DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, Colorado 80306	DATE FILED December 20, 2024 3:02 PM FILING ID: A6DD80CB3FCA5 CASE NUMBER: 2024CV30221
Plaintiffs: TOWN OF SUPERIOR, a municipal corporation of the State of Colorado; and THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF BOULDER, COLORADO, a County government in the State of Colorado, v. **Defendants:** THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF JEFFERSON, COLORADO, as successors in interest to the Jefferson County Airport Authority; and DR. STEPHANIE CORBO in her official capacity as acting Airport Director of the Rocky Mountain Metropolitan Airport.	**▲ COURT USE ONLY ▲**
Attorneys for Defendants Board of County Commissioners of the County of Jefferson, Colorado, and Dr. Stephanie Corbo: W. Eric Pilsk, Atty. Reg. No. 51681 Tracy A. Davis, Atty. Reg. No. 35058 Nathaniel H. Hunt, Atty. Reg. No. 49259 Steven L. Osit, Atty. Reg. No. 53821 Samantha R. Caravello, Atty. Reg. No. 48793 **KAPLAN KIRSCH LLP** 1675 Broadway, Suite 2300 Denver, CO 80202 Phone: 303-825-7000 Fax: 303-825-7005 epilsk@kaplankirsch.com tdavis@kaplankirsch.com nhunt@kaplankirsch.com sosit@kaplankirsch.com scaravello@kaplankirsch.com	Case No.: 2024CV30221 Division: 2
DEFENDANTS' MOTION TO DISMISS	

INTRODUCTION

A web of federal laws vest exclusive control of aircraft flight paths, operations, noise levels, emission standards, and fuel requirements in the Federal Aviation Administration ("FAA") and the Environmental Protection Agency ("EPA"). The Supreme Court has held that such "pervasive control . . . seems to us to leave no room for local curfews or other local controls." *Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 638 (1973). Critically, airport owners like Jefferson County must obtain FAA approval before adopting local restrictions on aircraft operations, even to address local noise and environmental concerns, and federal law sharply curtails any proprietary power the County may have to restrict flight operations or the sale and use of leaded aviation fuel. In short, state and local governments are irrefutably preempted from regulating the operations of aircraft in flight or the use of leaded aviation fuel.

Despite that well established principle, Plaintiffs -- the Town of Superior and the Board of County Commissioners of the County of Boulder, Colorado ("Plaintiffs") -- ask this Court to compel the Defendants -- The Board of County Commissioners of the County of Jefferson, Colorado ("Jefferson County") and Dr. Stephanie Corbo[1] (collectively, the "County") -- as the owner of the Airport, to ban "touch-and-go" aircraft operations at Rocky Mountain Metropolitan Airport ("Airport"), claiming that alleged impacts from noise and exhaust emissions constitute a nuisance. Complaint ¶ 3. But virtually every court that has considered similar claims has held that federal law preempts judicial authority to enjoin aircraft flight operations to abate an alleged

[1] Defendant Dr. Corbo was the acting Airport Director beginning in late 2023 until Mr. Erick Dahl became the Airport Director in June 2024. Because Dr. Corbo is no longer involved in Airport management, and no claim has been asserted against Dr. Corbo or the Airport Director personally, Dr. Corbo should be dismissed as a defendant.

nuisance. Plaintiffs offer no reason why this Court should take a different approach. As a matter of law, therefore, the Complaint fails to state a claim upon which relief can be granted, and the Complaint must be dismissed pursuant to C.R.C.P. 12(b)(5).

LEGAL FRAMEWORK

I. Federal Preemption

Under the Supremacy Clause of the U.S. Constitution, state or local laws are preempted where Congress *intends* a federal statute to supersede state laws or local ordinances. *Barnett Bank of Marion Cty., N.A. v. Nelson*, 517 U.S. 25, 30 (1996). In some statutes, Congress has expressly stated its intent to preempt state law. For example, Congress has expressly preempted states from regulating emissions from aircraft engines, 42 U.S.C. § 7573, and from regulating airline rates, routes, and services, 49 U.S.C. § 41713(b).

