

No. 16-670

IN THE
SUPREME COURT OF THE UNITED STATES

JOHANNA VON SCHOENEBECK AND ANDRE
VON SCHOENEBECK,
Petitioners,

v.

KONINKLIJKE LUCHTVAART MAATSCHAPPIJ
N.V., A/K/A KLM ROYAL DUTCH AIRLINES,
Respondent

*On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Ninth Circuit*

**MOTION AND BRIEF OF AMICI CURIAE FLYERS
RIGHTS EDUCATION FUND AND TRAVELERS
UNITED IN SUPPORT OF PETITIONER'S
PETITION FOR A WRIT OF CERTIORARI**

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December 20, 2016

**MOTION OF AMICI CURIAE FOR LEAVE TO
FILE BRIEF IN SUPPORT OF PETITIONER'S
PETITION FOR A WRIT OF CERTIORARI**

Flyers Rights Education Fund d/b/a
FlyerRights.org and Travelers United, respectfully
move for leave of Court to file the accompanying
brief as amici curiae in support of the Petitioner's
petition for a writ of certiorari. Counsel of record for
the parties received timely notice of amici curiae's
intent to file this brief as required by this Court's
rule 37.2(a). Counsel for Petitioners consented in
writing to the filing of this brief. Counsel for
Respondent has withheld consent.

FlyerRights.org is the largest non-profit
organization for airline passengers in the United
States. It publishes a weekly newsletter, operates a
toll-free hotline for passengers, and maintains an
office in Washington, DC to advocate for the rights
and interests of its 60,000 airline passenger
members. FlyerRights.org has also filed rulemaking
petitions before the U.S. Department of
Transportation and Federal Aviation Administration
to require plain language notices to passengers of
their rights under the Montreal Convention.

Travelers United is the only non-profit
membership organization that represents all
travelers regardless of mode of travel. Travelers
United works with Congress and travel regulators,
testifies before committees, and discusses consumer
issues with travel associations.

The application of the Montreal Convention is of
interest to FlyerRights.org and Travelers United
because it provides critical protections and rights to
both organizations' members. The Ninth Circuit's
decision, that *all* actions must be filed within the

two-year time limitation in the Montreal Convention before a passenger's right to damages is extinguished, adversely affects the interests of both organizations' members by establishing a system where passengers must timely file simultaneous and duplicative actions for damages in the United States, and all other relevant countries, in which a plaintiff wants to preserve the cause of action.

For those reasons, amici curiae respectfully requests that the Court grant leave to file this brief.

Respectfully submitted,

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QUESTIONS PRESENTED

Whether the statute of limitations period of Montreal Convention Article 35 requires either an action or all actions be filed within two years before the right to damages is extinguished. Montreal Convention for the Unification of Certain Rules for International Carriage by Air, Preamble, May 28, 1999, S. TREATY DOC. No. 106-45 (2000) 2242 U.N.T.S. 309, available at 1999 WL 33292734 [Hereinafter “Montreal Convention” or “the Convention”].

Whether Article 35 of the Montreal Convention requires a plaintiff to timely file simultaneous and duplicative actions for damages in the United States and all other relevant countries in which a plaintiff wants to preserve the cause of action within the statutory period, or whether an action in a single competent court preserves the action for all other potential relevant courts.

INTEREST OF AMICI CURIAE¹

Pursuant to Supreme Court Rule 37, Flyers Rights Education Fund d/b/a FlyerRights.org and Travelers United respectfully submit this brief amici curiae in support of Petitioner, Johanna von Schoenebeck. FlyersRights.org is the largest non-profit organization for airline passengers in the United States. It publishes a weekly newsletter,

¹ No counsel for a party authored this brief in whole or in part and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

operates a toll-free hotline for passengers, and maintains an office in Washington, DC to advocate for the rights and interests of its 60,000 airline passenger members. FlyersRights.org has also filed rulemaking petitions before the U.S. Department of Transportation and Federal Aviation Administration to require plain language notices to passengers of their rights under the Montreal Convention and to regulate seats. *Flyers Rights Education Fund Inc. v. Federal Aviation Administration et al*, No. 16-1101 (D.C. Cir. 2016). Travelers United is the only non-profit membership organization that represents all travelers regardless of mode of travel. Travelers United works with Congress and travel regulators, testifies before committees, and discusses consumer issues with travel associations.

ARGUMENT

I. THE NINTH CIRCUIT IGNORES THE MONTREAL CONVENTION'S PURPOSE TO PROTECT PASSENGERS AND HAVE A UNIFORM SYSTEM OF NO FAULT COMPENSATION FOR PASSENGERS' CLAIMS AGAINST AIRLINES.

The intent and purpose of the Montreal Convention was to clarify, harmonize, and achieve uniformity of rules governing claims arising from international air transportation. The preamble asserts:

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution...REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers,

baggage and cargo...CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new convention is the most adequate means of achieving an equitable balance of interests.

Convention for the Unification of Certain Rules for International Carriage by Air, Preamble, May 28, 1999, S. TREATY DOC. No. 106-45 (2000) 2242 U.N.T.S. 309, available at 1999 WL 33292734 [Hereinafter "Montreal Convention" or "the Convention"].

When President Clinton sent the Montreal Convention to the Senate Committee on Foreign Relations, he included a letter and the Department of State's Letter of Submittal, which expressed the State Department's understanding that the Convention's intent was "[t]o accomplish its fundamental purpose of establishing uniformity...." S. Treaty Doc. No. 106-45, at XII (2000). The Senate Committee on Foreign Relations concurred with this interpretation throughout the Executive Report issued by the committee upon ratification. See S. Exec. Rep. No. 108-8 (2003).

Additionally, the United Nations Conference on Trade and Development issued a guide to the international legal framework of carriage of goods by air in which it too states the Montreal Convention's intent was the unification of the rules of air transportation by writing it, "...provides the basis for genuine uniformity of laws governing transportation by air." U.N. Secretary General, *Carriage of Goods by Air: A Guide to the International Legal Framework*: Rep. of the UNCTAD Secretariat, ¶2, U.N. Doc. UNCTAD/SDTE/TLB/2006/1 (27 June 2006).

Finally, if the very name of the Convention for the Unification of Certain Rules for International Carriage by Air was not explicit enough, U.S. case law also supports the supposition that the intent of the convention was the unification of laws governing transport by air. The Southern District of Texas referenced numerous cases in their decision not to allow tolling of a Montreal Convention action, that stated the “cardinal purpose” of the Warsaw Convention and by extension the Montreal Convention was to “achieve uniformity of rules governing claims arising from international air transportation.” *Duay v. Continental Airlines, Inc.*, No. H-10-cv-1454, 2010 WL 5342824, at *4 n.4 (S.D. Tex. Dec. 21, 2010); See also *El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155, 169 (1999).

There is no uniformity of process if a plaintiff can be treated differently depending on what Member Country they file in. The Ninth Circuit’s decision causes confusion as to whether or not the millions of plaintiffs potentially affected by this decision must file simultaneous and duplicative actions for damages in the United States and all other relevant countries in which a plaintiff wants to preserve the cause of action under Article 35’s two-year statute of limitations, or whether an action timely filed in any Convention competent court preserves the action for all other relevant jurisdictions. The Convention is clear that “an action” must be filed within the two year time frame, not “all” actions, as has already been well argued in Petitioner’s petition.

By holding that a timely filing in one Member State did not satisfy the Convention’s statute of limitations should that claim be re-filed in a different jurisdiction, the Ninth Circuit is creating

unnecessary confusion as to the process frustrated passengers must take to get the redress afforded them by the Montreal Convention.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted

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