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November 25, 2018

"Via Hand Delivery"

Representative Tristan Cole
Chair, Transportation and Infrastructure Committee
Michigan House of Representatives
124 North Capitol Avenue
Lansing, MI 48909

**RE: House Bill 6436 Proposed Amendments to the Michigan Aeronautics Code
MCL 259.7 and 259.89**

Testimony on behalf of Midwest Freefall in Opposition of House Bill 6436

Dear Representative Cole,

Our office has the great honor and privilege of representing the interests of Midwest Freefall, a Sport Skydiving Flying Club, which has been conducting Sport Sky Diving operations at the Kunstman Airport in Ray Township, Michigan, since 2004.

Midwest Freefall strongly opposes House Bill 6436, as this Proposed Bill would violate long standing Federal and State Laws regarding both Federal and State Preemption of Aviation Operations.

This matter was litigated in 2004 and 2005 in the Macomb County Circuit Court. The Opinion and Order of Macomb County Circuit Court Judge Peter J. Maceroni is attached hereto as Exhibit 3.

The Aviation Related Operations at an Airport in the United States are the exclusive province of the Federal Aviation Administration. No limitations on Aviation Operations, curfews, etc, may be imposed by Local Municipalities. See Price v Township of Fenton, Exhibit 5.

The remaining issues of Aviation Operations are the exclusive authority of the Michigan Bureau of Aeronautics. See MCL 259.51 (Exhibit 3, Page 5).

November 25, 2018
Representative Tristan Cole
Page Two

The Michigan Bureau of Aeronautics has specifically reviewed the appropriateness of the Midwest Freefall Sport Flying Club's Skydiving Operations at Kunstman Airport, and has found it to be appropriate. Exhibit 1.

House Bill 6484 seeks to place State Limitations not only upon the Aviation Operations at Kunstman Airport, but upon the hundreds of Private Use Airports in Michigan.

This is unlawful due to Federal Preemption, and would necessarily be reversed in Federal Court, which was the exact situation in the Price v. Fenton case before the United States District Court, Judge Paul Gadola. Exhibit 5.

Finally, the proposed modifications pursuant to House Bill 6484 are overbroad, and would destroy ALL Aviation Flying Clubs operating out of the hundreds of Private Use Airports in Michigan, not just Sport Skydiving Clubs. These would include, flying clubs which operate gliders, small general aviation aircraft, etc.

Very truly yours,

STEVEN M. CHAIT, P.L.C.



Steven M. Chait

SMC/vll



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

GLORIA J. JEFF
DIRECTOR

September 15, 2005

Steven M. Chait
Steven M. Chait PLC
6515 Highland Road
Suite 100
Waterford, Michigan 48327

Dear Mr. Chait:

You have inquired of this office as to the requirements of the Michigan Aeronautics Code regarding the operation of a not for profit skydiving club on a private use airport. Specifically, you referenced the Kunstman airport in Ray Township.

The MDOT airspace review team recently reviewed the public use airport application for this facility. It was determined in our review that this airport did not currently meet all requirements for the issuance of a public use airport license however, it was noted that the airport meets all criteria for a private use airport. Further discussions of the group did involve the presence of the skydiving club at the airport as the Aeronautics Code requires commercial aeronautical activities to be conducted from a licensed public use airport. We determined that the activities of the skydiving club did not constitute a "commercial aeronautical activity" under the Aeronautics Code of the State of Michigan. This determination applies whether or not the owner of the airport charges a fee to the skydivers or the skydiving club charges a fee to its members. It is, therefore, our opinion that the existence and operation of the skydiving club at the Kunstman airport is appropriate and allowable under the Aeronautics Code. This determination is consistent with the long held opinion of the Department regarding this type of operation.

If you have further questions regarding this matter please feel free to contact me at 313.978.9783.

Sincerely,

Rick Hammond, Manager
Airport Safety & Compliance Unit
Multi-Modal Transportation Services Bureau

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CARMELLA SABAUGH
MACOMB COUNTY CLERK

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August 24, 2005

The Ray Township Board
Ray Township Hall
64255 Wolcott
Ray Township, MI 48096

RE: The Closing of the Kunstman Airport

To Whom It May Concern:

I would like to express my extreme disappointment at the closing of the Kunstman Airport on August 11, 2005.

I, along with my family, have been active residents of Ray Township since 1972. During this time, we have witnessed many changes within our community but not many have left us feeling more distraught and bewildered as this action taken to close our airport.

Over the years, our entire family, friends, and neighbors have enjoyed watching and hearing the aircraft take off and land at the airport and I can attest that the arrival of the Skydiving Club in 2004 has certainly been a source of great entertainment for us all. Recently, our son and grandchildren came in from Kalamazoo for a special visit to watch the "drop in" when, to our dismay, we learned of the injunction against the event.

As a resident living very close nearby, I can say that the Skydiving Club has been an excellent neighbor who has provided wonderful entertainment for the area. Everyone I know agrees that they are considerate in their flying time and they operate on a limited and very acceptable flying schedule. They have always kept the hanger area neat and clean and have not caused any problems or trouble in our township.

We would like to express our strong support to allow the airport to continue to operate as it has throughout the past 60 years. Please consider this notice from a family who is concerned we may lose something of great value that we feel is unique to our community.

I thank you for your time and attention in this matter, and look forward to a positive solution to this unsettling dilemma.

With concern,

Pat McKenna
18000 Twenty Nine Mile Road
Ray Township, MI 48096

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

TOWNSHIP OF RAY,
a Michigan municipal corporation,

Plaintiff,

vs.

Case No. 2005-3232-CZ

KUNSTMAN MANAGEMENT GROUP, LLC
And MIDWEST FREEFALL, INC.,
Jointly and Severally,

Defendants.

_____ /

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OPINION AND ORDER

Plaintiff moves to show cause why a preliminary injunction should not enter.

