APPENDIX

930 F.3d 65
United States Court of Appeals, Second Circuit.

TWEED-NEW HAVEN AIRPORT AUTHORITY, Plaintiff-Appellant,
City of New Haven, Intervenor Plaintiff-Appellant,
v.
William TONG, in his official capacity as Attorney General for the State of Connecticut, Defendant-Appellee.*

No. 17-3481-cv; 17-3918-cv
|
August Term 2018
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Argued: December 12, 2018;
|
Decided: July 9, 2019

Appeal from the United States District Court for the District of Connecticut, No. 15 Civ. 1731 (RAR), Robert A. Richardson, Magistrate Judge, Presiding.

Attorneys and Law Firms

Hugh I. Manke, John C. King, Christopher A. Klepps, Updike, Kelly & Spellacy, P.C., Hartford, Ct., for plaintiff-appellant Tweed-New Haven Airport Authority.

John Rose, Jr., Corporation Counsel, New Haven Office of the Corporation Counsel, New Haven, Ct., for intervenor plaintiff-appellant Tweed-New Haven Airport Authority.

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* The Clerk of Court is respectfully directed to amend the official caption as indicated above.

Drew S. Graham, Assistant Attorney General, Hartford, Ct., for defendant-appellee William Tong, Attorney General of the State of Connecticut.

Before: SACK, PARKER, and CHIN, Circuit Judges.

Opinion

BARRINGTON D. PARKER, Circuit Judge:

Tweed-New Haven Airport is located in the Town of East Haven and the City of New Haven, Connecticut. The Airport is owned by the City of New Haven and leased to and operated by Tweed-New Haven Airport Authority ("Tweed").[1] Tweed sued the then Connecticut Attorney General George Jepsen in his official capacity[2] (the "State"), seeking a declaratory judgment that a Connecticut statute (the "Runway Statute" or "Statute") that limits the Airport's runway to its current length of 5,600 feet was invalid. *See* Conn. Gen. Stat. § 15-120j(c). Tweed claimed that the

[1] Tweed is "a body politic and corporate" created through legislation by the state of Connecticut. *See* Conn. Gen. Stat. § 15-120i(a). While its originating statute describes Tweed as a "public instrumentality and political subdivision" of Connecticut, it "shall not be construed to be a department, institution or agency of the state." *Id.* It has a fifteen-member board of directors, comprised of persons appointed by the mayor of New Haven, the mayor of East Haven, and the South Central Regional Council of Governments. *Id*. § 15-120i(b). If Tweed is terminated, its rights and property pass to the City of New Haven. *Id*. § 15-120i(e).

[2] Since the inception of the suit, the identity of the Connecticut Attorney General has changed from George Jepsen to William Tong. This change is reflected in the case caption.

Statute was preempted by federal laws governing the regulation of air transportation, including the Federal Aviation Act ("FAAct"), *see* 49 U.S.C. § 40101 *et seq*.

Following a bench trial in the United States District Court for the District of Connecticut (Richardson, *M.J.*),[3] the court concluded that Tweed lacked standing to sue because its injury was not caused by the Statute and that, assuming Tweed could establish standing, the Runway Statute was not preempted by the federal laws to which Tweed cited. Because we conclude that Tweed has standing and that the Runway Statute is preempted by the FAAct, we reverse.[4]

BACKGROUND

The Airport serves the New Haven area. It has a catchment area—the area from which an airport expects to draw commercial air service passengers—in excess of 1,000,000 people. The Airport's primary runway, Runway 2/20, is currently 5,600 feet long. The runway is one of the shortest commercial airport runways in the country, and it is the shortest runway for an airport with a catchment area as large as Tweed's area. The Airport's catchment area is the largest catchment area without nonstop flights to Orlando,

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[3] The parties consented to proceed before a magistrate judge through the entry of final judgment. *See* 28 U.S.C. § 636(c); Fed. R. Civ. P. 73.

[4] The salient facts are not in dispute and have been stipulated to by the parties. *See* Joint App'x 51-66.

and there are no flights at the Airport to a number of East Coast cities such as Boston, Washington D.C., and Atlanta.

In 2009, the Connecticut legislature, seeking to prevent the expansion of Runway 2/20, passed the Runway Statute, which provides that "Runway 2-20 of the airport shall not exceed the existing paved runway length of five thousand six hundred linear feet." Conn. Gen. Stat. § 15-120j(c). The Runway Statute prevents Tweed from extending Runway 2/20 past its current length.

The short length of the Airport's runway has sharply limited the availability of safe commercial air service at Tweed. The length of a runway has a direct bearing on the weight load and passenger capacity that can be handled on any given flight. For example, at the time of trial, American Airlines, the one commercial airline providing service to and from the Airport, was unable to safely fill its planes to capacity and was required, depending on the weather, to leave between four and nine seats empty.

Tweed has been unable to attract new airline services. Tweed has contacted approximately ten different airlines and has been unable to convince them to operate out of the Airport. One airline, Allegiant Air, LLC, began an economic analysis of the feasibility of bringing additional flights to the Airport but concluded it would be pointless to continue with the analysis unless the runway were extended.

Lengthening the runway would allow for the safe use of larger aircraft, allow flights with no seating restrictions, allow more passengers on each airplane, and allow service to more destinations. It would also allow Tweed to attract more carriers and expand the availability of safe air service for its customers.

As required by the Federal Aviation Administration ("FAA"), Tweed has prepared a Master Plan for upgrading its airport, which includes extending the runway.[5] In 2002, the Master Plan—including the runway expansion—was approved by the FAA and by the State of Connecticut. However, in 2009, the State changed its position and passed the Runway Statute.

Tweed, seeking to lengthen the runway, sued for prospective injunctive relief, contending that federal law including the FAAct preempted the Runway Statute. The City of New Haven intervened as an additional plaintiff. The State moved to dismiss on several grounds, including that Tweed lacked Article III standing, that, as a political subdivision of the State of Connecticut, Tweed could not sue the State, and that the Runway Statute was not preempted. The District Court denied the State's motion.

At trial, the parties largely relied on a joint stipulation of facts. The District Court ultimately concluded that (1) Tweed lacked standing to sue

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[5] A Master Plan is required by the FAA for each commercial airport within its jurisdiction, such as Tweed, and represents a blueprint for the long-term development goals of the airport's facilities.

because it had not shown an injury-in-fact and causation attributable to the Statute; and (2) even if Tweed had standing, federal law (including the FAAct) did not preempt the Runway Statute. *See generally Tweed-New Haven Airport Auth. v. Jepsen*, No. 15-cv-01731, 2017 WL 4400751, 2017 LEXIS 162356 (D. Conn. Oct. 3, 2017).

Tweed raises both these issues on appeal and the State contends, as it did below, that Tweed cannot sue Connecticut because it is a political subdivision of the State. We review each of these questions *de novo*. *Montesa v. Schwartz*, 836 F.3d 176, 194 (2d Cir. 2016) (standing); *N.Y. SMSA Ltd. P'ship v. Town of Clarkstown*, 612 F.3d 97, 103 (2d Cir. 2010) (per curiam) (preemption).

DISCUSSION

I.

To establish Article III standing, a plaintiff must prove: "(1) injury-in-fact, which is a 'concrete and particularized' harm to a 'legally protected interest'; (2) causation in the form of a 'fairly traceable' connection between the asserted injury-in-fact and the alleged actions of the defendant; and (3) redressability, or a non-speculative likelihood that the injury can be remedied by the requested relief." *W.R. Huff Asset Mgmt. Co. v. Deloitte & Touche LLP*, 549 F.3d 100, 106-107 (2d Cir. 2008) (emphasis omitted) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). Each of these elements

"must be supported adequately by the evidence adduced at trial." *Lujan*, 504 U.S. at 561, 112 S.Ct. 2130 (internal quotation marks and citation omitted). Based on the facts at trial, we conclude that Tweed meets each of these requirements.[6]

First, we have little difficulty concluding that Tweed suffered an injury-in-fact. Where, as here, "the plaintiff is himself an object of the action (or forgone action) at issue . . . , there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it." *Lujan*, 504 U.S. at 561-62, 112 S.Ct. 2130. The Runway Statute directly targets Tweed and prevents it from extending its runway.

