

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ROBERT WEISSMAN,
c/o Public Citizen
1600 20th Street NW
Washington, DC 20009,

and

PATRICK LLEWELLYN,
c/o Public Citizen
1600 20th Street NW
Washington, DC 20009,

Plaintiffs,

v.

NATIONAL RAILROAD
PASSENGER CORPORATION
d/b/a AMTRAK,
1 Massachusetts Avenue NW
Washington, DC 20001,

Defendant.

Civil Action No. 1:20-cv-28

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiffs Robert Weissman and Patrick Llewellyn bring this action to obtain declaratory and injunctive relief to prevent defendant National Railroad Passenger Corporation (Amtrak), a corporation created, owned, and controlled by the federal government, from imposing an arbitration requirement on rail passengers and purchasers of rail tickets. Amtrak has included an “agreement” in its on-line terms of service that purports to require ticketed passengers and ticket purchasers to resolve past, present, and future disputes with Amtrak through binding arbitration before a private arbitrator. The arbitration provision prohibits passengers and purchasers from

arbitrating their claims on a class or representative basis. Passengers and purchasers who disagree with the arbitrator's decision cannot seek review or reversal of that decision in an Article III court or any other court, except on the circumscribed grounds set forth in the Federal Arbitration Act. The arbitration requirement prevents Amtrak's passengers and purchasers from waiting until a dispute has arisen before deciding whether binding arbitration is in their best interest. Rather, they must either submit to the arbitration requirement or forgo Amtrak's rail service.

2. Plaintiffs Weissman and Llewellyn have traveled on Amtrak in the past, and they have plans to use Amtrak in the future. Plaintiffs wish to use Amtrak's services without prospectively relinquishing their right to seek judicial redress for claims they may have against Amtrak. Plaintiffs seek declaratory and injunctive relief so that they may use Amtrak's passenger rail services without fear of forever forfeiting their constitutional and legal rights to have any claims against Amtrak adjudicated in an Article III court.

3. Declaratory and injunctive relief is warranted because Amtrak's imposition of an arbitration requirement on passengers and purchasers is unlawful *ultra vires* action. Amtrak is a federal governmental entity: It was created by the federal government, is owned and controlled by the federal government, and is charged with carrying out important federal public-policy objectives regarding passenger rail transportation. Although Congress made a policy choice that Amtrak should be operated and managed as a for-profit corporation, Congress did not grant Amtrak the authority to require rail passengers and ticket purchasers to waive their rights to seek redress for their injuries before an Article III court. Amtrak's decision to impose that requirement cannot be reconciled with its congressionally assigned mission of providing rail transportation services to the public.

4. Declaratory and injunctive relief is also warranted because Amtrak's arbitration requirement violates the U.S. Constitution. Amtrak is a creature of Congress and is subject to constitutional constraints like other government-created, government-controlled establishments. Amtrak's arbitration requirement violates the Constitution in three discrete ways: First, the arbitration requirement forces passengers and ticket purchasers, as a condition of rail travel, to give up their First Amendment right to petition courts for a redress of grievances against the government. Second, the Constitution forbids a federal governmental entity such as Amtrak from forcing individuals to give up their right to have disputes adjudicated by an Article III judge and instead requiring them to agree to submit claims against the government to binding arbitration before private adjudicators, as Amtrak's arbitration requirement purports to do. Third, Amtrak's arbitration requirement threatens the institutional integrity of the judicial branch by creating a wholly separate, private process for the resolution of claims, including constitutional and common-law claims, that is not subject to meaningful judicial oversight by Article III courts. If Amtrak can require individuals to cut federal courts out of the picture in this manner, nothing stops Congress from mandating private arbitration for any and all claims against the federal government and undermining the judicial branch's role in the constitutional separation of powers.

JURISDICTION AND VENUE

5. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this case presents claims arising under federal law and the U.S. Constitution, and under 28 U.S.C. § 1349 because Amtrak is a federally chartered stock corporation and the United States owns more than one-half of Amtrak's capital stock.

6. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c)(2) because Amtrak resides in the judicial district in which this Court sits and is subject to the personal jurisdiction of this Court.