I

Plaintiff filed its complaint for injunctive relief on August 11, 2005. Plaintiff alleges that defendant Kunstman Management Group, LLC ("Kunstman") owns certain realty in Ray Township, at 18570 29 Mile Road. Plaintiff contends that area is zoned R-1 (Residential-Agricultural), and would permit the operation of an airfield after obtaining special land use approval. Plaintiff contends the realty has been used as an individual airstrip for 30 years, without approval by the Township, for the landing of defendants' own personal planes, until August of 2004. In August of 2004, plaintiff contends, defendant Kunstman and Midwest Freefall, Inc., hosted a four-day skydiving event, attracting some 600 people, including a number of planes flying at all hours throughout the four days. Plaintiff contends that despite being informed that such an event violated the zoning ordinance, defendants planned a similar event for the following year, in August of 2005. In the meantime, plaintiff avers, defendants had

applied to the State of Michigan for a public-use airport license, which was denied on June 22, 2005. Plaintiff contends the use of the realty by Midwest Freefall for the hosting of a five-day skydiving event constitutes conversion of the realty from a private landing strip into a public airport requiring special land use approval in accordance with the Ray Township Zoning Ordinance. Plaintiff contends that defendants' blatant violation of the zoning ordinance constitutes a nuisance per se, and that the use of the realty as a de facto public airport substantially interferes with the surrounding residential property owners. Plaintiff maintains that abatement of this nuisance per se is remedied only by injunctive order of this Court. The Court issued a temporary restraining order and an order to show cause why a preliminary injunction should not issue.

In response to the order to show cause, defendant Midwest Freefall asserts, first, that the Henry Kurstman Airport was established in 1942 by the current owners' grandfather, as an emergency landing strip during World War II, and has functioned continuously since that time as an airport in Ray Township. Defendant asserts that Midwest Freefall is a part-time flying club, which makes available to its members the ability to participate in amateur sport parachuting. Midwest Freefall argues that Ray Township does not have the authority to regulate aeronautical activity which are matters of federal and state preemption. In this regard, defendant contends that while a township has the authority to determine whether an airport can be located within its jurisdiction through its local zoning regulations, once the airport has been permitted to exist lawfully, only the Federal Aviation Administration (FAA) and the Michigan Aeronautics Commission (MAC) determine which aeronautical activities are a safe and appropriate use of the airspace. The rationale behind legislation so holding, defendant contends, is that these agencies have the unique expertise to determine issues of safety, convenience and the delicate balance

between the public's need for aeronautical facilities and the public's need for safety and convenience. Moreover, defendant argues, the use of the Henry Kunstman Airport by a non-profit flying club is within the permitted uses of private landing areas and does not constitute a "de facto public use." Finally, defendant asserts that while the Michigan Bureau of Aeronautics denied a public use license, it nevertheless has no problem with the airport continuing as a private use facility, and has no problem with the skydiving club using the airport, which is an accepted aeronautical use for a private use airport. Defendant requests the Court dissolve the temporary restraining order dated August 11, 2005, pursuant to MCR 3.310(b)(5).

II

Pursuant to MCR 3.310(B)(5), a motion to dissolve a temporary restraining order granted without notice may be consolidated with the hearing on a motion for a preliminary injunction or an order to show cause why a preliminary injunction should not be issued. At a hearing on a motion to dissolve a restraining order granted without notice, the burden of justifying continuation of the order is on the applicant for the restraining order. In deciding whether to enter, continue, or dissolve a temporary restraining order or a preliminary injunction, a circuit judge may properly proceed summarily and informally, depending on the exigencies of the situation, but his factual findings and determinations arrived at in such manner are not a substitute for a full trial hearing on the allegations of the complaint and the issues framed by the pleadings. *Cramer v Metropolitan Federal Sav & Loan Ass'n*, 34 Mich App 638, 641; 192 NW2d 50 (1971). The refusal of a temporary injunction does not preclude later entry of a permanent injunction. *Id.*

A trial court's decision to grant a preliminary injunction is reviewed for an abuse of discretion. *Alliance for Mentally Ill of Michigan v Dep't of Community Health*, 231 Mich App

647, 661; 588 NW2d 133 (1998). In deciding whether to grant a preliminary injunction, a court must consider (1) the likelihood that the party seeking the preliminary injunction will prevail on the merits, (2) the danger that party will suffer irreparable harm if the injunction is not issued, (3) the risk that the party would be harmed more by the absence of an injunction than the opposing party would be by the granting of the injunction, and (4) harm to the public interest if the injunction is issued. *Fruehauf Trailer Corp v Hagelthorn*, 208 Mich App 447, 449; 528 NW2d 778 (1995).

III

The Court is persuaded to grant the request to dissolve the temporary restraining order and to deny the motion for a preliminary injunction. Plaintiff's specific request is that the Court enter a preliminary injunctive order "preventing the defendants, their agents, employees and anyone acting in concert therewith, from utilizing the realty for skydiving activities, including large scale events, and utilizing the realty as a de facto public airport during the pendency of this litigation." Plaintiff is not seeking to enjoin defendant Kunstman from using the airport as a private use airport.

The first question for the Court is whether plaintiff is likely to prevail on the merits. Germane to this question is whether the local zoning ordinance—which provides that use of realty as an airport or "other facilit[y] involved with aircraft operations" must be approved by the planning commission—is preempted by federal and state law. Plaintiff maintains that "other facilities involved with aircraft operations" would include skydiving school, and therefore, use of realty for this purpose must first be approved by the planning commission.

It has been repeatedly held that that FAA regulations preempt local law in regard to aircraft safety, the navigable airspace, and noise control, while the FAA does not preempt

regulation of local land or water use in regard to the location of airports or plane landing sites. *Gustafson v City of Lake Angelus*, 76 F 3d 778, 786 (CA 6 [Mich], 1996). At the state level, the Michigan Aeronautics Commission was created pursuant to MCL 259.26(1). In 1996, legislation was adopted that resulted in significant changes to the Aeronautics Code. Significantly, in § 51(1) of the Aeronautics Code, it was established that the MAC has exclusive jurisdiction over aeronautical activity within the state. MCL 259.51, which became effective July 3, 1996, states:

(1) The commission has general supervision over aeronautics within this state, with exclusive authority to approve the operation of airports, landing fields, and other aeronautical facilities within the state, so as to assure a uniformity in regulations covering aeronautics. The commission shall encourage, foster, and participate with and provide grants to the political subdivisions of this state in the development of aeronautics within this state. The commission shall establish and encourage the establishment of airports, landing fields, and other aeronautical facilities. The commission shall promulgate rules that it considers necessary and advisable for the public safety governing the designing, laying out, location, building, equipping, and operation of airports and landing fields. In order to implement this act, the commission may establish programs of state financial assistance in the form of grants, leases, loans, and purchases, or a combination of grants, leases, loans, and purchases, for assisting political subdivisions or other persons. The commission shall not grant an exclusive right for the use of an aeronautical facility....