In addition, Tweed has established that it is injured by the threatened enforcement of the Statute should Tweed attempt to extend the runway. The State claims that standing is not available under this theory because Connecticut has made no overt threat to enforce the Statute. Crediting this argument would run afoul of the Supreme Court's admonition not to put "the challenger to the choice between abandoning his rights or risking prosecution." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 129, 127 S.Ct. 764, 166 L.Ed.2d 604 (2007) (internal quotation marks omitted). The very purpose of the Declaratory Judgment Act was

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[6] Only one party must have standing to seek each form of relief. *Town of Chester v. Laroe Estates, Inc.*, ___ U.S. ___, 137 S. Ct. 1645, 1651, 198 L.Ed.2d 64 (2017). Because Tweed and the City of New Haven seek the same relief, we do not separately discuss the standing of the City.

to avoid requiring a litigant to confront this dilemma. *Id.*

When courts consider whether the threatened enforcement of a law creates an injury for the purposes of standing, "an actual . . . enforcement action is not a prerequisite to challenging the law"; a pre-enforcement challenge is sufficient. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 134 S.Ct. 2334, 189 L.Ed.2d 246 (2014); *see MedImmune*, 549 U.S. at 128-29, 127 S.Ct. 764; *see also Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 234, 130 S.Ct. 1324, 176 L.Ed.2d 79 (2010). Where a statute specifically proscribes conduct, the law of standing does "not place the burden on the plaintiff to show an intent by the government to enforce the law against it. Rather, it [has] presumed such intent in the absence of a disavowal by the government or another reason to conclude that no such intent existed." *Hedges v. Obama*, 724 F.3d 170, 197 (2d Cir. 2013). The record in this case shows no such disavowal.

Second, Tweed has demonstrated that its injury is caused by the Runway Statute. For standing purposes, a plaintiff is required only to show that the injury "is fairly traceable to the challenged conduct of the defendant." *Spokeo, Inc. v. Robins*, 578 U.S. ___, 136 S. Ct. 1540, 1547, 194 L.Ed.2d 635 (2016). Where, as here, a plaintiff is threatened by the enforcement of a statute that specifically targets the plaintiff, the requirement is met. *Lujan*, 504 U.S. at 561-62, 112 S.Ct. 2130. The Runway Statute is a solid barrier to extension of the Airport's runway. Nothing can happen

while the Statute is in place. Tweed's injury is, therefore, "fairly traceable" to the Statute.

The District Court concluded that, because other uncertainties stood in the way of the completion of an extended runway, the causation element was not satisfied. The District Court reasoned that because Tweed would have to obtain additional funding, secure approvals from various regulators, and obtain environmental and other permits, none of which was assured, there did "not appear to be a direct causal relationship between the statute and the plaintiff's alleged injury." *Tweed-New Haven*, 2017 WL 4400751, at *8, 2017 LEXIS 162356.

As an initial matter, the uncertainties seized upon by the District Court have no bearing on Tweed's fears of the Statute's enforcement, which is an independent basis for Article III standing. Further, we disagree with the District Court's analysis of the causation element of standing. A plaintiff is not required to show that a statute is the sole or the but-for cause of an injury. An injury can be "fairly traceable" even when future contingencies of one kind or another might disrupt or derail a project. The fact that a project's ultimate completion may be uncertain because a plaintiff must undertake additional steps, such as obtaining funding, environmental permits, or additional carriers, does not defeat standing. Nearly every project of any complexity involves contingencies or uncertainties of some sort. The point of a standing inquiry is not to figure out whether a plaintiff will likely achieve a desired result. The point is simply to ensure that a plaintiff has a

sufficient nexus to the challenged action in the form of a personal stake in the litigation so that the case or controversy requirements of Article III are met. *See Chevron Corp. v. Donziger*, 833 F.3d 74, 121 (2d Cir. 2016).

The Supreme Court has held that there is standing where "the challenged action of the [government] stands as an absolute barrier" that will be removed "if [the plaintiff] secures the . . . relief it seeks." *Vill. of Arlington Heights v. Metro. Hous. Development Corp.*, 429 U.S. 252, 261, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977). There, a developer sought to build a cluster of low- and moderate-income townhouses in the Village of Arlington Heights. *Id.* at 254, 97 S.Ct. 555. The developer eventually sued the Village for denying its application for a zoning variance, alleging racial discrimination and violations of the Fair Housing Act of 1968. *Id.* The Village argued that there was no injury for standing purposes because contingencies stood in the way of final completion of the project. *Id.* at 261 & n.7, 97 S.Ct. 555.

The Supreme Court, in language fully applicable here, rejected the view that the existence of contingencies was a barrier to standing. *Id.* at 261, 97 S.Ct. 555. The Court held that standing was not defeated because the developer "would still have to secure financing, qualify for federal subsidies, and carry through with construction." *Id.* (footnote omitted). We are, the Court emphasized, "not required to engage in undue speculation as a predicate for finding that the

plaintiff has the requisite personal stake in the controversy." *Id.* at 261-62, 97 S.Ct. 555.

We have also held that, for standing purposes, it was enough that plaintiffs alleged "diligent efforts" to secure funding and had made progress on the project in question. *NAACP v. Town of Huntington*, 689 F.2d 391, 394 (2d. Cir. 1982). In *Town of Huntington*, a not-for-profit housing group sought to construct a large multi-family housing unit. The group sued the town, alleging that its zoning regulations violated federal law. *Id.* at 393. While the suit was pending, the funds appropriated for the project lapsed and the town moved to dismiss the complaint on the ground that the lack of funding would render the requested relief (invalidation of the ordinance) meaningless. We nevertheless found standing because the group had shown diligent efforts to secure funding and had shown "some reasonable prospect for future financing" and obtaining governmental approvals if the statute was invalidated, which is all that is required. *Id.* at 394. Tweed comfortably meets this test. It has shown more than "diligent efforts" toward, and a reasonable prospect of, the project's completion.

Third, as to redressability, there is no question that a favorable decision will likely redress Tweed's fear of the Runway Statute's enforcement. *Cayuga Nation v. Tanner*, 824 F.3d 321, 332 (2d Cir. 2016) (stating that redressability requirement is met where the court could prevent enforcement of a preempted law). A favorable decision will also likely redress Tweed's current inability to move forward with the

runway extension and will remove the absolute barrier the Statute imposes. *See W.R. Huff Asset Mgmt. Co.*, 549 F.3d at 106-107; *see also Lujan*, 504 U.S. at 560-61, 112 S.Ct. 2130. Accordingly, we hold that Tweed has established Article III standing.

II.

Next, the State contends that Tweed cannot bring suit against Connecticut because it is a political subdivision of Connecticut. As support for this proposition, the State relies on *Williams v. Mayor of Baltimore*, 289 U.S. 36, 53 S.Ct. 431, 77 L.Ed. 1015 (1933), and *City of Trenton v. New Jersey*, 262 U.S. 182, 43 S.Ct. 534, 67 L.Ed. 937 (1923). *Williams* involved a suit under the Equal Protection Clause and *Trenton* involved a suit under the Contract Clause and the Fourteenth Amendment. In both cases, the Supreme Court held that suits under those provisions were not permitted. *Williams*, 289 U.S. at 40, 53 S.Ct. 431; *City of Trenton*, 262 U.S. at 188, 43 S.Ct. 534.