PARTIES

7. Plaintiff Robert Weissman is an individual who resides in the District of Columbia. He is the president of Public Citizen, a public-interest organization located in Washington, DC. Mr. Weissman regularly uses Amtrak to travel to and from New York City to attend meetings, visit with Public Citizen supporters, and attend conferences. He rode Amtrak to and from New York City in August 2019, August 2018, and February 2018.

8. Mr. Weissman expects to continue traveling to New York City on work-related business. He anticipates taking two or three trips to New York City in 2020. Although he sometimes travels to New York City by car, he wishes to have the ability to use Amtrak's passenger rail services without having to agree in advance to binding arbitration before a private arbitrator and waiving his rights to seek a judicial remedy, on an individual basis or as part of a representative or class action, for resolution of any claims against Amtrak. Mr. Weissman does not want to be forced to drive or take other transportation, which may be more inconvenient, burdensome, or expensive than travel by rail, to avoid being bound by Amtrak's arbitration requirement.

9. Plaintiff Patrick Llewellyn is an individual who resides in the District of Columbia. He works as an attorney at Public Citizen Litigation Group in Washington, DC. Mr. Llewellyn traveled to New York City on an Amtrak train in February 2018 for a court appearance in the United States District Court for the Southern District of New York.

10. Mr. Llewellyn expects to travel to New York City to present oral argument before the United States Court of Appeals for the Second Circuit in a case in which he is lead counsel.

Although the Second Circuit has not set the case for argument, Mr. Llewellyn anticipates that the oral argument will be in late 2020. Mr. Llewellyn wishes to have the ability to use Amtrak's passenger rail services without having to agree in advance to binding arbitration before a private arbitrator and waiving his rights to seek a judicial remedy, on an individual basis or as part of a representative or class action, for resolution of any claims against Amtrak. Mr. Llewellyn does not want to be forced to drive or take other transportation, which may be more inconvenient, burdensome, or expensive than passenger rail travel, to avoid being bound by Amtrak's arbitration requirement.

11. Defendant Amtrak is a federally chartered corporation organized under the laws of the District of Columbia. Amtrak's principal business is providing intercity passenger rail transportation to the public.

BACKGROUND

Amtrak's Establishment and Governance

12. In the Rail Passenger Service Act of 1970, Congress authorized the establishment of Amtrak. Pub. L. No. 91-518, § 301, 84 Stat. 1327, 1330. Congress determined that the “[p]ublic convenience and necessity require that Amtrak, to the extent its budget allows, provide modern, cost-efficient, and energy-efficient intercity rail passenger transportation between crowded urban areas and in other areas of the United States.” 49 U.S.C. § 24101(a)(1). Congress expected that Amtrak's rail service “can help alleviate overcrowding of airways and airports and on highways” and offer travelers “the greatest possible choice of transportation most convenient” to their needs. *Id.* § 24101(a)(2), (3). Congress accordingly directed Amtrak “to provide efficient and effective intercity passenger rail mobility.” *Id.* § 24101(c).

13. Amtrak is substantially owned by the federal government. As of September 30, 2018, the U.S. Department of Transportation owned 109,396,994 shares of Amtrak's preferred stock, representing all of Amtrak's issued and outstanding preferred stock. Each share of Amtrak's preferred stock is convertible to 10 shares of common stock. As of September 30, 2018, Amtrak's issued and outstanding common stock totaled 9,385,694 shares out of 10 million authorized shares. Amtrak's common stock is held by private entities. The ratio of the government's ownership interest to that of private entities thus exceeds 100 to 1.

14. Amtrak is controlled by the federal government. By statute, Amtrak's board of directors consists of 10 directors, of whom one is the Secretary of Transportation sitting *ex officio*. Eight other directors on Amtrak's board are appointed to that position by the President of the United States and must be confirmed by the Senate. The tenth director on Amtrak's board is the president of Amtrak, who serves as a nonvoting member. The president of Amtrak and Amtrak's other corporate officers are named and appointed by Amtrak's board of directors. 49 U.S.C. §§ 24302(a)(1), 24303(a).