The Court of Appeals has held that the Legislature intended for the MAC (along with airport authorities) to have exclusive jurisdiction over aeronautical activities throughout the state to assure uniformity in laws regulating aeronautics for the public good. *Capitol Region Airport Authority v Charter Twp of DeWitt*, 236 Mich App 576, 591; 601 NW2d 141 (1999). In *Capitol Region*, the Court concluded that, because exclusive authority for aeronautical activities was granted to the state agency, that agency was not subject to local land use ordinances or regulations if those ordinances or regulations related to aeronautical activities. *Id.* at 591-592. Therefore, even if a local township had been granted broad powers to regulate local land use under the Township Planning Act, the township's authority was subservient to the agency's authority in matters related to the agency's expertise. *Capitol Region*, at 592-593. However, the

township's authority over local land development could include airport property to the extent that the authority asserted by a township involves only non-aeronautical uses or development of the land. *Capitol Region*, at 593. Thus, "[t]ownships may still determine the locations of airports and landing areas, and control non-aeronautical activities, but may not determine what aeronautical activities take place on the property." *Twp of Oxford v Handleman*, unpublished opinion per curiam of the Court of Appeals, decided October 19, 1999 (Docket No. 206581), slip op 3.

In the case at bar, to the extent that the Township asserts a right to control/prohibit skydiving on defendant Kurstman's property, it is attempting to regulate aeronautical activity. The Township thus exceeds the scope of its authority in light of the MAC's exclusive jurisdiction. Because plaintiff does not object to defendant's running the realty as a private use airport, plaintiff's control over this matter with respect to aeronautical activities ended, and that authority is now vested exclusively with the MAC. See *Handleman supra*, slip op 4, concluding that "the Legislature has made it clear that the owner of a private landing field has the right to allow guests to use the landing field." Further, in this case, while plaintiff alleges defendant's use has rendered the facility a "de facto public airport," defendant attaches a letter from the Department of Transportation indicating that the MDOT airspace review team determined that the activities of the skydiving club did not constitute a "commercial aeronautical activity" under the MAC. (Def Ex 4) Reviewing the evidence presented in support of the current motions and the law, the Court is persuaded that the first factor of the preliminary injunction test—which party would prevail on the merits—weighs in favor of defendants.

The Court will now consider the second and third factors, whether the party seeking the injunction will suffer irreparable injury if the injunction is not issued, and if the party seeking the

injunction would be harmed more by its absence than the opposing party would be by the granting of relief. The Court is not persuaded that these factors weigh heavily in plaintiff's favor. Defendant Midwest Freefall asserts, and plaintiff does not dispute, that the skydiving club only operates in the warm weather months, and then only 2 or 3 days per week. Therefore, irreparable injury does not appear likely before a trial resolving this matter.

Finally, the Court is not persuaded that the fourth factor—the harm to the public interest if the injunction is issued—weighs heavily in plaintiff's favor. Again, it appears that the skydiving club only operates for a short time throughout the year. Further, while the Township asserts that numerous residents have complained of the noise and increased traffic resulting from the skydiving, defendant Midwest Freefall provides a letter from a resident asserting that the skydiving club is entertaining to watch. In any event, the Court finds the first factor the most pertinent under the facts of this case.

IV

Based on the foregoing, it is hereby

ORDERED defendants' motion to dissolve the temporary restraining order is GRANTED; the Court DENIES plaintiff's motion for a preliminary injunction. This *Opinion and Order* neither resolves the last pending claim nor closes this case. MCR 2.602(A)(3).

SO ORDERED.

DATED:

cc: Christine Anderson
Joseph Ciarrmitaro
Steven Chait

Peter J. Maceroni
Circuit Judge

PETER J. MACERONI
CIRCUIT JUDGE

DEC 15 2005

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK

BY: [Signature] Court Clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

TOWNSHIP OF RAY,
A Michigan municipal corporation,

Plaintiff,

vs

Case No. 05-3232-CZ
Honorable Peter J. Maceroni

KUNSTMAN MANAGEMENT GROUP, LLC,
and MIDWEST FREEFALL, INC.,
Jointly and Severally,

Defendants.

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STEVEN M. CHAIT (P33747)
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6515 Highland Road, Suite 100
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(248) 666-1100

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**DEFENDANT MIDWEST FREEFALL, INC.'S
BRIEF IN RESPONSE TO ORDER TO SHOW CAUSE**

NOW COMES the Defendant, MIDWEST FREEFALL, INC., by and through their attorneys, STEVEN M. CHAIT, P.L.C. and for its Response to the Order to Show Cause states as follows:

STATEMENT OF FACTS

A. The Henry Kunstman Airport

The Henry Kunstman Airport was established in 1942 by family members of Henry Kunstman and is now owned and operated by Harold and Frederick Diener, grandsons of Henry Kunstman.

The airport was originally established to service an emergency landing strip during World War II and has functioned continuously since that time as an airport in the Ray Township Community. Kunstman Management Property, LLC, owns the property, which consists of approximately 80 acres. The members of the LLC remain the same family members that have continuously owned the airport for the 63 years of its existence.

The Kunstman Airport has consistently been the home of a variety of light aircraft, including light airplanes, ultra-light aircraft and helicopters.

B. Midwest Freefall Sport Parachute Club

Midwest Freefall Sport Parachute Club is a part-time flying club, which makes available to its members the ability to participate in amateur sport parachuting pursuant to the Federal Aviation Regulations (FAR). The principal member of the club is Randall Allison, who is a full-time engineer employed by General Motors at the GM Tech Center in Warren, Michigan.

In approximately August, 2004, the club made arrangements to utilize the Henry Kunstman Airport for its part-time sport skydiving operation. Due to the nature of Michigan weather, the club only operates during the warm weather months and only operates 2 or 3 week days per week, typically in the evenings. The club also has operations on one or two weekend days per week.

The club currently has access to two (2) small Cessna aircraft, which are utilized to carry the skydivers aloft.

In August, 2004, the club arranged a special gathering which attracted approximately 150 people.