Even where Congress does not expressly preempt state law, an "intent to displace state law altogether can be inferred from a framework of regulation 'so pervasive . . . that Congress left no room for the States to supplement it' or where there is a 'federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'" *Arizona v. United States*, 567 U.S. 387, 399 (2012) (citation omitted). This form of preemption is known as "field preemption" because it preempts *all* state laws or local ordinances in a given field, regardless of whether the state laws or local ordinances are consistent or inconsistent with the scheme. *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1595 (2015).

Preemption may also be implied where "compliance with both federal and state regulations is a physical impossibility," or where "the challenged state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Arizona*, 567

U.S. at 399 (internal quotations omitted). Where Congress has expressed an intent to adopt a uniform system of regulation, state and local laws imposing different requirements are preempted as an obstacle to Congress's intent. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363 (2000) (federal law regarding foreign sanctions preempted state laws imposing foreign sanctions because of Congress's goal of giving the President such authority).

II. Federal Control Over Aviation and Airports

Federal control over the use of the national airspace and the operation of aircraft within such airspace is "exclusive" and plenary. 49 U.S.C. § 40103(a)(1). The navigable airspace includes areas above 1,000 feet in congested areas (and above 500 feet in uncongested areas) and areas necessary for take-off and landing.[2] 49 U.S.C. § 40102(a)(32); 14 C.F.R. § 91.119. Further, Congress has conferred on the FAA the authority to "prescribe air traffic regulations on the flight of aircraft," including for the "protecti[on] [of] individuals and property on the ground." 49 U.S.C. § 40103(b)(2). Similarly, Congress has stated that it is in the public interest for the FAA to "control[] the use of the navigable airspace and regulat[e] civil and military operations in that airspace in the interest of safety and efficiency . . . ." 49 U.S.C. § 40101(d)(4). As such, courts have repeatedly recognized that the FAA has exclusive control over air traffic control and aircraft operations. *Montalvo v. Spirit Airlines, Inc.*, 508 F.3d 464 (9th Cir. 2007) (federal law preempts entire field of aviation safety); *Allegheny Airlines, Inc. v. Cedarhurst*, 238 F.2d 812 (2d Cir. 1956) (local ban on flights under 1,000 feet preempted by federal control of the navigable airspace).

[2] Whether an area is considered congested is determined on a case-by-case basis, but the Court need not resolve that question. *See* FAA, Office of the Chief Counsel, *Anderson* Legal Interpretation at https://www.faa.gov/media/14411.

In 1990, Congress adopted the Airport Noise and Capacity Act ("ANCA"), 49 U.S.C. §§ 47521–34, specifically finding that efforts to address local noise problems "must be carried out at the national level" and be balanced against the national interest in a safe and efficient airspace system. 49 U.S.C. § 47521. ANCA generally prohibits "airport noise and access restrictions on the operation of stage 2 and stage 3 [and higher] aircraft" unless those restrictions meet stringent statutory requirements, including FAA approval for restrictions on Stage 3 or higher aircraft. *See id.* § 47524. ANCA applies to all jet and many piston and turbo-prop aircraft. *See* 14 C.F.R. § 36.1(e)-(h) (classifying aircraft into "stages" based on noise levels).[3]

More broadly, the Airport and Airway Improvement Act of 1982, 49 U.S.C. §§ 47101–47134 ("AAIA"), conditions the receipt of FAA grant funds on compliance with a number of federal "Grant Assurances," including the obligation to make the airport "available for public use on reasonable conditions and without unjust discrimination." 49 U.S.C. § 47107(a)(1).[4] This obligation requires that the FAA approve any limitation on aircraft operations:

