



AAPA 2017 Port Administration and  
Legal Issues Seminar

**Doing Business After the Election:**  
The Importance of Tariffs and  
Schedules

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# ▶ Northwest v. Ginsberg

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- 2014 U.S. Supreme Court decision important to the airline industry and has implications for all transportation services
- Unanimous decision in *Northwest v. Ginsberg* held that individual states could not impose their own implied concepts of what constitutes “good faith and fair dealing” on deregulated airlines’ contractual relations with their customers



# ▶ Caution

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- Justice Alito's careful opinion, however, comes with a caution
- Court noted that airlines can and should address issues like those in their contracts of carriage, frequent flier rules and other binding documents
- Establishing choice of law rules is a good example; they can be very helpful in resolving disputes



# ▶ The Lesson?

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- This raises a broader lesson for transportation services across the board
  - Deregulation is not the absence of rules, but rather the ability of operators to set their own rules on the basis of market considerations
  - And if they don't set their own rules, it may create a vacuum that regulators may not be reluctant to fill



## ▶ Currently...

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- Trump Administration is cutting back on regulation
  - Sent out guidance to agencies intended to freeze new regulatory initiatives
  - Issued an Executive Order on Regulation and Controlling Regulatory Costs – the so-called “two-for-one” order – and has established Regulatory Reform officers in agencies



## ► Currently...

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- These are welcome developments
- The government appeared to be in the process of turning back the clock on the deregulation of transportation services



# ▶ Bottom Line

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- Take initiative
  - Address these issues in your own rules, e.g., your schedules and tariffs
  - Consult with your trade associations on these issues, when appropriate
  - Courts will defer to, and enforce, the rules in your schedules, even absent actual knowledge of them, unless you have signed an actual contract covering the same services – and even in that case, your actual contracts can incorporate your schedules on matters not otherwise specifically addressed



## ▶ Final Word

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Your relationships with your customers are too important to be left to uncertainty, regulatory intervention, or both.





▶ Thank you

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