Many residents of the community enjoy the unique nature of the airport in their community and the entertaining sight of the skydivers as they float down under their modern, steerable and controllable parachutes. See Letter from Pat McKenna dated August 24, 2005, attached as Exhibit 1.

In August, 2005, the club again intended to hold a special annual flying event which apparently was the impetus for Plaintiff Ray Township to file their Verified Complaint for Injunctive Relief and Temporary Restraining Order prohibiting both the conduct of the special event scheduled for August, 2005, and also prohibiting the normal use of the airport facility by the club.

On August 11, 2005, Plaintiff Ray Township also unilaterally sought and was awarded a Temporary Restraining Order prohibiting all of these activities as a “use of the realty as a *defacto* public airport.”

Subsequently on August 22, 2005, this Honorable Court entered a Stipulated Order Enjoining Skydiving Event scheduled for August 17 – 21, 2005, and Modifying Temporary Restraining Order Entered on August 11, 2005. The stipulated Order permits the normal use of the Realty by Midwest Freefall for Skydiving activities and sets forth certain hours of operation for the club’s activities until September 12, 2005, unless dissolved pursuant to motion.

ARGUMENT

II. Plaintiff Township of Ray does not have the Authority to Regulate Aeronautical Activity Which are matters of Federal and State Pre-Emption.

The state of the law pertaining to airports in Michigan is such that a local municipality may determine whether an airport can originally be located within its jurisdiction through its local zoning regulations. However, once the airport has been

permitted to exist lawfully and in compliance with the municipalities' zoning requirements, only the Federal Aviation Administration (FAA) and the Michigan Aeronautics Commission (MAC) those agencies with unique expertise in aviation may determine which aeronautical activities are safe and appropriate use of the airspace. 49 U.S.C. App. § 1508 (a) provides that:

The United States of America is hereby declared to possess and exercise complete and exclusive national sovereignty in the airspace above the United States. Through the Act, Congress expressly directed the formation of comprehensive regulations governing aircraft operations giving the Federal Aviation Administration (FAA) its broad authority to regulate the use of the navigable airspace in order to insure the safety of aircraft and the efficient utilization of such airspace . . . "for the protection of persons and property on the ground . . . "
The City of Burbank v Lockheed Air Terminal, 411 U.S. 624 at 626-27. "49 U.S.C. App. § 1348 (a) & (c)."

Aviation safety, particularly as it may affect persons on the ground, is properly the exclusive domain of the Federal Aviation Administration. Stated in *City of Burbank*:

The Federal Aviation Act requires a delicate balance between safety and efficiency, 49 U.S.C., § 1348 (a), for the protection of persons on the ground. 49 U.S.C., § 1348 (a) . . . The interdependence of these factors require a uniform and exclusive system of Federal Regulation if the congressional objectives underlying, the Federal Aviation Act are to be fulfilled. (Citing *City of Burbank, supra* at 638-39).

Skydiving from aircraft is an aeronautical use which is permitted by the FAA and the State of Michigan at airports as aeronautical use and can only be supervised by regulated or approved either by the Federal Aviation Administration (FAA) or the Michigan Aeronautical Commission (MAC).

Price v Charter Township of Fenton. (E.D. Mich. 1995) 909 F. Supp 498.

In a case very similar to the instant case, the Charter Township of Fenton attempted to place restrictions upon the hours of operation and upon aircraft engines

greater than 300 horsepower, allegedly to protect the safety of the residents around the airport, from aircraft and noise. The Price Airport is located in Fenton Township in Genesee County, Michigan. U.S. District Judge Paul Gadola, found that similar to the Henry Kunstman Airport, Price Airport had been in existence prior to the inception of the Fenton Township Zoning Ordinances, and was therefore grand-fathered and not required to comply with their special use permit requirements, etc. *Price v Charter Township of Fenton*, (E.D. Mich. 1995) 909 F. Supp 498. (Footnote1).

Judge Gadola held that the airport was permitted to exist legally within the Township and as a result it had been grand-fathered by the Township and had no jurisdiction to regulate any of the aeronautical activities conducted at the Price Airport. In the Price case a business called North American Top Gun operated three (3) Warbird aircraft for the purpose of providing airplane rides to the general public, for a fee. *Price v Charter Township of Fenton*, attached hereto as Exhibit 2.

Michigan State Preemption

To the extent that any aspect of aeronautical matters may not be preempted specifically by the Federal Aviation Regulations (FAR), the legislature of the State of Michigan has made its clear intention to keep aeronautical supervision at the state level. The legislature has enacted the Michigan Aeronautics Code at MCLA 259.1, *et. seq.*

At MCLA § 259.51, the general supervisory powers and duties of the Aeronautics Commission are set forth as follows:

“The commission has general supervision over aeronautics within this state. The commission shall encourage, foster and participate with and provide grants to the political subdivisions of this state and the development of aeronautics within this state. The commission shall establish and encourage the establishment of airports, landing fields, and other aeronautical facilities. The commission shall promulgate rules that it considers necessary and advisable for the public safety governing the designing, laying out, location, building, equipping and operation of

airports and landing fields and shall exercise exclusive authority to approve the location and operation of airports, landing fields and other aeronautical facilities within the state, so as to assure a uniformity in regulations covering aeronautics.” [Emphasis added].

The Michigan Court of Appeals has sought to determine legislative intent as to the scope of authority delegated to the state in the Aeronautics Code. With reference to the Declaration of Intent stated at MCL 259.1: MSA 10.101, the Court of Appeals found an “intent to keep aeronautical supervision at the state Level. [emphasis in original].”

Charter Region Airport Authority v Charter Township of DeWitt, ____ Mich App __; __ NW2d __ (July 23, 1999)(1999 WL 528201). The legislative intention is not only to assure a uniform continuity in operations and to assure a statewide system of aeronautics but also to ensure fairness and uniformity by placing the decision making power regarding aeronautics in the hands of both the Federal Aviation Administration (FAA) and the Michigan Aeronautics Commission (MAC), which agencies have the unique expertise to determine issues of safety, convenience and the delicate balance between the public’s need for aeronautical facilities and public’s need for safety and convenience. This system assures that matters of local ignorance or prejudice will not be permitted to unfairly disable the state and federal aeronautics system. The legislative goal of promoting aeronautical activity would be substantially undermined if the agency’s authority over aeronautics were subordinated to a local government’s land use regulations charter region airport authority, *supra*.