> The term "aeronautical use" includes any activity which involves, makes possible or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. Activities within this definition include stop-and-go operations, intersection take-offs, operation of gliders, touch-and-go operations, taxi-back activities, operation of helicopters (rotorcraft) and in some cases, engine run-ups. *These activities are considered aeronautical activities and, as such, must generally be accommodated on airports developed with federal assistance unless adequate justification*

[3] The "stage" rating of an aircraft is based on measured sound levels pursuant to 14 C.F.R. Part 36 taking weight into account. *See* 14 C.F.R. § 36.1(e)-(h). Generally, higher stage numbers denote quieter aircraft, although a heavy aircraft with a higher stage rating (*e.g.*, Stage 4) may be louder than a lighter aircraft with a lower stage rating (*e.g.* Stage 2). Older aircraft types that were in service prior to Part 36 are not stage rated.

[4] The current grant assurances may be found at https://www.faa.gov/airports/aip/grant_assurances.

> *acceptable to the FAA indicates the activity should not be accommodated on a particular airport.*

Aircraft Owners and Pilots Association v. City of Pompano Beach, FAA Docket No. 16-04-01, Director's Determination at 11 (Dec. 15, 2005) ("AOPA") (emphasis added)[5]; *see also Timberview Helicopters, Inc. v. Okaloosa Cnty.*, FAA Docket No. 16-21-14, Director's Determination at 10 (Feb. 21, 2023)[6] ("[T]he FAA's role in regulating aviation and aviation safety is extensive and essentially plenary in terms of the agency's statutory, regulatory and policy responsibilities. FAA's safety responsibility includes regulation of the safety of aircraft takeoffs and landings."). The FAA enforces Grant Assurances by several methods, including authority to obtain a judicial order enjoining violations. *See* 49 U.S.C. § 47111(f).

III. FAA Regulation of Restrictions on Touch-and-Go Operations

The FAA's exclusive authority over aircraft operations expressly extends to the regulation of the touch-and-go operations Plaintiffs seek to enjoin here:

> **Restrictions on Touch-and-Go Operations.** A touch-and-go operation is an aircraft procedure used in flight training. It is considered an aeronautical activity. As such, it cannot be prohibited by the airport sponsor without justification. For an airport sponsor to limit a particular aeronautical activity for safety and efficiency, including touch-and-go operations, the limitation must be based on an analysis of safety and/or efficiency and capacity, and meet any other applicable requirements for airport noise and access restrictions explained in chapter 13 of this Order, *Airport Noise and Access Restrictions*.

FAA Order 5190.6B, Change 3, *Airport Compliance Manual* ¶ 14.8 (Sept. 15, 2023).

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[5] Available at: https://part16.airports.faa.gov/pdf/16-04-01-aopa-v-pompano-beach-dd.pdf.

[6] Available at: https://part16.airports.faa.gov/pdf/16-21-14--Tiberview-v-Okaloosa-County-DD.pdf.

In Chapter 13, the FAA makes clear that restrictions to address local safety and efficiency concerns require FAA review and approval. *Id.* at ¶ 13.7. To obtain FAA approval, a restriction to address noise concerns must comply with ANCA, as applicable, *and* must (1) be justified by an existing noncompatible land use problem; (2) be effective in addressing the identified problem without restricting operations more than necessary; and (3) reflect a balanced approach to addressing the identified problem that fairly considers both local and federal interests. *Id.* ¶ 13.8.

In addition, Sections 13.9 – 13.19 set forth additional, more specific, factors the FAA must consider and balance when evaluating whether to approve a specific aircraft operating restriction. An important part of that evaluation is whether the restriction would have an adverse impact on other communities or other airports, *id.* ¶ 13.12, or would impose an undue burden on interstate commerce, *id.* ¶ 13.15. Thus, the FAA's evaluation of a specific local noise abatement measure takes into consideration regional and national interests.