The view that subdivisions were broadly prevented from suing a state was put to rest in *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960). There, the Supreme Court considered a challenge under the Fourteenth and Fifteenth Amendments to Alabama's gerrymandering of the boundaries of the City of Tuskegee. *Id*. at 340, 81 S.Ct. 125. The Court rejected Alabama's assertion that a state's power over its political subdivisions was unrestricted by the Constitution: "Legislative control

of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution." *Id.* at 344-45, 81 S.Ct. 125. The Court emphasized that the "correct reading" of *Williams* and *City of Trenton* is "that the State's authority is unrestrained by the particular prohibitions of the Constitution considered in those cases." *Id.* at 344, 81 S.Ct. 125. Significantly, none of those cases involved the Supremacy Clause, which raises unique federalism concerns.

Hundreds of federal laws apply nationwide to states and their political subdivisions. They impose various responsibilities and prohibitions on states and political subdivisions that are intended by Congress to apply nationwide. If the Supremacy Clause means anything, it means that a state is not free to enforce within its boundaries laws preempted by federal law. Lawsuits invoking the Supremacy Clause are one of the main ways of ensuring that this does not occur.

In the years following *Gomillion*, the Supreme Court has repeatedly entertained suits against a state by a subdivision of the state, including cases under the Supremacy Clause. *See Va. Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 252-53, 131 S.Ct. 1632, 179 L.Ed.2d 675 (2011) (considering suit by independent state agency against its state for violation of federal law alleged to conflict with state law); *Nixon v. Mo. Mun. League*, 541 U.S. 125, 130-31, 124 S.Ct. 1555, 158 L.Ed.2d 291 (2004) (considering Supremacy Clause challenge by municipalities and utilities against state statute); *Lawrence Cty. v. Lead-Deadwood Sch. Dist.*,

469 U.S. 256, 258, 105 S.Ct. 695, 83 L.Ed.2d 635 (1985) (considering Supremacy Clause challenge by county against state statute); *accord Bd. of Educ. v. Allen*, 392 U.S. 236, 88 S.Ct. 1923, 20 L.Ed.2d 1060 (1968); *see also Romer v. Evans*, 517 U.S. 620, 623-24, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996) (state constitutional amendment preventing local anti-discrimination ordinances violated the Equal Protection Clause); *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 487, 102 S.Ct. 3187, 73 L.Ed.2d 896 (1982) (state statute prohibiting a local busing desegregation plan violated the Fourteenth Amendment).[7] In light of this authority, we hold that a subdivision may sue its state under the Supremacy Clause. In reaching this conclusion we join the Fifth and Tenth Circuits. *Rogers v. Brockette*, 588 F.2d 1057 (5th Cir. 1979); *Branson Sch. Dist. RE-82 v. Romer*, 161 F.3d 619 (10th Cir. 1998). *But see Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360 (9th Cir. 1998) (holding a political subdivision lacks standing to sue its own state under the Supremacy Clause).

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[7] We have held that a political subdivision does not have standing to sue its state under the Fourteenth Amendment. *See Aguayo v. Richardson*, 473 F.2d 1090, 1100 (2d Cir. 1973); *City of New York v. Richardson*, 473 F.2d 923, 929 (2d Cir. 1973). Those cases provide no aid to the State as Tweed is not seeking to assert its own rights under the Fourteenth Amendment, which presents considerations different from those we consider here.

III.

Tweed next contends that the Runway Statute is preempted by the FAAct.[8] We agree. The FAAct "was enacted to create a uniform and exclusive system of federal regulation in the field of air safety. . . . [It] was passed by Congress for the purpose of centralizing in a single authority . . . the power to frame rules for the safe and efficient use of the nation's airspace." *Air Transp. Ass'n of Am., Inc. v. Cuomo*, 520 F.3d 218, 224-25 (2d Cir. 2008) (internal quotation marks omitted). With these objectives in mind, we have held that the FAAct impliedly preempts the entire "field of air safety." *Goodspeed Airport LLC v. E. Haddam Inland Wetlands & Watercourses Comm'n*, 634 F.3d 206, 210-11 (2d Cir. 2011). Accordingly, "[s]tate laws that conflict with the FAA[ct] or sufficiently interfere with federal regulation of air safety are . . . preempted." *Fawemimo v. Am. Airlines, Inc.*, 751 F. App'x 16, 19 (2d Cir. 2018) (summary order). Our court has been clear as can be that FAAct preemption applies to airport runways. *Air Transp. Ass'n*, 520 F.3d at 224-25 (FAAct preemption "extends to grounded planes and airport runways").

Our next inquiry is whether the Runway Statute falls within the scope of that preemption. "The key question is thus at what point the state regulation sufficiently interferes with federal regulation that it

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[8] Tweed also contends that the Runway Statute is preempted by the Airline Deregulation Act and the Airport and Airway Improvement Act. Because we conclude that the Runway Statute is preempted by the FAAct, we make no determination concerning preemption under these other statutes.

should be deemed pre-empted[.]" *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 107, 112 S.Ct. 2374, 120 L.Ed.2d 73 (1992). We straightforwardly conclude that the Runway Statute falls well within the scope of the FAAct's preemption because of its direct impact on air safety.

The Airport has the 13th shortest runway out of the 348 airports where commercial service is provided. Furthermore, the State has conceded that "the length of the runway has a direct bearing on the weight load and passenger capacity that can be safely handled on any given flight." Joint App'x 55. Because of the Statute, "[w]eight penalties are imposed on [existing] aircraft [at the Airport] for safety reasons." *Id*. The Statute has limited the number of passengers that can safely occupy planes leaving the Airport by preventing planes from taking off at maximum capacity. For these safety reasons, carriers are forced to cut back on an ad-hoc basis the number of passengers that can safely be carried, the amount of baggage they can bring with them, and the total weight of luggage that can be loaded.

Additionally, the Runway Statute has sharply limited the types of planes that can use the runway. Modern jet passenger planes of the types used across the country cannot safely use the Airport. This localized, state-created limitation is incompatible with the FAAct's objective of establishing "a 'uniform and exclusive system of federal regulation' in the field of air safety." *Air Transp. Ass'n*, 520 F.3d at 224 (quoting *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S.

624, 639, 93 S.Ct. 1854, 36 L.Ed.2d 547 (1973)). If every state were free to control the lengths of runways within its boundaries, this Congressional objective could never be achieved.

The inflexibility of the ban imposed by the Runway Statute also counsels in favor of preemption. The Runway Statute's restriction on runway development is absolute—it is a total barrier to improvements that could make Tweed safer and more modern. Courts in this Circuit have held that the FAAct preempts significantly less rigid statutes that merely place limitations rather than total bans on runway modification. For example, in *Tweed-New Haven Airport Authority v. Town of East Haven* ("*Tweed I*"), the court held that a state regulation that required regulatory approval before the runway safety areas could be constructed was preempted. 582 F. Supp. 2d 261, 268-69 (D. Conn. 2008). Similarly, in *Town of Stratford v. City of Bridgeport*, the court held that a statute that required an airport to obtain approval of the town in which it is located before it can undertake a federally mandated runway safety project was preempted. No. 10-cv-394, 2010 WL 11566477, at *6, 2010 LEXIS 65975 (D. Conn. June 18, 2010). Those statutes merely required state or city approval for improvements to an airport's runway. Unlike those cases, the Runway Statute prohibits runway expansion entirely. The Statute's interference with the field of air safety is, therefore, even greater than was the case with other statutes courts have held to be preempted by the FAAct.