The Use of the Henry Kunstman Airport by a Non-Profit Flying Club is within the Permitted Uses of Private Landing Areas and does not Constitute a “Defacto Public Use.”

Skydiving operations are by necessity, aeronautical activities as they utilize aircraft to carry the skydiving club members to altitude. In addition, the FAA is notified and must put out notices to airmen (notams) alerting pilots to the presence and operation

of the skydivers. Therefore, the FAA is involved in the coordinating of safety in the airspace, so that pilots of other aircraft will know and avoid the parachute jump zone. This aeronautical activity is therefore controlled by and coordinated by the state and federal agencies, which have the unique expertise to determine what is safe and what is a reasonable use of the airspace and airports.

Ray Township's remedy is to file a request with either the Federal Aviation Administration or the Michigan Aeronautics Commission in the event that they wish to request that any prohibitions or restrictions should apply. However, the Township of Ray does not have the authority or the jurisdiction to prohibit or restrict any aeronautical activities, including the activities of the Skydiving Club at Henry Kunstman Airport.

Application of the Henry Kunstman Airport to the Michigan Bureau of Aeronautics for a Public Use License.

Plaintiff's Complaint represents that Defendant Kunstman recently applied to the Michigan Aeronautics Commission for a Public Use Airport License. Although that fact is irrelevant to the issues in this litigation, the Court should be aware that the state has no problem with the airport continuing as a private use facility, and further has no problem with the skydiving club utilization of the Henry Kunstman Airport, which is an accepted aeronautical use for a private use airport. The state has further invited Defendant Kunstman to reapply for a Public Use License once certain very simple and easily accomplished steps are taken as outlined in Exhibit 3 attached.

CONCLUSION

For the above reasons, Defendant Midwest Freefall, Inc., respectfully requests that this Honorable Court dissolve the Temporary Restraining Order dated August 11, 2005, pursuant to MCR 3.310(b)(5).

Defendant further requests that this Honorable Court decline to enter a Preliminary Injunction limiting or prohibiting any activities by Midwest Freefall, Inc., and Defendant further requests that this Honorable Court dismiss the Complaint and award Defendant's their costs and attorney's fees wrongfully incurred.

Respectfully submitted,

STEVEN M. CHAIT, P.L.C.

By: _____
Steven M. Chait (P33747)
Attorney for Def. Midwest Freefall, Inc.
6515 Highland Road, Ste. 100
Waterford, MI 48327
(248) 666-1100

Dated: September 14, 2005

Loislaw Federal District Court Opinions

PRICE v. CHARTER TP. OF FENTON, (E.D.Mich. 1995)

909 F. Supp. 498

Joel PRICE, an Individual, and Price Aviation, Inc., a Michigan Corporation, Plaintiffs, v. CHARTER TOWNSHIP OF FENTON, a Michigan Municipal Entity, Defendant.

Civil Action No

United States District Court, E.D

ion

November 30

West Page 499

John P. Siler, Bellairs, Dean,
Flint, MI, for Richard T. Gall.

Marshall G. MacFarlane, Krass & Young, Ann Arbor, ... :
Price Aviation, Inc.
West Page 500

MEMORANDUM AND ORDER GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

GADOLA, District Judge.

Plaintiffs brought suit alleging that Fenton Township Ordinance 458, regulating the frequency of certain flights at plaintiffs' airport, is unconstitutional because preempted by federal aviation law. Plaintiffs now move for summary judgment and a permanent injunction preventing Fenton from enforcing its ordinance against plaintiffs. Fenton moves for judgment on the pleadings, arguing that there is no federal preemption. For the reasons stated below, the court will grant the plaintiffs' motion. Before launching into an analysis of preemption under federal aviation law, the court will provide an overview of the factual background.

I. Factual Background

Plaintiffs have privately owned and operated Price's Airport, a public use airport located within Fenton, Michigan, since 1966. Price's Airport is a home base for approximately seventy aircraft. Operations at Price's Airport include a flight school and aircraft fuel, service, and storage facilities. Price's Airport is located in an agricultural zoning district, which permits the presence of airports after special approval by the Fenton Township Planning Commission.^[fn1] Recently, over 600 residential units have been approved by the township for construction within approximately two miles of Price's Airport.

Plaintiffs' relationship with Fenton and its residents near the airport became turbulent during and after the summer of 1994. In the summer of 1994, plaintiffs leased space at Price's Airport to North American Top Gun (hereinafter "Top Gun"), a company that operated three "warbird" aircraft^[fn2] for the purpose of providing airplane rides to the general public, for a fee. The operation of Top Gun's warbirds raised a flap among several residents of Fenton, who subsequently flocked to the Fenton Planning Commission to complain of the noise generated by these aircraft.

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Fenton responded by enacting Ordinance 458,^[fn3] effectively clipping the wings of Top Gun's warbirds. Ordinance 458 prohibits plaintiffs from allowing any commercial enterprise (such as Top Gun) to use their airport if such use will cause more than four takeoffs and landings of a plane with a jet engine, or an engine with more than 299 horsepower, within a 24 hour period. Violations of Ordinance 458 are punishable by fines of not more than \$100.00 (plus court costs), imprisonment of not more than ninety days, or both. Each day in which a violation occurs is a separate offense. It is undisputed that Ordinance 458 applies to Top Gun's activities at Price's airport.

Plaintiffs responded by initiating this action, in which they request that this court

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hold that Ordinance 458 is preempted by federal aviation law and enjoin Fenton from enforcing it against plaintiffs. On May 15, 1995, this court entered a preliminary injunction, enjoining Fenton from enforcing Ordinance 458 against plaintiffs during the pendency of this action. Plaintiffs now move for summary judgment. Defendant moves for judgment on the pleadings. There are no material issues of fact that are in dispute. The only questions are those of law. Thus, this case is an appropriate one for summary disposition.