IV. FAA Regulation of Leaded Avgas

With respect to aviation fuels, the EPA and the FAA have the exclusive authority to set emission standards from aircraft engines. 42 U.S.C. §§ 7571(a)(2), 7572(a). The Clean Air Act expressly preempts states from imposing or enforcing stricter emissions standards:

> No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

Id. at § 7573. Pursuant to that authority, the EPA recently made an endangerment finding regarding lead emissions from leaded aviation fuel, which is the first step in issuing federal regulations regarding leaded avgas. *Finding That Lead Emissions From Aircraft Engines That Operate on Leaded Fuel Cause or Contribute to Air Pollution That May Reasonably Be*

Anticipated To Endanger Public Health and Welfare, 88 Fed. Reg. 72,372 (Oct. 20, 2023). Thus, emissions of lead from aircraft operations is the subject of ongoing federal regulation.

Further, Congress has restricted the ability of airport proprietors to limit the sale and use of leaded aviation fuel. Section 565 of the 2018 FAA Reauthorization Act allows the FAA to approve the use of unleaded Avgas only by following certain procedures and making certain findings. Pub. L. 115-254 (Oct. 5, 2018). Section 770 of the 2024 FAA Reauthorization Act prohibits grant-obligated airports, including RMMA, from limiting the sale or use of leaded aviation fuel. Pub. L. 118-63 (May 16, 2024). The FAA has also made clear that a "restriction on the sale or use of [leaded avgas] at a federally obligated airport is inconsistent with Grant Assurance 22…." *FAA Unleaded Fuel Development FAQs and Definitions*.[7]

V. Judicial Recognition that Federal Aviation Laws Preempt State and Local Authority

Courts considering the preemptive effect of federal laws regarding aircraft operations and noise have long recognized that state and local laws pertaining thereto are preempted:

> Congress has recognized the national responsibility for regulating air commerce. Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands.

Nw. Airlines v. State of Minn., 322 U.S. 292, 303 (1944) (Jackson, J., concurring). That extensive federal control over airspace management, aircraft noise, and safety preempts state regulation over aircraft operations in order to address local noise and pollution concerns:

> [T]he Administrator has imposed a variety of regulations relating to takeoff and landing procedures and runway preferences. The

[7] Available at: https://www.faa.gov/sites/faa.gov/files/FAQs_FAA_UL_Fuel_Development.pdf.

> Federal Aviation Act requires a delicate balance between safety and efficiency and the protection of persons on the ground. Any regulations adopted by the Administrator to control noise pollution must be consistent with the highest degree of safety. 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.

Burbank, 411 U.S. at 638–39 (internal citations omitted). Similarly, state agencies are preempted from exercising their regulatory authority to require an airport proprietor to limit aircraft operations to limit noise. *San Diego Unified Port Dist. v. Gianturco*, 651 F.2d 1306 (9th Cir. 1981) (state permit preempted because it included limits on operations by noisy aircraft), *cert. denied*, 455 U.S. 1000 (1982). As discussed below, that principal preempts state courts from enjoining aircraft operations to abate an alleged nuisance. *Infra*, 10-13.

Moreover, in the years since *Burbank*, Congress and the FAA have limited the authority of airport proprietors to restrict aircraft operations through the adoption of ANCA and the FAA's enforcement of the AAIA grant assurances. *See Arapahoe County Pub. Airport Auth. v. FAA*, 242 F.3d 1213, 1220-21 (10th Cir. 2001) (affirming FAA decision that local ban on scheduled passenger operations violated FAA grant obligations); *City of Santa Monica v. FAA*, 631 F.3d 550 (D.C. Cir. 2011) (ban on certain aircraft to address local safety concerns violated FAA grant obligations). In summary, federally obligated airport proprietors like the County do not have the unilateral authority to restrict aircraft operations to address noise and emissions concerns.

