Federal Preemption Prevents States from Interfering with Local Government Airport Proprietor

Raymond T. Van Arnam

Recommended Citation
Available at: https://digitalrepository.unm.edu/nrj/vol23/iss1/12

This Note is brought to you for free and open access by the Law Journals at UNM Digital Repository. It has been accepted for inclusion in Natural Resources Journal by an authorized editor of UNM Digital Repository. For more information, please contact amywinter@unm.edu, lsloane@salud.unm.edu, sarahrk@unm.edu.
NOTES

FEDERAL PREEMPTION PREVENTS STATES FROM INTERFERING WITH LOCAL GOVERNMENT AIRPORT PROPRIETOR


FACTS

The San Diego Unified Port District (Port District) owns and operates San Diego International Airport, Lindbergh Field. The Port District imposed a midnight to 6:00 a.m. curfew on all commercial jet takeoffs. The State of California, through its Department of Transportation, CalTrans, imposed a more restrictive curfew. The Port District sought a variance to the more restrictive regulation. An administrative law judge granted the variance, subject to several conditions. One condition required the Port District to extend its curfew two hours, one hour on each end. The Port District did not wish to extend its curfew further, and appealed the judge’s ruling in federal court, seeking an injunction. The Port District asserted that the state was preempted by federal law from interfering with the District’s regulation of its airport. The injunction was granted and an appeal followed. The appellate court ruled on the issue of whether the doctrine of federal preemption prevents the State of California from directing a political subdivision to impose a curfew on aircraft flights. In so doing, the appellate court interpreted City of Burbank v. Lockheed Air Terminal, and federal statutes enacted since Burbank. The Court of Appeals for the Ninth Circuit affirmed the district court and held that the state could not impose its own curfew regulations.

BACKGROUND

Air travel is the fastest method of transportation over long distances. Airplanes, particularly the larger ones, generate significant and sometimes unbearable amounts of noise. The problem represents a conflict between two groups or interests. "On the one hand, there is a group who provide

various air transportation services. On the other hand, there is a group who live, work, and go to schools and churches in communities near airports. San Diego has struck a compromise between the two, which the State of California does not feel is strong enough.

The conflict between San Diego and California, although unique because of the position of the parties, is representative of an ongoing discussion in the area of aircraft noise. Typically, two legal issues permeate any discussion of aircraft noise: liability and preemption. The issue of liability is settled. Airport proprietors are liable to nearby property owners for property damage caused by aircraft noise from overflying commercial flights. Local governmental proprietors have responded to this dilemma by attempting to control aircraft traffic, thereby controlling aircraft noise. This raises the second legal issue, preemption.

In many areas of federal regulation the acts of Congress are so comprehensive as to make reasonable the inference that Congress left no room for supplemental state action. However, federal statutes and policy clearly indicate that cooperative state-federal regulation of noise control is envisioned by Congress. This shared power is to be exercised by local governments under restrictions imposed by Congress. There is no express statutory provision for federal preemption in this area. Neither the Federal Aviation Act, nor the Noise Control Act of 1972, explicitly prohibits state and local governments from acting in this area. The preemption that does exist in this area has been judicially created.

Prior to the Noise Control Act of 1972, a series of cases arose involving local governments grappling with the question of the extent of their authority to regulate aircraft noise. The courts held federal authority preempted local regulations which affect aircraft flight. In City of Burbank v. Lockheed Air Terminal, Inc., the City of Burbank attempted to impose curfew restrictions on the Hollywood-Burbank Airport. Burbank enacted a curfew ordinance which made unlawful jet take-offs from Hollywood-Burbank Airport between 11 p.m and 7 a.m. The Court ruled that the City was preempted from exercising its police powers over aircraft serving the airport. However, the Court noted in a footnote that it did