II. Analysis

The thrust of plaintiffs' argument is that Ordinance 458 violates the Supremacy Clause of the Constitution^[fn4] by regulating in an area that has been preempted by federal law, i.e., the Federal Aviation Act of 1958, 49 U.S.C. app. § 1301-1557, including the Noise Control Act of 1972, 49 U.S.C. app. § 1431-32.^[fn5] Although there is a presumption that federal law does not supersede the police powers of the states, federal preemption is a venerable concept of American jurisprudence,^[fn6] which arises in several limited circumstances. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed. 1447 (1947). State law may be preempted when a federal law expressly states that it is preempted. *Hillsborough County v. Automated Medical Lab, Inc.*, 471 U.S. 707, 712-13, 105 S.Ct. 2371, 2374-75, 85 L.Ed.2d 714 (1985). Additionally:

[t]he scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. . . . Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.

Rice, 331 U.S. at 230, 67 S.Ct. at 1152. Further, "state law is nullified to the extent that it conflicts with federal law." *Hillsborough*, 471 U.S. at 713, 105 S.Ct. at 2375.

In determining the preemptive power of the Federal Aviation Act, this court is not exactly flying into uncharted territory. The Supreme Court in *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 93 S.Ct. 1854, 36 L.Ed.2d 547 (1973), discussed at length Congress' intent regarding the preemptive scope of the Federal Aviation Act and Noise Control Act. In *Burbank*, the Court reviewed the constitutionality of a local ordinance that prohibited flights of jet airplanes from the Hollywood-Burbank Airport between the hours of 11:00 p.m. and 7:00 a.m. Like Price's Airport, the Hollywood-Burbank Airport was privately owned. Due to the light air traffic at the Hollywood-Burbank Airport, only one regularly scheduled

flight was affected by the local curfew, a flight from Burbank to San Diego, leaving every Sunday night at 11:30 p.m.

In determining the scope of preemption under these acts, the Court first noted the broad language found in 49 U.S.C. app. § 1508, "The United States of America is hereby declared to possess and exercise complete and exclusive national sovereignty in the airspace of the United States. . . ." *Id.* at 626-27, 93 S.Ct. at 1856-57. The Court also discussed the intricate regulatory scheme developed by the Noise Reduction Act, which authorizes the Federal Aviation Administration (hereinafter "FAA"), in conjunction with the EPA, to provide "for the control and abatement of aircraft noise and sonic boom, including the application of such standards in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by this title." *Id.* at 629, West Page 502

93 S.Ct. at 1858. While recognizing that there is "no express provision of pre-emption in the 1972 [Noise Control] Act," the Court concluded that "the pervasive nature of the scheme of federal regulation of aircraft noise" implied preemption. *Id.* at 633, 93 S.Ct. at 1859. The Court stated:

Control of noise is of course deep seated in the police power of the States. Yet the pervasive control vested in EPA and in FAA under the 1972 Act seems to us to leave no room for local curfews or other local controls. . . . The Federal Aviation Act requires a delicate balance between safety and efficiency, and the protection of persons on the ground. . . . The interdependence of these factors requires a uniform and exclusive system of federal regulation if the congressional objectives underlying the Federal Aviation Act are to be fulfilled.

. . . .

. . . We are not at liberty to diffuse the powers given by Congress to FAA and EPA by letting the States or municipalities in on the planning.

Id. at 638-40, 93 S.Ct. at 1862-63. The Court determined that the curfew ordinance was intended to regulate airplane noise, and was therefore preempted.^[fn7]

The *Burbank* Court supported its conclusion by noting that Senator Tunney, when describing the regulatory scheme on the floor of the Senate stated:

proposed means of reducing noise in airport environments [include] the regulation of flight patterns and aircraft and airport operations, and modifications in the number, frequency, or scheduling of flights [as well as] . . . the imposition of curfews on noisy airports, the imposition of flight path alterations in areas where noise was a problem, the imposition of noise emission standards on new and existing aircraft. . . .

Burbank, 411 U.S. at 637, 93 S.Ct. at 1861 (quoting 19 Cong.Rec. S at 18644 (Oct. 18, 1972)). The Court viewed this listing of proposed actions by the federal government as evidence that states were preempted from taking these actions. With respect to the present case, it is important to note that these proposed federal actions include regulating the number, frequency, and scheduling of flights.

The Court also supported its conclusion with the following excerpt from the debates concerning the Noise Control Act:

The courts have held that the Federal Government presently preempts the field of noise regulation insofar as it involves controlling the flight of aircraft. . . . State and local governments will remain unable to use their police powers to control aircraft noise by regulating the flight of aircraft.

Id. at 635, 93 S.Ct. at 1860 (quoting Secretary of Transportation Boyd, in a letter to the Senate describing the preemptive impact of the Noise Reduction Act). Under *Burbank*, an ordinance restricting the timing of flights is considered to be a preempted regulation of the "flight of aircraft." *Id.* at 640, 93 S.Ct. at 1863. Thus, an ordinance restricting the frequency of flights would also seem to land squarely within the area of regulations that are preempted by the Federal Aviation Act.

Federal courts, in the wake of *Burbank*, have held that various attempts by local governments to enforce their police powers to control noise or otherwise affect flights are preempted. *Blue Sky Entertainment, Inc. v. Town of Gardiner*, 711 F. Supp. 678

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(N.D.N.Y. 1989) (ordinance that limits, inter alia, decibel levels and flight paths of airplanes is preempted); *United States v. City of Blue Ash*, 487 F. Supp. 135 (S.D. Ohio 1978) (ordinance requiring aircraft to make "noise abatement turns" is preempted); *Command Helicopters, Inc. v. City of Chicago*, 691 F. Supp. 1148 (N.D. Ill. 1988) (ordinance regulating lifting operations of helicopters is preempted); *Gustafson v. City of Lake Angelus*, 856 F. Supp. 320 (E.D. Mich. 1993) (ordinances restricting the storage, landing, and flight altitude of aircraft are preempted).

Further, the plaintiffs' case is strengthened by the position of the FAA that Ordinance 458 is preempted. Plaintiffs have enclosed with their brief a letter from the FAA which states that the present case, as far as the FAA is concerned, is nearly identical to the case of *Country Aviation, Inc. v. Tinicum Township*, No. 92-3017, 1992 WL 396782 (E.D. Penn. December 22, 1993), in which the FAA took the position that a local ordinance enacted to limit noise levels of airplanes was preempted. As the agency in charge of administering portions of the Federal Aviation Act, the FAA's opinion should be considered by this court. See *Chemical Mfrs. Ass'n v. Natural Resources Defense Council*, 470 U.S. 116, 125, 105 S.Ct. 1102, 1107, 84 L.Ed.2d 90 (1985); *Blue Sky Entertainment, Inc. v. Town of Gardiner*, 711 F. Supp. 678, 693 (N.D.N.Y. 1989).