Finally, we have noted that FAAct preemption is less likely to apply "to small airports over which the FAA has limited direct oversight." *Goodspeed*, 634 F.3d at 211-12. Tweed is not such an airport. On the contrary, the FAA's involvement with Tweed and its runway project has been direct and significant. The Airport is federally regulated and exists within the Tweed-New Haven Airport Layout Plan ("ALP"), which is approved by the FAA. The FAA maintains full control over any modification to the ALP, including runway length. The Airport is classified by the FAA as a primary commercial service airport and is required to hold an operating certificate under FAA regulation 14 C.F.R. Part 139. A Master Plan is required of all Part 139 airports, and Tweed's Master Plan, which includes extending the length of the runway up to 7,200 feet, was approved by the FAA as far back as 2002. This level of federal interest and involvement is further indication that the Runway Statute is preempted.

In response to all of this, the State maintains that implied preemption is not warranted because the Runway Statute "does not prevent Tweed from complying with any federally-mandated safety standards." Appellee's Br. at 56-57. But the State confuses different branches of implied preemption law: conflict preemption and field preemption. Conflict preemption exists when a state law "actually conflicts with federal law," *English v. Gen. Elec. Co.*, 496 U.S. 72, 79, 110 S.Ct. 2270, 110 L.Ed.2d 65 (1990), in other words, where "state law stands as an obstacle to the accomplishment" of Congress's intent, *Hillsborough*

County v. Automated Med. Labs., Inc., 471 U.S. 707, 713, 105 S.Ct. 2371, 85 L.Ed.2d 714 (1985). This case involves field preemption, not conflict preemption. Field preemption exists where "Congress intended the Federal Government to occupy [a field] exclusively." *Air Transp. Ass'n*, 520 F.3d at 220. And as we have seen, Congress intended the FAAct to occupy the entire field of air safety including runway length.

The State next asserts that the FAAct does not preempt the Runway Statute because here, unlike in *Tweed I*, no federal mandate requires that Tweed extend its runway. *See* Appellee's Br. at 58. This characterization misses the point. Preemption analysis does not turn on whether the airline safety activity is mandated by the federal government; the dispositive question is whether the Runway Statute intrudes into the field of air safety. We conclude that it does and does so directly. For these reasons, we hold that the Runway Statute is preempted by the FAAct.

CONCLUSION

The judgment of the lower court is **REVERSED** and the case is **REMANDED** for entry of judgment in favor of Tweed.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of July, two thousand and nineteen.

Before: Robert D. Sack,
Barrington D. Parker,
Denny Chin,
Circuit Judges.

Tweed New Haven Airport Authority,

Plaintiff - Appellant,

City of New Haven,

Intervenor-Plaintiff - Appellant,

v.

William Tong, in his official capacity as Attorney General for the State of Connecticut,

Defendant - Appellee.

JUDGMENT

Docket No.
17-3481(L), 17-3918 (Con.)

The appeal in the above captioned case from a judgment of the United States District Court for the District of Connecticut was submitted on the

district court's record and the parties' briefs. Upon consideration thereof,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the judgment of the district court is REVERSED, and the case is REMANDED for entry of judgment in favor of Tweed New Haven Airport Authority.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

[SEAL]

/s/ Catherine O'Hagan Wolfe

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

TWEED-NEW HAVEN AIRPORT AUTHORITY,

Plaintiff,

v.

GEORGE JEPSEN, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF CONNECTICUT

Defendant.

CASE NO. 3:15cv01731 (RAR)

JUDGMENT

(Filed Jul. 31, 2019)

This action came to trial on May 22, 2017 before the Honorable Robert A. Richardson, United States Magistrate Judge. After a bench trial, the Court entered judgment in favor of the defendants on all counts. Thereafter, the Second Circuit Court of Appeals reversed the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that judgment is hereby entered in favor of the plaintiff, Tweed New Haven Airport Authority, on all counts.

Dated at Hartford, Connecticut, this 31st day of July, 2019.

ROBIN D. TABORA, CLERK

By /s/ Robert A. Richardson, U.S.M.J.

Angela Blue

Deputy Clerk

2017 WL 4400751
Only the Westlaw citation is currently available.
United States District Court, D. Connecticut.

TWEED-NEW HAVEN AIRPORT AUTHORITY, Plaintiff,
v.
George JEPSEN, in His Official Capacity as Attorney General for the State of Connecticut, Defendant.

CASE NO. 3:15cv01731 (RAR)
|
Signed 10/03/2017

Attorneys and Law Firms

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Drew S. Graham, Office of the Attorney General, Hartford, CT, for Defendant.

MEMORANDUM OF DECISION

Robert A. Richardson, United States Magistrate Judge

Plaintiff, Tweed-New Haven Airport Authority (hereinafter "Plaintiff" or "the Authority"), brings this suit against George Jepsen in his official capacity as Attorney General for the State of Connecticut ("Defendant"), seeking declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*.

(Dkt. # 1). Plaintiff alleges that Conn. Gen. Stat. 15-120j(c) violates the Supremacy Clause of the United States Constitution.

For the reasons set forth below, the Court finds that the plaintiff lacks standing to bring this action and that Conn. Gen. Stat. 15-120j (c) is not preempted by the Supremacy Clause.

PROCEDURAL BACKGROUND

Plaintiff filed this action on November 24, 2014 in federal court. (Dkt. # 1). On June 30, 2016, the defendant filed a Motion to Dismiss. (Dkt. # 39). On August 8, 2016, plaintiff filed a memorandum in opposition to defendant's motion to dismiss. (Dkt. # 44). On August 22, 2016, the defendant filed a reply memorandum in support of its motion to dismiss. (Dkt. # 45). On September 29, 2017, the Court held oral argument on the motion to dismiss. (Dkt. # 49). On December 9, 2016, the undersigned denied the motion to dismiss. (Dkt. # 53).

A bench trial was held on March 22, 2017 before the undersigned. (Dkt. # 67). On May 19, 2017, the parties submitted simultaneous post-trial briefs. (Dkt. #'s 73-74). On July 19, 2017, at the request of the parties, oral argument was held on the post-trial briefs. (Dkt. # 77).

FACTUAL BACKGROUND

The following facts, drawn from the parties' Stipulation of facts in their Joint Trial Memorandum, are undisputed. (Dkt. # 59, Stipulation of Facts).[1]

Tweed-New Haven Airport Authority is a public instrumentality and political subdivision of the state of Connecticut, pursuant to Conn. Gen. Stat. 15-120i, et seq. (Stip. # 2). The airport property is owned by the City of New Haven and leased to the Authority pursuant to the terms of a Lease and Operating Agreement, dated July 1, 1998. (Stip. # 7).

The length of Runway 2/20 is currently approximately 5,600 linear feet. (Stip. # 9). In 2009, the state of Connecticut, through Public Act 09-7, amended Conn. Gen. Stat. § 15-120j by adding subsection (c) which provides, in relevant part: "Runway 2/20 of the airport shall not exceed the existing paved runway length of five thousand six hundred linear feet." (Stip. # 9).

The Airport is among the public-use airports included in the National Plan of Integrated Airport Systems. (Stip. # 10). The Airport consists of numerous structures, including an airport terminal building and an air-rescue and fire-safety facility, Runway 2/20, which runs essentially North/South on the site, crosswind Runway 14/31, which runs Northwest/Southeast, and a number of taxiways. (Stip. # 12). All of these structures are within the Airport's boundaries

[1] The stipulated facts are hereafter referred to as "Stip. #."

and are part of the Airport Layout Plan ("ALP"). (Stip # 13). The ALP is approved by the FAA, which maintains full control over any modifications to the ALP, including limitations on runway length. (Stip. # 13).