STANDARD OF REVIEW

A court must dismiss a claim under C.R.C.P. 12(b)(5) where "the plaintiff's factual allegations cannot support a claim as a matter of law." *BRW, Inc. v. Dufficy & Sons, Inc.*, 99 P.3d 66, 71 (Colo. 2004). A plaintiff's complaint will not survive Rule 12(b)(5) review if it fails to

contain factual allegations showing that it is entitled to relief under any cognizable legal theory. *See, e.g., Pub. Serv. Co. v. Van Wyk*, 27 P.3d 377, 385-86 (Colo. 2001). In ruling on a motion to dismiss, courts accept all factual allegations "as true, and [] view them in the light most favorable to the non-moving party." *N.M. ex rel. Lopez v. Trujillo*, 397 P.3d 370, 373 (Colo. 2017). However, "[a] court is not required to accept as true legal conclusions couched as factual allegations." *W. Innovations, Inc. v. Sonitrol Corp.*, 187 P.3d 1155, 1158 (Colo. App. 2008).

ARGUMENT

I. Plaintiffs' Request to Enjoin Airport Touch-And-Go Operations Is Preempted by Federal Aviation Laws

Plaintiffs seek to compel the County to stop touch-and-go operations in order to address concerns over noise and lead emissions. Complaint ¶ 3. That relief is clearly preempted because it requires this Court to make decisions about what kinds of operations at the Airport are safe or appropriate, what level of noise is acceptable, and what level of lead emissions are acceptable, all of which decisions have been vested in the FAA's exclusive authority:

- The FAA's control over air traffic and aviation safety preempts state regulation of the flight and operation of aircraft such as touch-and-go operations. 49 U.S.C. §§ 40102(a)(32), § 40103(b)(2), and 40101(d)(4); *Nw. Airlines*, 322 U.S. at 303; *AOPA*, Director's Determination at 11.

- The Clean Air Act preempts state authority to regulate lead emissions from aircraft. 42 U.S.C. § 7573; and

- Federal regulation of aircraft noise and restrictions preempts state and local authority to regulate flight operations in order to address noise concerns. *Burbank*, 411 U.S. at 638; *Arapahoe County*, 242 F.3d at 1220-21.

Moreover, the web of federal laws regarding air traffic control, safety, noise, and emissions reflects a Congressional intent that regulation of aircraft operations, noise regulation, and emissions standards occur at a national level in order to prevent a patchwork of varying local rules and procedures. *Burbank*, 411 U.S. at 638. The requested injunction would impose the kind of unique local flight restriction that would stand as an obstacle to Congress' goal of a national, uniform approach to airspace management and noise control.

Preemption is particularly clear here because the Airport has an FAA air traffic control tower.[8] Accordingly, all operations, including the touch-and-go operations Plaintiffs seek to enjoin, occur only with the permission of, and at the direction of, the FAA. An injunction prohibiting certain operations would be inconsistent with the FAA's exclusive authority over flight operations at the Airport. Indeed, in a recent case by residents near the Airport seeking damages from the same touch-and-go operations Plaintiffs seek to enjoin here, another judge in this Court observed that the comprehensive nature of federal regulation of noise "would defeat plaintiffs' claims if plaintiffs were seeking to limit or regulate the operation of the airport." *Abair v. Jefferson County*, No. 2023CV31075, Order re: Defendant's Motion to Dismiss at ¶ 11 (Col. Dist. Ct. Nov. 26, 2024) (allowing damages claims to proceed) (attached as Exhibit 1).