Defendant misguidedly attempts to distinguish *Burbank* and the other preemption cases by drawing a distinction between ordinances that regulate aircraft operations in flight or the use of navigable airspace (which defendant concedes are preempted) and ordinances that are "simple zoning" ordinances regulating the type of activity permitted on land within Fenton. Unfortunately for defendant, *Burbank* and its progeny do not support such a distinction in this case.

To begin with, Ordinance 458 restricts flight operations. The defendant cannot credibly argue that because the ordinance limits takeoffs and landings, but not flight paths, it is not a regulation on flight operations. It is difficult, if not impossible, to draw a distinction between regulation concerning the "flight" of aircraft and regulation concerning the takeoff and landing of aircraft. Obviously, there cannot

be one without the other two. As stated in *Burbank*, "[t]he moment a ship taxis onto a runway it is caught up in an elaborate and detailed system of controls." *Burbank*, 411 U.S. at 634, 93 S.Ct. at 1860. Also, *Burbank* refused to make such a distinction, holding that the defendant's concession that there is preemption regarding airspace management was "fatal" to the defendant's argument that a curfew on flights was not preempted. *Id.* at 627, 93 S.Ct. at 1856. There is scant difference between the *Burbank* restriction on the timing of flights and Fenton's restriction on the frequency of flights. Both are fairly construed as regulations of flight operations.

Further, defendant's statement that federal courts "have not . . . restricted local or state regulation relating land use restrictions and zoning laws" is simply not true. In *Gustafson*, this court held that an amendment to a city's zoning ordinance that prohibited the "mooring, docking, launching, storage, or use of . . . aircraft powered by internal combustion engines . . ." was preempted. *Gustafson*, 856 F. Supp. at 322, 326. Clearly, that ordinance was a zoning law that regulated the type of activity permitted on land within the township. Nonetheless, the zoning law violated the Supremacy Clause.

The defendant lifts language from the *Burbank* dissent to support its argument, but glides over the majority opinion. Justice Rehnquist, in dissent, did state that, according to the congressional history of the Federal Aviation Act and the Noise Control Act, those acts never intended to diminish "the authority of units of local government to control the effects of aircraft noise through the exercise of land use planning and zoning powers. . . ." *Id.* at 650, 93 S.Ct. at 1868. In light of the *Burbank* majority's holding that ordinances restricting flight schedules are not valid exercises of state zoning power, this language in the congressional history does not give talismanic protection to those ordinances that are characterized as zoning laws. Nobody denies that Fenton has the ability to create zoning laws so that airports are not placed snugly between hospitals, churches, schools, cemeteries, and the like. If Fenton

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wanted to prevent the construction of an airport that it felt would be disruptive to the surrounding area, it most likely could do so. Faced with the ongoing operations of Price's Airport, however, Fenton may not, under the pretense of its zoning power, attempt to regulate those flight operations to quell airplane noise. The power to create such restrictions, regardless of whether they are called zoning laws, is relegated exclusively to the federal government under *Burbank*.

San Diego Unified Port Dist. v. Gianturco, 651 F.2d 1306 (9th Cir. 1981), also quotes the language from the *Burbank* dissent cited by the defendant, but recognizes that there are limitations on a state's power: "The observation that a state has a power in no way implies any doubt about equally well-settled limits to that power, such as federal preemption." *Gianturco*, 651 F.2d at 1316. The Ninth Circuit held that "[l]ocal governments may adopt abatement plans that do not impinge on aircraft operations." *Id.* at 1314. Ordinance 458 cannot leap this hurdle because it impinges on aircraft operations at Price Airport. In fact, Ordinance 458 was enacted for the purpose of impinging upon Top Gun's flight operations at Price's Airport. Thus, defendant cannot successfully rely on Ordinance 458's status as a "zoning" ordinance to prop up its case.

Defendant also heavily relies on *Faux-Burhans v. County Comm'rs of Frederick County*, 674 F.Supp.1172 (D.Md. 1987), in which the court held that certain zoning ordinances were not

preempted by the Federal Aviation Act and the Noise Control Act. In *Faux-Burhans*, Frederick County granted a special exception under the zoning laws to the plaintiff's father-in-law to operate a private airstrip in accordance with certain restrictions. Plaintiff inspected and repaired planes on the land and the strip was presumably used only by those planes being serviced. Plaintiff's father-in-law conveyed the land to plaintiff, who then paved the runways, improved a hangar that he had previously built, and registered the facility with the FAA as a private airport. The County stated that the airstrip, in spite of the improvements, was still subject to the zoning restrictions. The restrictions, unfortunately, are not directly quoted in the opinion, but appeared to regulate:

the intensity of use (by the number of aircraft),
the type of aircraft that can use the facility
(by takeoff distance required), the clear zone at
the runway ends (by prohibiting building
thereon), the locale of operation (by setback
requirements), and the type of aircraft
operations (by prohibiting instructional
flights).

Id. at 1174.

Although this court need not distinguish *Faux-Burhans* because it arises from the District of Maryland, *Faux-Burhans* can be distinguished from the present case. In spite of its holding, *Faux-Burhans* states that there is preemption when local noise regulations "infringe[] upon the federally pre-empted regulation of navigable airspace, by directly affecting the manner in which, and the type of aircraft by which, flight operations were to be conducted from airports that were otherwise open to air traffic in general." *Id.* at 1174 (emphasis added). *Faux-Burhans* dealt with the creation of a private airport from a landing strip, not an airport "otherwise open to air traffic in general." *Id.* at 1174. In *Faux-Burhans*, the county was merely attempting to enforce the zoning requirements that had always applied to the landing strip and were conditions of its conception. In contrast, at the time that Ordinance 458 was enacted, Price's Airport was clearly "otherwise open to air traffic in general." Thus, under the above-quoted language, Ordinance 458 is preempted. Ordinance 458 directly affects the manner in which, and the type of aircraft by which, flight operations at Price's Airport occur by limiting the frequency of takeoffs and landings of planes with engines larger than 299 horsepower.