The Airport is classified by the United States Department of Transportation Federal Aviation Administration ("FAA") as a primary, commercial service airport in that it provides regularly scheduled commercial passenger air service. (Stip. # 14). As a result of this classification, the Airport is currently required to, and does, hold an operating certificate under FAA regulation part 139 (14 C.F.R. Part 139), which currently requires the Airport to have runway safety areas on its main runway that are acceptable to the FAA. (Stip. # 14).

Part 139 establishes the rules governing the certification and operation of airports serving scheduled passenger-carrying operations of an air carrier operating aircraft configured for more than 9 passenger seats. (Stip. # 15). The Airport is required under Part 139 to operate and maintain the Airport according to standards contained in the FAA Advisory Circulars. (Stip. # 15). Additionally, as a recipient of federal aid under the FAA Airport Improvement Program ("AIP"), the Airport is required to comply with AIP grant assurances. (Stip. # 15).

The FAA requires a master plan that outlines future plans for upgrading airport facilities for each Part 139 airport. (Stip. # 16). The Airport's updated

master plan for the Airport, which included extending the length of Runway 2/20 up to 7,200 linear feet, was approved by the state and by the FAA in 2002. (Stip. # 16).

There is one commercial airline providing service to the Airport from Philadelphia, with four scheduled flights per day in each direction and a capacity of no more than 37 passengers on each flight. (Stip. # 17). The length of the runway has a direct bearing on the weight load and passenger capacity that can be safely handled on any given flight. (Stip. # 17).

Since 2009, the Airport has failed to attract a single new scheduled commercial carrier, and service remains low, with fewer than 35,000 emplanements per year. (Stip. # 18). Weight penalties are imposed on aircraft for safety reasons, and a longer runway could potentially reduce or eliminate the weight penalties that are imposed on existing flights at the Airport. (Stip. # 19). Current scheduled commercial service at the Airport is entirely provided by a single type of aircraft, the Bombardier DH8-100 (the "Dash 8"). (Stip. # 20).

Runway 2/20, because of its length, does not allow the Dash 8 to takeoff at maximum capacity. (Stip. # 21). The Dash 8 has capacity for 37 passengers, but generally only 33 passengers are allowed on the plane. (Stip. # 6). Lengthening Runway 2/20 would allow the Dash 8 and other larger aircrafts to potentially service the Airport, hold more passengers and service additional destinations. (Stip. # 22).

The Airport has commenced planning on a runway extension project to increase the functioning length of Runway 2/20, within the existing boundaries of the Airport and the ALP, on land that is currently part of the runway safety areas. (Stip. # 23). The planning documents describe several alternatives for lengthening Runway 2/20 up to 6,601 linear feet and modifying related taxiways. (Stip. # 23). The initial step in the Project is to perform an Environmental Assessment of the various layout and construction options. (Stip. # 23). The Authority has expended private funds to hire Hoyle, Tanner & Associates, Inc. ("Hoyle"), a consulting engineering firm, which has conducted a preliminary environmental assessment. (Stip. # 23).

Robert M. Furey is Senior Vice President at Hoyle, which is located in Manchester, NH. (Stip. # 25). Hoyle specializes in airport planning, design and construction administration and has performed engineering work for the Authority since 1999. (Stip. # 27). Mr. Furey has personal knowledge regarding the Preliminary Environmental Assessment at the Airport and the environmental assessment process. (Stip. # 26). Federal review and comment is necessary for any construction project located within the ALP, and one of the initial steps in any such project under the applicable federal regulations is to submit an Environmental Assessment to the FAA. (Stip. # 28).

Hoyle looked at a number of alternatives for lengthening Runway 2/20 ranging from 6,601 linear feet up to 7,000 linear feet. (Stip. # 29). The Authority proposes to pave a portion of the Runway 2/20 runway

safety areas and this paved section would be considered a runway extension. (Stip. # 24).

In 2014, Hoyle completed the first three chapters of an Environmental Assessment, as the customary procedure is to submit a Preliminary Environmental Assessment to the FAA for review and comment before drafting the full Environmental Assessment. (Stip. #'s 30-31). The ultimate document that the Authority submitted to the FAA for review included only runway alternatives that were not longer than 6,601 linear feet. (Stip. # 29).

The FAA has declined to review and comment on the content of the Preliminary Environmental Assessment for more than two years. (Stip. # 32). The FAA has not provided funding to the Project and has not reviewed the alternative layouts presented in the Preliminary Environmental Assessment. (Stip. # 32). FAA review of the Preliminary Environmental Assessment is a necessary step in the Environmental Assessment process. (Stip. # 33).

The FAA is not proceeding with review of the Environmental Assessment in part because the Authority is in violation of several federal grant assurances and regulations. (Stip. # 34). The FAA's decision not to respond to the Authority's request for review of the Preliminary Environmental Assessment is in part because of the runway length limitation in Connecticut General Statutes § 15-120j(c). (Stip. # 35).

Whenever the Authority accepts federal funds, it agrees to various grant assurances which, among other

things, require compliance with a long list of federal statutes and regulations directed to airport facilities and operations. (Stip. # 36). Non-compliance by an airport such as Tweed can result in enforcement action by the FAA. (Stip. # 36).

FAA Advisory Circular 150/5300-13A, Airport Design, establishes criteria for the separation of runways and parallel taxiways. (Stip. # 37). The runway to taxiway separation distance is a function of the Airport Reference Code. (Stip. # 37). The ALP approved by the FAA for the Airport identifies the primary runway, Runway 2/20, as a C-III runway. (Stip. # 37). The designation C-III includes aircraft with approach speeds of 121 knots or more but less than 141 knots, and wingspans greater than 79 feet but less than 118 feet. (Stip. # 37).

The interactive runway design standard matrix (Table 3-5) in FAA Advisory Circular 150/5300-13A specifies that the runway centerline to parallel taxiway centerline for C-III aircraft is 400 feet. (Stip. # 38). The current locations and dimensions of taxiways, which are integral to the aircraft landing and takeoff system, are not in compliance with federal regulations in terms of their distance from Runway 2/20. (Stip. # 39). This non-standard separation between the taxiway and the runway could be brought into compliance as part of the proposed runway extension project. (Stip. # 39).

Hoyle prepared drawings depicting improvements to Taxiways A, F and G at the Airport. (Stip. # 40). The

primary safety improvement alternative is to extend the runway with a taxiway centerline separation to the required distance of 400 feet, in accordance with FAA Advisory Circular 150/5300-13A, Table 5. (Stip. # 40). This would provide the Airport and FAA with safer runway and taxiway ground maneuvering as well as greater separation between active takeoff and landing operations and aircraft which are either holding short or maneuvering adjacent to the runway. (Stip. # 40).

The alternatives identified in the Preliminary Environmental Assessment include the extension of the parallel taxiway. (Stip. # 41). A full length parallel taxiway is required for runways with instrument approach procedures with visibility minimums below one mile. (Stip. # 41). The existing Runway 2/20 instrument landing system approach has visibility minimums of ¾ mile. (Stip. # 41). Construction of the parallel taxiway at the standard 400 foot runway centerline to taxiway separation would bring the airport into compliance with FAA standards. (Stip. # 41).

Although there is no enforcement action pending by the FAA against the Authority due to the non-standard separation between the taxiway and the runway, the FAA has issued notice to the Authority that the Authority is not in compliance with all of the requirements of CV.F.R/ part 139, the Airport Certification Manual and the Airport Operating Certificate. (Stip. # 42). The FAA expects the Authority to achieve the standard 400 foot separation between Taxiway A and Runway 2/20 and the 400 foot

separation has been included in the Preliminary Environmental Assessment. (Stip. # 42).