With respect to nuisance claims like those asserted by Plaintiffs, virtually every court that has considered the issue has held that federal law preempts state courts from issuing injunctions

[8] The Court may take judicial notice of the existence of the tower as a fact generally known in this jurisdiction and that can be readily confirmed by reliable sources. Colo. R. Evid. 201(b).

limiting aircraft operations to abate a nuisance.[9] The Wisconsin Supreme Court explained that its authority to enjoin aircraft operations to abate a nuisance "is completely preempted" because:

> Allowing state court ordered injunctions to abate an aircraft noise nuisance would have such a severe impact on the free flow of air commerce that such remedy cannot co-exist with the [Federal Aviation] Act. If state courts were allowed to enjoin the operation of all or part of an airport based on nuisances to neighboring property, air commerce would be completely disrupted. Airport proprietors must be allowed, within federal laws and regulations, to choose the type of service to be provided at our nation's airports, taking into account the safety of those in the aircraft and on the ground, the most efficient use of airport facilities and the needs of the surrounding community. We believe injunctions prohibiting such proprietorial decisions are completely preempted under the Act. This preemption of injunctive relief in aviation noise nuisance actions extends to all types of injunction, including the injunction originally sought in this case, which was directed not at the actual flight of the aircraft but at decisions made by the proprietor as the ground facilities. The free flow of air commerce requires that the airport proprietor be free to make and implement such airport planning and operating decisions, subject only to federal requirements and the obligation to compensate those who are injured by such decisions.

Krueger v. Mitchell, 332 N.W. 2d 733, 740 (Wis. 1983). The Arizona Supreme Court explained:

> For the state through legislative or court action to impose curfews, prohibit certain types of turns or to dictate runway utilization infringes upon the FAA's charge. We therefore hold that the trial court had no power to regulate through its injunctive powers the operation of flights, the methods of landing or takeoff of aircraft, or any other aspect of actual aircraft operation technique or scheduling.

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[9] The only case the County has found enjoining flight operations as a nuisance, *Aviation Cadet Museum, Inc. v. Hammer*, 283 S.W.3d 198 (Ark. 2008), is distinguishable because the air strip there was a private airfield that was not subject to FAA grant obligations under the AAIA. It also does not appear that defendants opposed the injunction on preemption grounds, causing the court to consider the case a land use case under state law. *Id.* at 201 n.2. In any event, *Aviation Cadet* is an outlier, and the overwhelming weight of authority holds that courts are preempted from enjoining flight operations to abate a nuisance.

Ne. Phx. Homeowners' Ass'n v. Scottsdale Mun. Airport, 636 P.2d 1269, 1273 (Ariz. 1981); *see also Kramer v. HTX Helicopters, LLC*, 2023 R.I. Super. LEXIS 41at *38-39 (R.I Super. Ct. 2023) (authority to issue injunction preempted by ANCA); *In Re Burlington Int'l Airport For F-35A*, 117 A.3d 457, 467-68 (Vt. 2015) (refusing to enjoin fighter jet operations because "any action to regulate a change in use to the F-35A would amount to an attempt to regulate noise and be preempted."); *Greater Westchester Homeowners Ass'n v. City of L.A.*, 603 P.2d 1329, 1332 (Cal. 1979) ("[C]ommercial flights which are conducted in strict compliance with federal regulations may not be enjoined as nuisances, both because of the continuing public interest in air transportation, and because of the likelihood of direct conflict with federal law."); *United States v. City of New Haven*, 367 F. Supp. 1338, 1341 (D. Conn. 1973) ("the order of the [state] court was directed to and conflicted squarely with the regulation of navigable airspace which Congress has reserved for exclusive federal control."); *Village of Bensenville v. City of Chicago*, 306 N.E. 2d 562, 565 (Ill. Ct. App. 1973) (authority to enjoin use of airport to prevent a nuisance is preempted); *Loma Portal Civic Club v. American Airlines, Inc.*, 61 Cal. 2d 582 (1964) (federal law preempted state court's authority to enjoin aircraft operations).

Plaintiffs attempt to plead their way around this overwhelming body of law by framing their requested injunction as directing the County to exercise its proprietary powers, rather than to enjoin flight activities directly. Compl. ¶ 3. That is a distinction without a difference because the effect is the same: for the Court to assume powers Congress reserved to the FAA by directing the County to ban certain operations without first obtaining FAA approval. As the court in *Krueger* explained, "injunctions prohibiting such proprietorial decisions are completely preempted under

the Act." 332 N.W. 2d at 740; *see also Gianturco*, 651 F.2d at 1316 (state agency preempted from requiring that airport proprietor impose a curfew as a condition of a state permit).