To the extent that *Faux-Burhans* holds that, as applied to an airport like Price's Airport under the facts of this case, local zoning regulations that restrict the number, timing, or frequency of flights are not preempted by federal law, this court declines to treat *Faux-Burhans* as persuasive precedent and expressly holds otherwise.

Defendant also allots a fair amount of space in his brief to a discussion of the
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ascension of Chief Justice Rehnquist, who wrote the dissent in *Burbank*, to his current position, the change in the composition of the Court since *Burbank*, and the general views of the current Court towards states' rights, as evidenced in recent cases like *United States v. Lopez* and *United States Term Limits Inc. v. Thornton*. The upshot of defendant's argument is that *Burbank* has been weakened as precedent somehow by these changes in the Court. For example, defendant argues:

In light of the Chief Justice's dissenting
opinion in *Burbank*, . . . and the trend of a

majority of the Court to protect the powers of the separate states pursuant to the Tenth Amendment, it seems probable that the Court would affirm the right of local governments to reasonably control use and development of private airports through the zoning process.

This argument simply does not fly. The impropriety of this type of argument was thoughtfully addressed in a recent Sixth Circuit opinion:

While we understand that changes in Court personnel may alter the outcome of Supreme Court cases, we do not sit as fortune tellers, attempting to discern the future by reading the tea leaves of Supreme Court alignments. Each case must be reviewed on its merits in light of precedent, not on speculation about what the Supreme Court might or might not do in the future, as a result of personnel shifts.

Columbia Natural Resources, Inc. v. Tatum, 58 F.3d 1101, 1107 n. 3 (6th Cir. 1995).

For the aforementioned reasons, this court holds that, to the extent that Ordinance 458 limits the frequency of flights of certain airplanes, it is preempted by the Federal Aviation Act and violates the Supremacy Clause of the Constitution. Having held that plaintiff has succeeded on the merits, this court must now determine the appropriateness of issuing a permanent injunction preventing Fenton from enforcing the unconstitutional portions of Ordinance 458 against plaintiffs. "As a general rule, this court will issue a permanent injunction when there is no adequate remedy at law and when the balance of the equities favors the party seeking relief." *Blue Sky Entertainment, Inc. v. Town of Gardiner*, 711 F. Supp. 678, 690 (N.D.N.Y. 1989); See *Gustafson v. City of Lake Angelus*, 856 F. Supp. 320, 327 (E.D.Mich. 1993). In the present case, this court believes that plaintiffs have no adequate remedy at law and that it would be equitable to issue a permanent injunction. Issuing a permanent injunction would not be against public policy because the injunction supports the uniform federal regulations promulgated by the FAA for the purpose of ensuring "safety and efficiency, and the protection of persons on the ground." *Burbank*, 411 U.S. at 638-39, 93 S.Ct. at 1862-63. Further, this injunction will not cause undue harm to third parties because the plaintiffs are still subject to all applicable federal regulations concerning flights at Price's Airport. Residents of Fenton are protected by these regulations. Accordingly, this court will issue a permanent injunction preventing the defendant from enforcing the unconstitutional provisions of Ordinance 458 against plaintiffs.

ORDER

Therefore, it is hereby ORDERED that plaintiffs' motion for summary judgment be GRANTED.

It is hereby further ORDERED that defendant's motion for judgment on the pleadings be DENIED.

It is hereby further ORDERED that defendant, its officers, agents, and attorneys, as well as all other persons in concert or participation with defendant are hereby PERMANENTLY ENJOINED from enforcing the provisions of Section 7.03(b)(3) of Fenton Ordinance 458 against plaintiffs, their officers and agents, and persons using Price's Airport.

SO ORDERED.

[fn1] Apparently, plaintiffs did not need to receive the Fenton Township Planning Commission's approval because Price's Airport was in existence before the passage of this local zoning ordinance.

[fn2] Apparently these aircraft are vintage airplanes from World War II.

[fn3] Ordinance 458 reads, in pertinent part:

1. Definitions.

.

b) Airport shall include any publicly or privately owned facility intended for the landing and takeoff of aircraft.

c) Controlled airport shall mean any airport at which the approaches to landing, ground operations, takeoffs and departures following takeoff, are controlled at all times, or during portions of a 24 hour period, by Federal Aviation Administration Air Traffic Controllers operating from a tower or similar facility located on the airport.

d) Uncontrolled airport shall mean any airport which is not a Controlled airport.

e) Operator shall mean the owner of the airport and person or entity responsible for day to day management of the airport.

.

3. No operator of an uncontrolled airport in Fenton Township, whether constructed before or after the effective date of this ordinance, shall permit any commercial enterprise to operate aircraft at the airport if such operation entails more than four takeoffs or four landings of an aircraft having one or more engines in excess of 299 horsepower, or having a jet engine, within a 24 hour period. For the purposes of this subsection, a commercial enterprise shall mean any aircraft operation conducted for the purpose of earning financial or other consideration.

[fn4] U.S. Const. art. VI, cl. 2 reads, in pertinent part:

This Constitution, and the Laws of the United States which shall be made in pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[fn5] The defendant has conceded that plaintiffs have standing to bring this action. Thus, the issues of standing, ripeness, and the presence of an actual case or controversy will not be discussed further, except to state that an examination of the factual background of this case convinces the court that plaintiffs do have standing and that there is an actual case or controversy before the court that is ripe for adjudication.

[fn6] See *Cooley v. Board of Wardens*, 53 U.S. (12 How.) 299, 13 L.Ed. 996 (1852).

[fn7] Neither *Burbank* nor the present case deals with the ability of a state or city to restrict the frequency or timing of flights in airports for which the state or city is a proprietor. These cases deal with the ability of a locality to exercise its police powers over private airports. See *Burbank*, 411 U.S. at 635 n. 14, 93 S.Ct. at 1860 n. 14 ("[W]e are concerned here not with an ordinance imposed by the City of Burbank as 'proprietor' of the airport, but with the exercise of police power.")

Defendant argues that this dichotomy, which allows cities to restrict airports for which they are proprietors but not restrict privately owned airports, leaves residents without a remedy when the operator of a private airport irresponsibly creates unnecessary noise. This is not true. The residents' remedy is to seek redress from the federal government by requesting enforcement of existing federal regulations promulgated by Congress or the Federal Aviation Administration or by requesting the creation of new regulations by these bodies.

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