

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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US AIRWAYS, INC.,)	
)	
Plaintiff-Appellant,)	No. 09-2271
)	
v.)	
)	
O'DONNELL et al.,)	
)	
Defendants-Appellees.)	
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**MOTION OF THE UNITED STATES OF AMERICA
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT**

Amicus curiae the United States of America respectfully requests leave to participate in the oral argument in this case scheduled for September 20, 2010. As set forth below, plaintiff-appellant US Airways does not oppose this motion and has agreed to cede argument time to the United States.

1. This case concerns the relationship between state alcohol-licensing schemes and the uniform system of federal supervision and control over civilian aviation in the United States. The State of New Mexico attempted to enforce its Liquor Control Act against plaintiff US

Airways. US Airways filed this action to enjoin the state statute as preempted under the federal Airline Deregulation Act of 1978 and the Federal Aviation Act of 1958. The district court rejected those arguments and held that New Mexico has the authority to regulate alcohol service on airlines and to require compliance with state liquor-licensing requirements, including flight attendant training requirements beyond what is required under federal law.

2. The district court's ruling raises questions of significant interest to the United States. As explained in the government's amicus brief in this case supporting reversal of the district court's judgment, civilian aviation in the United States is subject to comprehensive federal supervision and control. As Justice Jackson once observed, federal control over aviation is both "intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands." Northwest Airlines, Inc. v. Minnesota, 322 U.S. 292, 303 (1944) (Jackson, J., concurring); see also, e.g., City of Burbank v.

Lockheed Air Terminal, Inc., 411 U.S. 624, 639 (1973) (explaining that “a uniform and exclusive system of federal regulation” is required “if the congressional objectives underlying the Federal Aviation Act are to be fulfilled”). The district court’s ruling would upset this uniform scheme and create a patchwork of state regulation of alcohol service on airlines.

3. In particular, this case involves the interpretation of the Airline Deregulation Act of 1978 and the Federal Aviation Act of 1958. Responsibility for implementing and enforcing these federal statutes is vested in the United States Department of Transportation (DOT) and one of its subsidiary agencies, the Federal Aviation Administration (FAA). See Northwest Airlines, Inc. v. County of Kent, 510 U.S. 355, 366-67 (1994) (the Secretary of Transportation is “charged with administering the federal aviation laws”). DOT, FAA, and the former Civil Aeronautics Board have for decades construed federal law to preempt state regulation of the kind at issue here. The United States thus has a strong interest in the issues presented in this appeal and is in the best position to address the Court’s questions regarding federal

aviation law and policy.

4. Oral argument is scheduled for September 20, 2010, at 9:00 am in Denver, Colorado. The Court has allotted 15 minutes of argument time per side.

5. Seth Waxman, counsel for plaintiff-appellant US Airways, consents to the government's participation at the oral argument and has agreed to cede a portion of his argument time to counsel for the United States. Joseph Goldberg, counsel for defendants-appellees, objects to the government's participation in the oral argument, although defendants' argument time would be unaffected.

6. If the Court grants the government leave to participate in the oral argument, the Court may wish to add five additional minutes of argument time for each side, for a total of twenty minutes per side. The United States stands ready to participate in the oral argument, however, regardless whether the Court grants additional argument time.

CONCLUSION

For the foregoing reasons, the Court should grant the United States leave to participate in the oral argument in this matter.

Respectfully submitted,

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August 23, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 23d day of August, 2010, I caused the foregoing motion to be filed electronically with the Court via the CM/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 all parties and amici.

s/ Mark Freeman

Mark R. Freeman

CERTIFICATE OF DIGITAL SUBMISSION

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

1. in the foregoing motion, no privacy redactions were required;
2. the ECF version of the motion has been scanned for viruses by the following program, and no viruses were found:

Program: Microsoft Forefront Client Security
Version 1.5.1973.0

Virus Pattern Date: August 23, 2010

3. the ECF version of the motion is an exact copy of any hard copies that may need to be filed with the Clerk, apart from the substitution of digital signatures.

s/ Mark Freeman

Mark R. Freeman