Moreover, the injunction that Plaintiffs seek would conflict with federal law. As noted above, the FAA regulates the ability of airports to limit touch-and-go operations and other aeronautical operations and to limit the sale and use of leaded fuel. Failure to comply with those requirements would subject the County to enforcement action by the FAA, including a possible injunction to prevent the restrictions Plaintiffs seek. *See* 49 U.S.C. § 47111(f).

Plaintiffs do not, and cannot, allege that the FAA would approve a prohibition on touch-and-go operations or a limit on the use of leaded fuel. Nor can Plaintiffs allege that the County satisfies or could satisfy the FAA's standards for restricting touch-and-go operations. Thus, the requested injunction would place the County in an impossible double jeopardy: restrict operations in order to comply with the Court's injunction but face penalties from the FAA for doing so. Worse, if the FAA were to exercise its authority and obtain an injunction, the County would face competing injunctions from this Court and a federal court. Those warring injunctions highlight the inherent conflict between federal law that limits the ability of states and local airport proprietors to restrict touch-and-go operations and the injunctive relief Plaintiffs seek.

The Tenth Circuit reached a similar conclusion in *Arapahoe County*. There, the Arapahoe County Public Airport Authority banned scheduled passenger operations. 242 F.3d at 1216. When an airline began operations despite the ban, the Authority obtained an injunction in state court. *Id* at 1216-1217. At the same time, the FAA initiated an enforcement action because the ban violated the Authority's Grant Assurances. *Id.* at 1217. After lengthy administrative proceedings, the Tenth Circuit affirmed the FAA's finding that the ban on scheduled passenger operations was

unlawful. *Id.* at 1224. The Tenth Circuit further explained that the state court injunction was preempted by federal law:

> [W]e perceive a direct and significant conflict [between state court decision and the FAA's decision] inasmuch as this and similar state court rulings, if deemed preclusive, would frustrate the FAA's ability to discharge its statutory duty to interpret and implement federal aviation statutes governing the enforcement of grant assurances. *See* 49 U.S.C. § 47122. If given preclusive effect, state court rulings favoring local airport authorities in actions tangentially involving federal grant assurances would further lead to inconsistent enforcement of the federally mandated assurances, potentially jeopardizing the efficiency and equality of access to our Nation's air transportation system. For these reasons, we hold the strong policy of federal supremacy in the field of aviation prevails over full faith and credit principles in this case.

242 F.3d at 1221. Similarly here, an injunction requiring the County to prohibit touch-and-go operations would create an unavoidable conflict with the County's federal obligations and stand as an obstacle to achieving Congress's goal of regulating air traffic control, noise, and emissions at a national level.[10] Because of the strong federal interest in a national aviation system as managed by the FAA, Plaintiffs' claim here is preempted.

[10] At a minimum, any restriction on touch-and-go operations should be evaluated by the FAA, as the agency with authority over aircraft operations and flight procedures, to assure compliance with federal law *before* such a restriction may be implemented. *See Commander Properties Corp. v. Beech Aircraft Corp.*, 745 F. Supp. 650, 652 (D. Kan. 1990) (declining jurisdiction over case involving issues that "have been placed in the hands of an administrative body," *i.e.*, the FAA).

CONCLUSION

For the foregoing reasons, the Complaint and action should be dismissed with prejudice.

Respectfully submitted December 20, 2024.

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CERTIFICATE OF SERVICE

I certify that on December 20, 2024, the foregoing document was served by e-filing through the Colorado Courts E-Filing System on all counsel appearing in this action.

/s/ W. Eric Pilsk
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