

12-462 NORTHWEST, INC. V. GINSBERG

DECISION BELOW: 695 F.3d 873

LOWER COURT CASE NUMBER: 09-56986

QUESTION PRESENTED:

The Airline Deregulation Act of 1978 ("ADA") includes a preemption provision providing that 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." 49 U.S.C. § 41713(b).

Respondent was a participant in Northwest Airlines' frequent flyer program, which by its terms permitted Northwest to remove participants from the program in Northwest's "sole judgment." After respondent was removed from the frequent flyer program, he filed suit against Northwest alleging, inter alia, that Northwest breached both its contractual obligations and an implied covenant of good faith and fair dealing under Minnesota law when it exercised its discretion to terminate respondent's membership in the program. Although the district court dismissed the contract claim for failure to state a claim and the implied covenant of good faith claim as preempted by the ADA, the Ninth Circuit reversed as to the implied covenant claim, finding such claims categorically unrelated to a price, route or service under a line of Ninth Circuit cases that have been recognized by other Circuits as inconsistent with this Court's precedents, especially *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995).

The question presented is:

Did the court of appeals err by holding, in conflict with the decisions of other Circuits, that respondent's implied covenant of good faith and fair dealing claim was not preempted under the ADA because such claims are categorically unrelated to a price, route, or service, notwithstanding that respondent's claim arises out of a frequent flyer program (the precise context of *Wolens*) and manifestly enlarged the terms of the parties' voluntary undertakings, which allowed termination in Northwest's sole discretion.

CERT. GRANTED 5/20/2013