15. By statute, Amtrak is "operated and managed as a for-profit corporation." 49 U.S.C. § 24301(a)(2). Amtrak, however, has received annual appropriations from Congress throughout its existence. In 2015, Congress authorized a total of \$8.1 billion over five years in annual funding for Amtrak through fiscal year 2020. Congress has also capped Amtrak's liability for personal injury, death, and damage to property arising out of a single accident or incident at \$294.3 million. 49 U.S.C. § 28103(a); 81 Fed. Reg. 1289 (Jan. 11, 2016).

16. Although Amtrak "is not a department, agency, or instrumentality of the United States Government," 49 U.S.C. § 24301(a)(3), the Supreme Court has held that Amtrak is a

component of the federal government for purposes of the Constitution. *Dep't of Transp. v. Ass'n of Am. R.R.*, 575 U.S. 43 (2015); *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374 (1995).

Amtrak's Arbitration Requirement

17. Amtrak provides rail services to millions of passengers using a nationwide rail network located in 46 states and the District of Columbia. Amtrak is the country's primary provider of intercity passenger rail service, and it is the only high-speed intercity passenger rail provider in the United States. In many communities that lack intercity bus or airline service, Amtrak is the only intercity passenger transportation service. In 2018, passengers took more than 31 million trips on Amtrak trains.

18. Beginning on or about January 2019, Amtrak unilaterally amended the terms and conditions on which it would provide passenger rail transportation services to the public to include a binding "Arbitration Agreement." Amtrak posts the current terms and conditions, including the Arbitration Agreement, on its website at <https://www.amtrak.com/terms-and-conditions.html>. The website states that: "These terms and conditions contain a binding Arbitration Agreement below. ... By purchasing a ticket for travel on Amtrak, You are agreeing to these terms and conditions and agreeing to the Arbitration Agreement."

19. The Arbitration Agreement purports to bind both any person who purchases a ticket and any individual for whom a ticket is purchased. The Arbitration Agreement states that the purchaser and passenger agree in advance to submit any claims against Amtrak to binding arbitration. By its terms, the Arbitration Agreement extends, with limited exceptions, to claims "past, present, or future, that otherwise would be resolved in a court of law or before a forum other than arbitration."

20. The Arbitration Agreement states that it applies to claims against Amtrak, its affiliates and related entities, and any party to which Amtrak would owe an indemnity, including host railroads. A host railroad is a freight railroad whose tracks Amtrak uses to provide passenger services.

21. The Arbitration Agreement states that it is “intended to be as broad as legally permissible.” The Agreement states that it applies “without limitation” to claims and disputes “based upon or related to: these Terms and Conditions, breach of contract, tort claims, common law claims, Your relationship with Amtrak, tickets, services and accommodations provided by Amtrak, carriage on Amtrak trains and equipment, any personal injuries..., and any claims for discrimination and failure to accommodate,” unless an applicable federal statute provides that a claim cannot be arbitrated.

22. The Arbitration Agreement states that it requires binding arbitration of claims before a single arbitrator. The Agreement vests the arbitrator with exclusive authority to resolve disputes relating to the validity, applicability, enforceability, unconscionability, or waiver of the Arbitration Agreement, including any claim that all or any part of the Arbitration Agreement is void or voidable. Except with respect to the class-action waiver, the Agreement expressly purports to deny any court or agency the authority to decide whether the Arbitration Agreement is valid.

23. The Arbitration Agreement contains a class-action waiver. The class-action waiver requires passengers to arbitrate on an individual basis and bars them from participating in a class or representative action against Amtrak. Under the Arbitration Agreement, only a court, and not the arbitrator, can resolve disputes concerning the interpretation, applicability, enforceability, or waiver of the class-action waiver.

24. The Arbitration Agreement states that the arbitration must be conducted under the Consumer Arbitration Rules of the American Arbitration Association (AAA). The Arbitration Agreement authorizes a court of competent jurisdiction to enter judgment upon the arbitrator's decision or award.

25. The Arbitration Agreement is governed by the Federal Arbitration Act. Under the Federal Arbitration Act, a federal court may vacate, modify, or correct an arbitrator's decision only for circumscribed, statutorily specified reasons. 9 U.S.C. §§ 10, 11.