The Authority is not in compliance with FAA design standards due to the non-standard taxiway geometry. (Stip. # 43). The FAA has given the Authority until May 6, 2021 to redesign and reconstruct its taxiways, including realignment of Taxiway A, to bring the Airport into compliance with federal design standards. (Stip. # 43). There is no current or pending FAA enforcement action against the authority for noncompliance with any FAA safety standard applicable to 49 U.S.C. Part 139 airports or any standard contained in FAA Advisory Circular 150/5300-13A. (Stip. # 44).

Tom Reich, the Director of Air Service Development at AFCO AvPorts Management, LLC, has provided marketing services to the Tweed-New Haven Airport and for other airports around the country. (Stip. # 45). He was previously employed as a market analyst for Independent Air and as the Manager of Market Planning for Colgan Air's United Express and US Airways Express branded operations. (Stip. # 45). Mr. Reich has provided marketing services for the Airport since December 2011. (Stip. # 46). During the time that he has provided marketing services to the Airport, Mr. Reich has been in touch with approximately ten different airlines with regard to the possibility of those airlines bringing service to the airport. (Stip. # 46).

From 2012 to 2016, Mr. Reich attended the Airports Council International—North America

JumpStart Air Service Development Conference, where airlines and airport administrators convene annually. (Stip. # 48). Mr. Reich has met with numerous airline representatives at the JumpStart conferences with regard to the possibility of those airlines bringing service to the Airport, and has remained in steady contact with airline representatives throughout the years, even outside of JumpStart conferences. (Stip. # 48).

In Mr. Reich's experience, there are three primary factors that determine whether or not an airline will choose to provide service to a given destination: (1) market size; (2) equipment performance; and (3) economic viability. (Stip. # 49). One analysis, completed by AvPort, shows that the South-Central Connecticut market is the largest catchment area in the United States in terms of existing passenger demand without nonstop flights to Orlando, Florida. (Stip. # 50).

In Mr. Reich's experience, the overriding issue with respect to an airline choosing to provide service to a new destination is economic viability. (Stip. # 51). Runway length is an integral part of an airline's economic viability analysis due to the weight restrictions a shorter runway can cause and the resulting limit to the number of passengers that can be carried on the flight. (Stip. # 51). Lengthening a runway could eliminate safety concerns and could reduce the need for these weight restrictions at a given airport, allowing aircraft to carry more passengers while increasing the profit potential of the flight to an acceptable level for the airline. (Stip. # 52)

In Mr. Reich's experience, weight restrictions can impose economic impediments at airports, such as Tweed, with short runways. (Stip. # 53). The Airport has the thirteenth shortest runway out of 348 airports where commercial service is provided, and according to the AvPorts analysis, the twelve airports with shorter runways do not have as large a catchment area as Tweed-New Haven Airport. (Stip. # 53). Tweed-New Haven Airport has the shortest runway in the nation for catchment areas with $1,000,000 or more people. (Stip. # 53).

Allegiant Air has prepared this type of economic analysis for the Airport and has declined to service the Airport because "runway 2/20 is too short for Allegiant to comfortably operate regularly scheduled commercial service." (Stip. # 55). Over his last five years providing marketing services to the Airport, Mr. Reich has been unable to convince any new airlines to commence service at Tweed. (Stip. # 57).

Over the past eight years the Authority has been operating the Airport at a loss which has required annual subsidies from the state of Connecticut in the amount of $1,500,000 and from the City of New Haven in the amount of $325,000. (Stip. # 58). The subsidy from the State was reduced to $1,480,000 for fiscal year 2016-2017. (Stip. # 58). Notwithstanding marketing efforts, the Authority has not received a commitment from any airline to provide service at the Airport if the statutory restriction on the length of Runway 2/20 is removed. (Stip. # 59).

In 2009, a Memorandum of Agreement ("MOA") was established among the City of New Haven, the Town of East Haven, the Authority and certain members of the General Assembly. (Stip. # 60). The MOA limits Runway 2/20 to the existing paved runway length of 5,600 feet. (Stip. # 61). It also limits daily commercial departures to thirty and annual emplanements to 180,000. (Stip. # 61).

Section III of the MOA references a bill for adoption in the 2009 Legislative Session that limited the length of the runway, increased the number of members of the Authority's Board of Directors to be appointed by the Town of East Haven and City of New Haven related to the airport property. (Stip. # 62), Section III also called for additional appropriations for the Authority in the two fiscal year budgets being considered in the 2009 Legislative Session that would have reduced the capital bond commitment of the State to the Airport. (Stip. # 62)

The bill reducing the capital bond authorization was defeated and the restriction on the runway and the change in board membership in the designated bill were adopted, but the payment in lieu of taxes portion of the bill was not adopted and $1.5 million of additional appropriations were approved, whereas the MOA called for $2 million. (Stip. # 62). The items that were not adopted in the 2009 Legislative Session have not been adopted by subsequent General Assembly action. (Stip. # 62).

Section IV of the MOA provides in pertinent part: "[T]his agreement may be terminated by written notice by either the City or the Town in the event . . . (c) the State of Connecticut fails to enact the Legislative Initiatives contained in Section III of this Agreement in the 2009 Legislative Session." (Stip. # 63). To date, the City of New Haven has not taken steps to invalidate the MOA. The Authority does not appear to have the power, pursuant to the MOA, to unilaterally terminate the MOA. (Stip. # 64).

The Connecticut Coastal Management Act discourages the substantial expansion of existing airports within the coastal boundary. (Stip. # 64). Two permits from the Connecticut Department of Energy and Environmental Protection ("DEEP") were previously issued to the Authority for the construction of runway safety areas. One of the permits, the tidal permit, states: "At no time shall the permittee modify the surfaces of the RSAs including paving." The second permit, for disturbing wetlands and water quality, requires a modification to the permit from the DEEP if the safety areas are altered. (Stip. # 66).

The FAA has indicated to the Authority that if it wishes to continue with its proposed runway extension project, the Authority must develop a joint action plan with DEEP addressing the Agency's concerns identified in the two previously issued permits. (Stip. # 67).

If Conn. Gen. Stat. § 15-120j(c) is removed or invalidated, the Authority intends to file an application

seeking DEEP approval to remove the conditions in the permits mentioned above. (Stip. # 68). Increasing the length of Runway 2/20 would require the Authority to ensure that all new approach surfaces are clear for approaching aircraft. (Stip. # 69). The Authority is currently in the process of ensuring that such surfaces are clear for a 6,601 foot runway. (Stip. # 69). The normal approval process for a runway extension requires: (a) careful planning, including review of feasible alternatives; (b) proper environmental analysis, consistent with federal regulations; and (c) sufficient funding, including federal, state and/or local sources. (Stip. # 70).

The Airport Improvement Program ("AIP") provides about $3.5 billion annually versus an estimated need of over $40 billion over the next five years. Accordingly, dollars must be allocated to the highest national priorities that are eligible and justified. (Stip. # 71). The Authority received approximately $24 million from the FAA in 2008 for its runway safety area project and has received over $40 million from the FAA in the past twenty years. (Stip. # 72).

DISCUSSION

I. Article III Standing

The defendant argues that the plaintiff has not sustained its burden of establishing the "injury in fact" necessary to confer standing, thereby depriving the Court of jurisdiction over this matter. (Dkt. # 74 at 2). Plaintiff argues, in response, that it has sustained

multiple legally cognizable injuries, any one of which alone would satisfy the injury in fact requirement of standing. (Dkt. # 73 at 6).

