

State AGs: DOT Needs an On-Time Departure

Paul L. Singer, Beth Bolen Chun

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This week, 38 Attorneys General joined forces in a [letter](#) promulgated by the National Association of Attorneys General (NAAG) to urge Congress to provide them with authority to address consumers' frustrations with airlines, further advocating for a shift of federal authority over consumer complaints away from the Department of Transportation.

Stating that the airline industry has "failed their customers," the Attorneys General discuss the thousands of complaints they receive from consumers that they are unable to act upon due to the US Department of Transportation's preempting authority. The AGs blame USDOT throughout multiple administrations for not taking appropriate action against the airlines even when made aware of the AG consumer complaints. General Weiser of Colorado additionally has raised antitrust concerns further impact consumers. Ultimately, the AGs ask Congress to pass legislation to authorize State AGs to enforce consumer protection laws against airlines. As an essential service to the economy and both personal and professional lives of consumers, the AGs state that the airline industry's impact on consumers is a bipartisan issue that should be policed by State AGs to increase consumer confidence.

While the AGs don't specifically note in the letter how their powers have become limited, two important cases highlight the broad preemptive power of the Airline Deregulation Act of 1978. In the first, *Morales v. Trans World Airlines*, 504 US 374 (1992), the United States Supreme Court held that the Airline Deregulation Act preempts States from enforcement of their general consumer protection statutes, in this case specifically pertaining to allegedly deceptive advertisements. States had created airline industry guidelines through the National Association of Attorneys General as part of a multistate effort in the 1980s, which Texas later sought to enforce in the *TWA* case.

Later in 2012 California filed suit under its Online Privacy Protection Act against Delta over its app lacking a privacy policy. A California appeals court in 2016 ruled that the state did not have the ability to enforce its privacy statute because the Airline Deregulation Act disallows states from enforcing laws "related to a price, route or service of an air carrier."

The takeaway? States AGs will continue to push boundaries where their consumers have interest and where they believe their enforcement efforts can complement and enhance federal protections. Moreover, when issues arise but they cannot enforce their laws, they will use those opportunities to expand their consumer protection authority.