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VIA FEDERAL EXPRESS

Glen Hauenstein, President
DELTA AIR LINES, INC.
1030 Delta Boulevard
Atlanta, GA 30354-1989

RE: Delta's Discriminatory Passenger Dress Code Policy

Dear Mr. Hauenstein,

I am writing to you concerning the unlawful discriminatory conduct to which my client Lisa Archbold was subjected when she was a passenger on Delta flight #826 on January 22, 2024. Ms. Archbold was escorted off her plane and told that she was prohibited from flying because her attire, a T-shirt without a bra – was, according to a Delta gate agent, “revealing” and “offensive.”

Ms. Archbold, a Silver Delta member, was scheduled to take a Delta flight departing from Salt Lake City and arriving in San Francisco. On the day of the flight, Ms. Archbold wore a loose white T-shirt, a button-up business shirt, baggy white jeans, boots, red sunglasses, a multi-colored headband, and a cheetah print jacket. Ms. Archbold rarely wears a bra. Though one could faintly see the shape of her breasts and/or nipples through the T-shirt, Ms. Archbold's breasts and/or nipples were covered.

Because the temperature inside the airport was uncomfortably warm, Ms. Archbold removed her business shirt, which she had been wearing over her T-shirt, and she also removed her cheetah print jacket at the airport gate, tying the shirt around her waist and placing her cheetah jacket on the top of her suitcase.

At the gate, Ms. Archbold approached a Delta gate agent to discuss the upgrade of her seat from Economy to Economy Plus. Ms. Archbold recalls a female Delta gate agent treating her with hostility, though she wasn't sure why. Still, Ms. Archbold boarded her flight as normal, sitting in a window seat next to two other passengers. No passenger or flight attendant said anything to her about what she was wearing.

Prior to take-off, the same Delta gate agent suddenly approached Ms. Archbold. The gate agent announced loudly, “I need to speak with you in private.” Ms. Archbold was shocked, but she obeyed the Delta gate agent, who escorted her off of the plane. Then outside of the plane, Ms. Archbold alleges that the gate agent told her that the reason she needed to speak with her in private was that Ms. Archbold’s outfit was too “revealing” and “offensive.”

The gate agent told her that when passengers are wearing offensive or revealing clothing, Delta’s official policy is to remove them from the flight. The gate agent said, however, that she would not prohibit Lisa from flying on one condition. She told Lisa that she would be allowed to remain on the flight if she put on a jacket over her T-shirt.

Embarrassed and upset, Lisa complied, and took the business shirt that she had tied around her waist and put it on to cover her T-shirt. That seemed to satisfy the gate agent and she allowed Lisa to reboard the flight and return to her seat. The interaction was bizarre, harassing, embarrassing, discriminatory, and unnecessary. When she returned to her seat, Ms. Archbold spoke with surrounding passengers about the situation, several of whom stated that they believed the Delta gate agent was out of line. In fact, the woman seated next to Lisa stated that not only was what the gate agent did out of line, but also was discriminatory.

At the end of her flight, Ms. Archbold reported the incident to the head flight attendant. He said that Delta’s official policy is that “women must cover up” and that an official report was made. Ms. Archbold was unclear if the report was concerning the Delta employee’s mistreatment of her or if the report was about her outfit.

Following the incident, Ms. Archbold submitted a complaint through Delta’s website. Delta responded and sent Ms. Archbold an apology for the “frustrating situation” she experienced, and said they cannot conclude there was any discriminatory intent but they will handle it internally with the appropriate action taken.

I’ve attempted to ascertain the policy that permitted Ms. Archbold to be removed from a plane for not wearing a bra. It appears that while there may not be a formal dress code, Delta’s [Contract of Carriage](#) reads that Delta may remove a passenger when “reasonably necessary” for the “comfort or safety” of passengers, for example when “the passenger’s conduct, attire, hygiene, or odor creates an unreasonable risk of offense or annoyance to other passengers.” If Delta contends that the treatment of Ms. Archbold is in alignment with this policy, please explain how wearing a T-shirt without a bra causes “an unreasonable risk of offense or

annoyance” to the point that removal is “reasonably necessary.”