In the Court's ruling on the motion to dismiss, the undersigned found that the plaintiff's pleadings had satisfied the burden of establishing an injury in fact sufficient to confer standing. However the standard of proof for establishing Article III standing is higher following a trial. *See* Lujan v. Defs. of Wildlife, 504 U.S. 555, 561, 112 S. Ct. 2130, 2137, 119 L.Ed. 2d 351 (1992) ("At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.' ")

Article III, § 2 of the United States Constitution restricts federal courts to deciding " 'Cases' and 'Controversies.' " Lujan, 504 U.S. at 559. The "case-or-controversy requirement is satisfied only where a plaintiff has standing." Sprint Commc'ns Co., L.P. v. APCC Servs., Inc., 554 U.S. 269, 273 (2008). "Three elements comprise the 'irreducible constitutional minimum' of standing: (1) the plaintiff must have suffered an injury-in-fact—an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the challenged conduct; and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." All. for Open Soc'y Int'l, Inc. v. U.S. Agency for Int'l

Dev., 651 F.3d 218, 228 (2d Cir. 2011), aff'd sub nom. Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., 133 S. Ct. 2321, 186 L.Ed. 2d 398 (2013). "The party invoking federal jurisdiction bears the burden of establishing these elements." Lujan, 504 U.S. at 561.

Plaintiff first argues that the Airport is injured by virtue of the mere existence of Conn. Gen. Stat. § 15-120j(c). (Dkt. # 73 at 6-8). Specifically, plaintiff argues that the "statute's existence is sufficient to confer standing on Tweed because Tweed is currently injured by its inability to proceed with an FAA and state approved runway extension project." (Dkt. # 73 at 7). Plaintiff further contends that this "injury can be redressed by a decision declaring General Statutes § 15-120j(c) unconstitutional. (Dkt. # 73 at 7).

The defendant does not reply directly to plaintiff's argument. However, the defendant describes several obstacles to lengthening Runway 2/20, apart from Conn. Gen. Stat. § 15-120j(c). The defendant notes that the normal approval process for a runway extension requires three things: "(a) careful planning, including review of feasible alternatives; (b) proper environmental analysis, consistent with federal regulations; and (c) sufficient funding, including federal, state and/or local sources." (Dkt. # 74 at 22).

While the Authority had taken significant steps in planning the proposed runway, including hiring Hoyle, Tanner & Associates at its own expense to conduct a Preliminary Environmental Assessment, plaintiff faces

serious hurdles to securing FAA approval as well as adequate funding. (*See* Dkt. # 59, Stip. # 23).

Federal review and comment is necessary for any construction project located within the ALP. (Dkt. # 59, Stip. # 28). One of the initial steps under the applicable federal regulations in such a project is to submit an Environmental Assessment. (Dkt. # 59, Stip. # 28). The FAA has declined to review and comment on the content of the Authority's Preliminary Environmental Assessment for more than two years. (Dkt. # 59, Stip. # 32).

The FAA is not proceeding with review of the Environmental Assessment for a variety of reasons, including because the Authority is in violation of several federal grant assurances and regulations. (Dkt. # 59, Stip. # 34). Additionally, two permits were previously issued by the DEEP for the construction of runway safety areas. (Dkt. # 59. Stip. # 66). The FAA has indicated to the Authority that if it wishes to continue with its proposed runway extension project, the Authority must develop a joint action plan with the DEEP addressing the agency's concerns identified in the two previously existing permits. (Dkt. # 59, Stip. # 67). Thus, the existence of Conn. Gen. Stat. § 15-120j(c) represents one of several factors preventing the FAA from reviewing the Preliminary Environmental Assessment.

Additionally, projects utilizing federal funding must be both eligible and justified at the time of the investment, including runway extensions. (Dkt. # 59,

Stip. # 73). The Airport Improvement Program provides about $3.5 billion annually versus an estimated need of over $40 billion over the next five years. (Dkt. # 59, Stip. # 71). Accordingly, dollars must be allocated to the highest national priorities that are eligible and justified. (Dkt. # 59, Stip. # 71).

The Authority received approximately $24 million dollars from the FAA in 2008 for its runway safety area project and it has received approximately $40 million from the FAA in the past twenty years. (Dkt. # 59, Stip. # 73). The defendant emphasizes that the current circumstances are not equivalent to those that existed in 2008, when the Authority received funding for a project concerned with safety and where there was a current enforcement action by the FAA pending against the Airport. (Dkt. # 74 at 23).

The defendant also notes that just because the FAA has approved an ALP or Master Plan for an airport, as it has in this case, it does not follow that the agency must provide funding to that airport to make that plan a reality. (Dkt. # 74 at 23). The defendant states that "the FAA's discretion to fund airport improvements remains subject to a ranking in which safety concerns have the highest priority." (Dkt. # 74 at 23; trial transcript at 134-35).

The Court is persuaded by the defendant's arguments. In light of the fact that the Airport would have to remedy its violation of several federal grant assurances and obtain DEEP approval before proceeding with any runway expansion project, there

does not appear to be a direct causal relationship between the statute and the plaintiff's alleged injury.

Additionally, even if the Authority were to overcome these obstacles, it is uncertain that the FAA would provide the necessary funding for plaintiff to complete the proposed runway project. For these reasons, the Court finds plaintiff's argument that it is injured by the mere existence of the statute to be unpersuasive.

Plaintiff next argues that the statute has directly led to inadequate revenue at the airport and chronically low service levels, and that the evidence presented at trial proves this. (Dkt. # 73 at 8). Plaintiff contends that the dire financial situation of the airport is tied to the chronically low services levels and that the low service levels are "inextricably tied to the current length of Runway 2/20." (Dkt. # 73 at 8).

Plaintiff claims that these injuries can be redressed by invalidating Conn. Gen. Stat. § 15-120j(c). (Dkt. # 73 at 8).

Plaintiff states that over the last eight years the Authority has been operating at a loss which has required annual subsidies from the state and the City of New Haven. (Dkt. # 73 at 10; Exhibit B). Since 2009, the Airport has experienced an average annual operating loss of $1,800,000. (Dkt. # 73 at 10; Dkt. # 59, Stip. # 58; Exhibit B). According to the testimony of Mr. DeCoster, "the lengthening of the runway is the absolute door opener in order to have a chance at

improving the financial condition of the airport." (Trial transcript at 99).

Mr. DeCoster also testified that if additional service were brought to Tweed, "[i]t would absolutely increase direct and indirect revenue and make a major impact on the deficit that occurs today." (Trial transcript at 100). According to plaintiff, "[a] longer runway would permit Tweed to accommodate new commercial service which would result in additional revenue for the Airport, alleviate its annual operating losses and significantly reduce state and local subsidies." (Dkt. # 73 at 12).

The defendant argues that the evidence fails to show that the state statute has caused plaintiff the loss of current business, and therefore plaintiff fails to show that it has suffered an injury. (Dkt. # 74 at 14). The defendant notes that "[w]hile evidence presented at trial shows that the runway was 5,600 linear feet prior to the passage of Conn. Gen. Stat. § 15-120j(c) in 2009, no evidence has been presented suggesting that service levels at the Airport have become chronically low or lower since then." (Dkt. # 74 at 14). Defendant also notes that plaintiff's witnesses failed to account for the service levels at the Airport prior to 2009 or indicate whether there has been or currently is a market demand for any new type of commercial service to or from the airport. (Dkt. # 74 at 141; trial transcript at 129).

The Court finds that plaintiff's failure to account for the financial status of the airport prior to the

passage of the state statute in 2009 constitutes a significant problem. Plaintiff must prove that the downturn in the Airport's financial situation is a direct result of the passage of Conn. Gen. Stat. § 15-120j(c) in order to show a causal relationship between the statute and the alleged injury.

Plaintiff next argues that Tweed is unable to attract new commercial services to the Airport as a result of Conn. Gen. Stat. § 15-120j(c). (Dkt. # 73 at 12). Plaintiff claims that the evidence adduced at trial shows that the length of Runway 2/20 has already deterred at least one commercial carrier from bringing service to Tweed, and that the Airport will be unable to attract new commercial service if Runway 2/20 is not lengthened.

