

Court Reports

United Motorcoach Ass'n, Inc. v. City of Austin, (TEX. 2014) (holding that Plaintiff United Motorcoach Association demonstrated its likelihood to succeed on the preemption challenge over two amendments that Austin City Ordinance enacted: § 13-2-252(B)(1) and § 13-2-252(B)(4)).

United Motorcoach Association (“UMA”), an association of professional bus and motorcoach companies, challenged the Austin City (“City”) Ordinance No. 20130620-051, claiming that it was preempted by 49 U.S.C. §1451(a)(1) (C) under the Federal Aviation Administration Authorization Act of 1994 (FAAAA). The disputed City Ordinance, Austin City Code Chapter 13-2, modified the City’s Ground Transportation Code by altering the definitions of “prearranged service” and “charter service” and by including additional requirements for the permit to provide charter service:

Prearranged service means ground transportation service that is scheduled by initial reservation a minimum of one half hour in advance of the trip, excluding performance under a corporate contract.

Charter service consists of transporting passengers using motorized vehicles such as vans, minibuses, buses or motor coaches to transport a group of individual passengers for prearrange service on irregular routes and schedules with a rate of fare based either on a flat rate for each passenger or on an hourly rate operated from locations within the city to locations inside the city (point-to-point and continuous trips) from the same point of origin or from various point of origin to a single point of destination. Charter service does not include services owned, contacted, or subcontracted by a governmental entity, or independent or consolidated school district.

The Court first examined whether Plaintiff’s allegations of expressed preemption satisfied the required legal standard for the Court to grant a preliminary injunction. According to the Court, a party seeking a preliminary injunction must satisfy each of four criteria: 1) a substantial likelihood of success on the merits; 2) a substantial threat of irreparable injury in absence of injunction; 3) the substantial injury outweighs the threatened harm to the party against whom the injunction is sought; and 4) granting the injunction will not disserve the public interest. Subsequently, the Court articulated that UMA’s demonstration of the substantial likelihood of success on the merits was sufficient in cases involving expressed preemption.

The Court further analyzed whether the City’s Ordinance relates to

the Charter bus transportation and whether it falls within the scope of the safety exception under §14501(a)(1)(C). The Court cited *Cole v. City of Dallas*, 314 F.3d 730, 733 (5th Cir.2002) in acknowledging that the authority to provide interstate or intrastate charter bus transportation falls within FAAAA's regulations, unless State's conduct satisfies the preemption exception. The Court concluded that when State's local regulation of motor vehicles is responsive to safety concerns and does not reflect Congress's clear and manifested purpose, FAAAA shall not supersede it. The Court added that the provisions of the Ordinance that obviously relate to safety concerns do not require States to express such intent.

The Court found that the City Ordinance regulations relate to the authority to provide charter bus transportation because they imposed direct requirements and restrictions not only on taxicabs but also on charter buses. Thus, such provisions are preemptive by the FAAAA.

The Court next applied the requirements for the exception to the amended City Ordinance provisions. The Court concluded that both subsection (B)(2) that requires charter services to provide a list and copies of their drivers' commercial driver's licenses, and subsection (B)(3) that requires proof of annual vehicle inspection have a safety related basis; therefore, they are unlikely to be preemptive. Similarly, the Court articulated that subsection (B)(5), which requires charter service operators to keep a trip ticket in their vehicles is not preemptive because it is done for safety purposes.

Contrarily, according to the Court, subsection (B)(1) with a sole purpose to distinguish charter services from taxicab services and subsection (B)(4) that prohibits charter service vehicle to hold itself as a taxi vehicle are likely to be preemptive. The Court explained its opinion by City's failure to produce any evidence of actual safety concerns and regulation's negative effect on charter service in case of its failure to comply with such modification.

Accordingly, the Court found that although UMA has failed to show a substantial likelihood of success on all of its preemption claims, it was successful in proving two specific modifications of the City Ordinance to be preemptive: § 13-2-252(B)(1) and § 13-2-252(B)(4). Subsequently the Court enjoined the City from enforcing those two provisions until this case reaches final solution. In sum, the Court granted part and denied part of UMA's motion for preliminary injunction.

Giedre Stasiunaite