5. This issue was settled first in Griggs v. Allegheny County, 369 U.S. 84 (1962). The Supreme Court has never wavered from this position. It is now well established law; law which exposes airport owners, overwhelmingly local governments, to a plethora of lawsuits.
not consider "what limits, if any, apply to a municipality as a proprietor" in the area of aircraft noise regulation.\textsuperscript{10} Hence, although \textit{Burbank} supported the proposition that local governments were preempted from exercising any direct control over aircraft noise, the holding did not apply to those cities which owned and operated their own airports. Because the liability of cities which owned their airports was well established,\textsuperscript{11} it was recognized that some measure of protective power needed to be extended to them. In suits subsequent to \textit{Burbank}, courts have acknowledged the right of local governmental proprietors to enact noise control ordinances.\textsuperscript{12}

\textbf{GIANTURCO}

Generally, challenges to aircraft noise control ordinances arise in the context of a private party contesting the local governmental proprietor's power to enact restrictive ordinances. In \textit{San Diego Unified Port District v. Gianturco},\textsuperscript{13} the challenge comes from the State of California against one of its political subdivisions, the Port District. Hence, the posture of the parties is somewhat reversed. In this case, the Port District (rather than a private party) is arguing that the state (rather than a local government) is preempted from interfering with the District's control over its airport. Unwilling to extend its curfew, the Port District petitioned the district court to enjoin enforcement of the state's more restrictive conditions. The district court agreed with the Port District's assessment of the relative position of the parties and held that the state was preempted by federal authority. Pursuant to this finding, the court issued a preliminary injunction.\textsuperscript{14}

On appeal, the state argued that the district court erred in relying on \textit{Burbank} and issuing the injunction. The Port District reiterated its argument that the State of California was preempted from interfering with the District's control over its airport.

In addressing itself to the arguments of the parties, the Ninth Circuit court begins with an exploration into preemption. The court's analysis of preemption follows traditional lines. Noting that Congress had not enacted laws explicitly preempting states in the area of aircraft noise, the court determined that the "key to the scope of federal preemption is the

\begin{thebibliography}{9}
\bibitem{10} \textit{Id.} at 635 n. 14 (1973).
\bibitem{11} \textit{See} cases cited \textit{supra} in footnote 8.
\bibitem{12} National Aviation v. City of Hayward, 418 F. Supp. 417 (N.D. Cal. 1976); Air Transport Ass'n of America v. Crotti, 389 F. Supp. 58 (N.D. Cal. 1975); Santa Monica Airport Ass'n v. City of Santa Monica, 659 F.2d 100 (9th Cir. 1981). \textit{See also} 22 NAT. RES. J. 251 (1982) for further discussion.
\bibitem{13} 651 F.2d 1306 (9th Cir. 1981).
\bibitem{14} \textit{Id.} at 1309.
\end{thebibliography}
intent of Congress in enacting the applicable federal legislation."\(^{15}\) Because the court found no specific intent on the part of Congress to preempt local government in this area, it proceeded to analyze case law on the subject of preemption.

Case law in this area traditionally requires the court to first assess the effect of state regulation on national aviation and aircraft noise policy. In this instance the court finds no problem in determining that the State of California is seeking "to regulate and restrict aircraft flights directly by requiring the Port District to adopt a more extensive curfew than the Port District itself thought necessary and appropriate."\(^{16}\) The problem, the court states, is in assessing the effect of the state's action on national aviation and aircraft noise policy.

The court begins with a \textit{Burbank} type analysis, and reaffirms the district court's finding that the Port District is well within the exemption to federal preemption of local control of air traffic created by footnote 14.\(^{17}\) This portion of the \textit{Gianturco} opinion, the examination of Congressional intent and applicable case law, is well reasoned and on firm legal footing. The court holds that the State of California is in a position analogous to that of the City of Burbank. That is, it is a "governmental entity . . . attempting to impose a mandatory curfew on an unwilling airport proprietor."\(^{18}\)

The state responded with a two pronged argument. First, the state asserted \textit{Burbank} was no longer good law because of congressional and administrative actions evincing a retreat from that position. This prompted the court to analyze applicable federal rules and regulations enacted since \textit{Burbank}. Second, the state argued that even if \textit{Burbank} was good law, the State of California fits into the exemption \textit{Burbank} created. This led the court back to a complete and somewhat faulty analysis of \textit{Burbank}.

