozens of public airports, spread throughout the State. FAA Facilities Data, Kansas (Dec. 17, 2009).[4] A single flight through Kansas could expose carriers to a panoply of rules — changing virtually minute-by-minute as the flight progressed — under which service of alcohol is either permitted, prohibited unless the airline generated sufficient revenue from food sales, or prohibited completely. The District Court's notion that the ADA and DOT

[3] Kansas Legislative Research Dep't, Kansas Liquor Laws 17 (Feb. 24, 2003), available at http://skyways.lib.ks.us/ksleg/KLRD/Publications/Kansas_liquor_laws_2003.pdf.

[4] http://faa.gov/airports/airport_safety/airportdata_5010/menu/nfdcfacilitiesexport.cfm?Region=&District=&State=KS&County=&City=&Use=PU&Certification=

regulations permit such local variation in regulation of onboard airline services is simply absurd.

CONCLUSION

The fact is that serving a passenger alcohol onboard an aircraft is a service, and a safety-related one at that. Consumers want — and expect — carriers to provide this service, and FAA has made a considered decision that providing some alcohol service is safer than outright prohibition. While New Mexico has made a judgment, based on its interests, that rules, training, and enforcement should be stricter, Congress disempowered States from making precisely this kind of judgment when it enacted the ADA and vested DOT with exclusive authority to regulate air safety. Essentially, Congress determined that air safety policy should be set uniformly to meet the *Nation's* interests as a whole, and Congress therefore gave the authority to set air safety policy to a single federal regulator with a global perspective on the Nation's transportation needs. That regulator is the DOT Secretary.

Amici former DOT Secretaries submit that the District Court's opinion flouts the joint judgment of Congress and DOT. It exposes carriers to myriad, potentially inconsistent local rules relating to alcohol service, and it forces carrier personnel to focus on complying with these laws rather than on performing their

more important in-flight duties. Thus, it would unduly interfere with air travel, commerce, and safety.

For the foregoing reasons, in addition to those stated by US Airways, this Court should reverse the judgment of the District Court.

Respectfully submitted,

/s/

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February 10, 2010

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 29(c)(5) and 10th Cir. Rule 32(a), I certify that this brief complies with the length limitations set forth in Fed. Rule App. Proc. 32(a)(7) because it contains 5,215 words, as counted by Microsoft Word, even including the items that may be excluded under Federal Rule 32(a)(7)(B)(iii).

/s/ Daryl L. Joseffer
Daryl L. Joseffer

CERTIFICATE OF SERVICE

I certify that on this 10th day of February, 2010, I filed the foregoing brief via the Court's electronic case filing (ECF) system. Pursuant to this Court's General Order of March 18, 2009, the resulting Notice of Docket Activity generated by the ECF system constitutes service on counsel for the parties.

/s/ Daryl L. Joseffer
Daryl L. Joseffer

CERTIFICATE OF DIGITAL SUBMISSION

Pursuant to this Court's General Order of March 18, 2009, I certify that:

(1) no privacy redactions were required;

(2) this ECF submission is an exact copy of the paper submission filed with the clerk, except that the ECF version is signed in the manner required by the General Order whereas the paper version is signed by hand.

(3) this ECF submission has been scanned for viruses by McAfee VirusScan Enterprise 8.5 *i* (updated continuously) and, according to that program, is free of viruses.

/s/ Daryl L. Joseffer
Daryl L. Joseffer