

TRAVEL WEEKLY

Conservative groups back airline efforts to overturn DOT ad rule

By: Bill Poling - March 14, 2013

Three conservative/libertarian public interest groups have filed briefs at the U.S. Supreme Court in support of airline efforts to overturn the Transportation Department's price-advertising rule.

The three groups, each filing as an amicus curiae, or friend of the court, generally argue that the DOT's rule, by dictating the format of air travel ads and fare quotes, infringes on First Amendment free speech rights.

They say it perpetuates a flawed legal doctrine that allows the government to regulate commercial speech in ways that are off-limits for political speech, artistic speech and other forms of expression.

The three groups are the New England Legal Foundation, the Pacific Legal Foundation and the Cato Institute, joined by National Federation of Independent Business/Small Business Legal Center.

None of the entities participated in the case when the price advertising rule was being developed at the DOT or reviewed by a Court of Appeals, but all three filed to participate when the airlines filed for Supreme Court review because they see the case, as the Cato Institute put it, as a "vehicle to clarify the law on commercial speech."

The DOT regulation, now more than a year old, requires that all ads or fare quotes for air transportation or for travel packages that include air must state the total price with all taxes and fees included.

The rule allows taxes and fees to be broken out and explained separately, but such explanatory amounts may not be more prominent than the total.

When Spirit, Allegiant and Southwest filed for Supreme Court review of the matter last year, they attracted support from Airlines For America and IATA, which are also participating as friends of the court.

A key claim in the airline case is that the advertising rule "restricts truthful speech about tax burdens" and thus infringes not only upon commercial speech but political speech, as well.

The airline parties are also seeking review of the DOT's 24-hour refund rule, which requires airlines to hold a reservation for 24 hours or allow passengers to cancel within 24 hours without penalty.

Carriers claim that the DOT overstepped its authority with this rule by effectively re-regulating fares. The airline brief said, "The DOT does not have plenary authority to mandate one-size-fits-all 'best practices'," then declare that any deviation is "deceptive."

In its brief to the court, the DOT defended its actions as "a reasonable exercise of the Department's long-standing authority to prevent consumer confusion," and argued that the court should decline to review.

To date, no parties have filed friend of the court papers in support of the DOT.

The question now is whether the court will decide to take up the case.