\textbf{a. Federal Regulation Following \textit{Burbank}}

Part of the state's first argument is that the Quiet Communities Act of 1978 (QCA)\(^{19}\) amended the 1972 Noise Control Act relied upon in \textit{Burbank}. Specifically, the State of California quotes section two of the QCA, and argues that local governments are allowed to regulate the source of aviation noise unless such regulation is in direct conflict with existing federal regulations. The court correctly rebuffs the state's argument, but later contradicts itself on this point. Although correct in its refutation of

\(^{15}\) \textit{Id.} at 1310.
\(^{16}\) \textit{Id.} at 1311.
\(^{18}\) 651 F.2d at 1312.
California's argument, the court incorrectly reasons that the distinction is between controlling the source of the noise and mitigating its impact. The court states that "federal authority preempted local control of the sources of aviation noise."20 Distorting aircraft noise regulation ordinances imposed through curfews into an attempted control of aircraft noise at its source severely handicapped the court's reasoning. Concluding that portion of its opinion, the court egregiously states that "[o]ur analysis . . . leads us to conclude that the curfew imposed by [the State] impinges on airspace management by directing when planes may fly in the San Diego area [cite omitted] and a federal control of aircraft noise at its source by restricting the permissible flight times . . . solely on the basis of their noise."21 The Port District was doing the same thing as the state, to a lesser extent, yet the court fails to realize that. If the court did not realize that, then it internally overruled itself in its statement that the "state has attempted to act in an area preempted by the federal government and its actions are void."22

b. The Burbank Analysis As Applied

In the second part of its argument, California argued that if Burbank is still good law, the state qualifies as an airport proprietor and is therefore exempt from federal preemption. Responding to the state's argument, the court analyzes the criteria necessary to qualify as a proprietor within the meaning of footnote 14 in Burbank. "These criteria (ownership, operation, promotion, and the ability to acquire necessary approach easements) comprise a federal definition of proprietors for preemption purposes."23 Exploring the powers and authorities granted the Port District by the state, the court arrives at the conclusion that the Port District is an airport proprietor. The court notes that "[u]nder state law then, the Port District is the owner, operator, and promoter of San Diego Airport."24 Agreeing to this, California argues that because of its inherent powers over its political subdivisions, it too is a proprietor. Focusing on the liability factor, the court soundly rejects this proposition. In its conclusion, the court states that it is the Port District, not the state, which is subject to suit from citizens. The court then holds that "[s]ince CalTrans bears no liability for excessive aircraft noise at Lindbergh Field, it is not now a proprietor under federal law, and cannot avail itself of City of Burbank's footnote 14."25

20. 651 F.2d at 1313.
21. Id. at 1316.
22. Id.
23. Id. at 1317.
24. Id.
25. Id. at 1319.
CONCLUSION

While the Ninth Circuit Court of Appeals reaches the correct result, the reasoning employed to rebuff that portion of the state’s argument based on the Quiet Communities Act is deficient. The state is barred from regulating air traffic via a curfew at Lindbergh Field because that amounts to impinging on airspace management and federal control of aircraft noise at its source. These attempts are preempted because they conflict directly with federal legislation. Yet that is exactly what the Port District is doing with its curfew. The only distinction is that the District owns the airport. Ownership of an airport by a governmental entity does not grant it immunity from direct federal regulations. It does, however, exempt it from preemption based on a *Burbank* analysis and the application of *Griggs* liability. Therefore, although its initial reasoning is somewhat faulty, the conclusion the court reached is entirely correct. The result is that the preemption exemption outlined in footnote 14 of *Burbank* is now further strengthened to give local governments the right to make regulations in this area without interference from their state governments.

RAYMOND T. VAN ARNAM