This same policy also says Delta “may not refuse to provide transportation based upon ... sex.” By denying Ms. Archbold the right to travel in a T-shirt that would be perfectly appropriate for a man, Delta discriminated on the basis of sex.

I am requesting a meeting with you to discuss policy changes to ensure that passengers do not face embarrassment, harassment, and discrimination with regard to how they are dressed. A bra, or lack thereof, should not prevent an individual from accessing the services she has rightfully purchased.

My understanding of the United States Department of Transportation rules governing commercial airlines is that passengers may be removed from a flight for safety or security reasons. However, Lisa did not present either a safety or security risk. Neither her breasts or any other woman’s breasts have ever tried to take over a plane. Breasts are not weapons of war, and it is not a crime for a woman or girl to have them. The only war in the United States in which women are directly involved is the war against women which attempts to control women’s bodies. That war could immediately end if government, the courts, and large corporations would stop trying to tell women what they can and cannot do with their bodies.

Was Delta concerned that another passenger might attack Lisa because the passenger was sexually stimulated by the outline of Lisa’s breasts or the sight of her nipple underneath her T-shirt? If that is Delta’s concern, it is based on a sexual stereotype that men or other women view a woman’s breast as a sexual object, and a stereotype that other passengers cannot control themselves, and that is why Delta insists on controlling what female passengers can and must do with their attire.

In the alternative, if Delta based Lisa’s removal on the assumption that other passengers might view the outline of Lisa’s breasts and her nipple under her T-shirt as offensive, how did Delta reach that conclusion?

Did Delta take a vote or poll of other passengers on the flight? We know of no such poll or vote and, to the contrary, the other passengers on the row in which Lisa was seated did not complain to Lisa or the flight attendant and did not request Lisa’s removal from the flight.

What is next for Delta in their women must cover up policy?

Will women who wear low cut T-shirts or blouses or dresses which reveal the shape of their breasts but not their nipples, be asked to leave the plane?

What will Delta do about girls under the age of 18? At which age must a girl make sure that her nipples cannot be seen under a T-shirt? Is the age when they may be removed from a flight age 7, or age 13, or age 17?

It is bad enough that women and girls have to be subjected to laws in half of the states that control when and if a woman can have an abortion, and what women and girls can do with their uterus.

Now Delta appears to take this one step further by seeking to control what women wear and how much of their breasts and body must be covered or can be viewed by others.

There does not appear to be any clear legal justification for Delta's oppressive policy.

We look forward to meeting with Delta so that we may discuss with them how their policy may be changed so that no future passenger is subjected to the kind of discrimination and humiliation that Lisa Archbold was forced to suffer.

The fight for gender equity has made significant strides in the last decade. Many jurisdictions have prohibited dress codes and grooming standards that impose restrictions or requirements specific to gender. The United States Court of Appeals for the 10th Circuit found that a law that prohibits women from baring their breasts below the areola is likely unconstitutional, in violation of the Equal Protection Clause, because the law's distinction was not based on any morphological differences between men and women's breasts, but from "stereotypes about women's breasts, but not men's, as sex objects."

Delta's current policy, which is highly subjective, has been applied in a discriminatory manner and resulted in disparate treatment and harassment of passengers like Ms. Archbold. The policy should be revised in a way that considers gender equity and does not result in increased burdens on women. Male passengers are not required to cover up their T-shirts with a shirt or jacket. They also do not have to wear a bra to board or remain on a plane, and women should not have to wear one either.

In a time where women's bodies are so heavily policed, autonomy over the way women present themselves through clothing is very important. Delta's treatment of Ms. Archbold sends the message that it ratifies the sexualization of women's bodies. Ms. Archbold dressed as many of us do on travel days: comfortably. She should not have been escorted off the plane because she wore attire that would have been permissible for male passengers.

Please contact me or have your attorney contact me on or before April 6, 2024, to schedule a meeting to discuss a constructive policy and practice solution to this important issue.

Thank you.

Very truly yours,
ALLRED, MAROKO & GOLDBERG

A handwritten signature in black ink that reads "Gloria Allred". The signature is written in a cursive, flowing style with a large initial "G".

GLORIA ALLRED

GA:jg

Statement of Gloria Allred
Representing Lisa Archbold
March 28, 2024