26. Arbitrators selected under AAA rules are not Article III judges or any other type of officer of the United States.

27. Because the Arbitration Agreement is a compulsory, non-negotiable term under which Amtrak will provide service, travelers are required to either accept the Agreement's terms or forgo Amtrak's passenger rail transportation service.

**FIRST CAUSE OF ACTION
(Absence of Statutory Authority)**

28. Plaintiffs have a non-statutory right of action to enjoin and declare unlawful official action that is *ultra vires*.

29. Amtrak has a statutory responsibility to provide passenger rail services to the public.

30. Congress has not authorized Amtrak to provide passenger rail services only to those members of the public who waive their right to seek judicial redress for claims against Amtrak in favor of binding arbitration before a private arbitrator.

31. Amtrak's decision to impose the Arbitration Agreement on plaintiffs as a term and condition of passenger rail service is unlawful because it lacks congressional authorization and violates Amtrak's statutory responsibilities.

**SECOND CAUSE OF ACTION
(Violation of the Petition Clause)**

32. Plaintiffs have a non-statutory right of action to enjoin and declare unlawful official action that is *ultra vires*.

33. The First Amendment provides that “Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances.”

34. The Petition Clause guarantees individuals’ right to access the courts for the resolution of legal disputes.

35. Amtrak’s decision to impose the Arbitration Agreement as a term and condition of passenger rail service violates the Petition Clause because the imposition by a governmental entity of a requirement to submit claims to binding arbitration before a private arbitrator abridges plaintiffs’ right to petition the courts for judicial redress for claims against Amtrak.

**THIRD CAUSE OF ACTION
(Violation of Personal Right to Article III Adjudication)**

36. Plaintiffs have a non-statutory right of action to enjoin and declare unlawful official action that is *ultra vires*.

37. Article III of the U.S. Constitution vests the “judicial Power of the United States” in federal courts whose judges “shall hold their Offices during good Behavior” and shall receive compensation “which shall not be diminished during their Continuance in Office.”

38. Federal district courts have either original or removal jurisdiction to adjudicate all claims against Amtrak, including state and common-law claims, by virtue of 28 U.S.C. § 1349, because Amtrak is a federally chartered stock corporation and the United States owns more than one-half of Amtrak’s capital stock.

39. Article III grants individuals a personal right to have claims properly before a federal court adjudicated by an impartial judge whose independence is protected under Article III.

40. As a component of the federal government, Amtrak has no authority to take action in derogation of Article III.

41. Amtrak's decision to impose the Arbitration Agreement as a term and condition of passenger rail service violates Article III by compelling plaintiffs to waive their right to adjudication of disputes against Amtrak in an Article III court if plaintiffs want to purchase tickets or to travel on Amtrak.

**FOURTH CAUSE OF ACTION
(Violation of Separation of Powers)**

42. Plaintiffs have a non-statutory right of action to enjoin and declare unlawful official action that is *ultra vires*.

43. The constitutional separation of powers does not permit the government to take actions that threaten the institutional integrity of the judicial branch.

44. As a component of the federal government, Amtrak has no authority to take action that violates the separation of powers.

45. Amtrak's decision to impose the Arbitration Agreement as a term and condition of passenger rail service threatens the institutional integrity of the judicial branch by purporting to force plaintiffs and millions of other rail passengers to litigate their constitutional, statutory, and common-law claims against Amtrak through a non-governmental process that is separate from—and not subject to constitutionally meaningful judicial supervision or review by—Article III courts.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

- (A) Declare that Amtrak lacks authority to impose the Arbitration Agreement on ticket purchasers and rail passengers;
- (B) Declare that the Arbitration Agreement violates the U.S. Constitution;
- (C) Enjoin Amtrak from enforcing existing Arbitration Agreements against plaintiffs;
- (D) Enjoin Amtrak to remove the Arbitration Agreement as a term and condition of providing passenger rail services to plaintiffs;
- (E) Award plaintiffs their reasonable costs and reasonable attorney fees; and
- (F) Grant such other relief as this Court may deem just and proper.

Respectfully submitted,

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