The parties stipulated to the fact that despite marketing efforts and various attempts to attract new service, the Authority has failed to attract a single new scheduled commercial carrier since 2009. (Stip. # 18). The parties also stipulated that during the six years that Mr. Reich has been providing marketing services to the Airport, he has been in touch with approximately ten different airlines with regard to the possibility of bringing service to the Airport. (Stip. # 47). Nonetheless, Mr. Reich has been unable to convince a single airline to commence service at the Airport. (Stip. # 57).

Plaintiff argues that there is a direct link between the Authority's inability to attract new commercial service and the length of Runway 2/20. (Dkt. # 73 at

14). Plaintiff notes that in Mr. Reich's experience, "the overriding issue with respect to an airline choosing to provide service to a new destination is economic viability." (Dkt. # 73 at 14). Plaintiff claims that runway length is an integral part of an airline's economic viability analysis, and that Tweed is effectively handicapped by its inability to lengthen the runway because it prevents the Airport from even getting a place at the table to negotiate with commercial air carriers. (*See* Dkt. # 73 at 14-15; Dkt. # 59, Stip. # 51; Reich Affid. at ¶ 11).

Nonetheless, plaintiff notes that it has received "real and substantial interest from Allegiant Air, LLC in terms of bringing commercial service to the airport." (Dkt. # 73 at 15; *see* Exhibit 10). Mr. DeCoster testified that Allegiant Air is one of the fastest growing, ultra-low cost fares in the industry. (Trial transcript at 57). Plaintiff alleges Allegiant cannot proceed with its analysis of Tweed as a potential market specifically because Runway 2/20 is too short for Allegiant to comfortably operate regularly scheduled commercial service with its current fleet of planes.[2] (Dkt. # 73 at 15-16).

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[2] Mr. DeCoster gave his opinion on whether Allegiant Air might be willing to bring service to Tweed if the runway is lengthened (trial transcript at 94-95), it would have been helpful had Tweed called a representative from Allegiant to testify on this subject. As Exhibit 10 indicates, Allegiant has not yet gone forward with its analysis of Tweed as a potential market. There is nothing in the record which establishes what factors Allegiant would want to analyze or how Tweed would likely fare with respect to each such factor.

The defendant argues that "the evidence does not support the plaintiff's contention that it has incurred specific lost business opportunities due to the runway limitation in Conn. Gen. Stat. § 15-120j(c)." (Dkt. # 74 at 11). The defendant argues that Plaintiff's Exhibit 10 does not prove a lost business opportunity. Exhibit 10 is a letter from Allegiant to the FAA, in which Allegiant indicated its willingness to reopen its analysis of whether it would be economically viable to bring regularly scheduled commercial service to Tweed if the runway were lengthened. The defendant notes that the "Allegiant letter itself contains too many contingencies to show a specific lost business opportunity for the plaintiff based on the length of the runway." (Dkt. # 74 at 12; *see* Exhibit 10). The defendant also argues that "there is a complete dearth of evidence showing that any airline has even considered whether regularly scheduled commercial service to the Airport could or would be economically feasible with a lengthened runway." (Dkt. # 74 at 15; trial transcript at 73, 128-30). The Court agrees.

Citing In re Old Carco LLC, 470 B.R. 688, 692 (S.D.N.Y. 2012) (hereinafter "In re Old Carco"), the plaintiff argues that it has standing to seek prospective declaratory relief before exposing itself to actual injury. (Dkt. # 73 at 17-19). Plaintiff also argues that it does not have to show an actual commitment from an air carrier in order to establish standing. (*See* Dkt. # 73 at 17-19). In *In re Old Carco*, a Chapter 11 debtor and a new entity that assumed liabilities of debtors and their debtor-affiliates brought an action

for declaratory and injunctive relief against Colorado and Kentucky state officials responsible for enforcing state automobile dealer laws. In re Old Carco, 470 B.R. at 688. The plaintiffs alleged that certain state statutes violated and were preempted by the Supremacy Clause. Id. The state argued that the plaintiffs lacked standing because they had not yet suffered an injury. Id. at 697.

In finding that the plaintiffs established standing, the Court noted that "[e]nforcement of the Kentucky statute would cause New Chrysler to sustain an injury that could be redressed by this decision." In re Old Carco LLC, 470 B.R. at 697. The Court quoted MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118 (2007), in which that Court held that "the Declaratory Judgment Act permits a plaintiff to seek prospective declaratory relief rather than face exposure to liability or injury before seeking remedial relief." Id.

The Court finds that this case is distinguishable from *In re Old Carco*, In *In re Old Carco.* the Court was able to precisely identify the likely injury. More specifically, the Court stated that "New Chrysler will either have to forego selling its products within ten miles of a rejected dealer for ten years or will have to contract with the dealers whose previous contracts were rejected during the bankruptcy proceeding." *In re Old Carco*, 470 B.R. at 697. In this case, plaintiff argues that the statute is preventing the Airport from attracting new commercial service, but there is no evidence in the record that any airline, including Allegiant, has indicated that it would commit to

bringing service to Tweed if the runway is lengthened. (Dkt. # 59 at 14; trial transcript at 73, 77, 128-30).

In *In re Old Carco*, there was also a direct causal relationship between the injury and the state statute, and the court explicitly found that the injury could be redressed by invalidating the statute. Id. at 697. ("Enforcement of the Kentucky statute would cause New Chrysler to sustain an injury that could be redressed by this decision). In this case, plaintiff has failed to show a direct causal relationship between the length of the runway and the Airport's inability to attract new commercial service.[3] (*See* trial transcript at 128). Likewise, without a clear commitment from any air carrier that it will bring service to the Airport if the runway is lengthened, it is not clear that plaintiff's alleged injury would be redressed in the absence of Conn. Gen. Stat. § 15-120j(c). (*See* Exhibit 10). For these reasons, the Court finds that *In Re Old Carco.* is distinguishable from the current case.

The Court finds the defendant's arguments to be persuasive. The parties stipulated that notwithstanding marketing efforts, the Authority has not received a commitment from any airline to provide service at the Airport if the statutory restriction on the length of Runway 2/20 is removed. (Dkt. # 59 at 14). The Court finds that without an express commitment that a

[3] Mr. DeCoster testified that he had not conducted any independent market demand studies that analyzed other potential destinations for commercial service from Tweed, or that analyzed Tweed as a potential destination from other airports. (Trial transcript at 128).

carrier will bring service to the airport if the runway length is increased, the plaintiff cannot show a causal connection between the statute and the alleged injury.

Plaintiff next argues that the airport cannot comply with federal grant requirements due to the state statute's restriction on the length of Runway 2/20. (Dkt. # 73 at 19). Plaintiff notes that whenever Tweed accepts federal funds, it agrees to various grant assurances which, among other things, require compliance with a long list of federal statutes and regulations directed to airport facilities and operations. (Dkt. # 73 at 20). Non-compliance by an airport such as Tweed can result in an enforcement action by the FAA. (Dkt. # 73 at 20, *See* Dkt. # 59, Stip. # 36). The defendant argues that "the Authority, not the state, has been the party responsible for the Authority's failure to comply with federal grant assurances and related federal statutes since the enactment of Conn. Gen. Stat. § 15-120j(c) in 2009." (Dkt. # 74 at 16).

Plaintiff notes that the "FAA has identified several federal obligations and grant assurances that Tweed is unable to comply with as a result of General Statutes § 15-120j(c)." (Dkt. # 73 at 20). In fact, the FAA has not commented directly on Conn. Gen. Stat. § 15-120j(c), but it has commented on a Memorandum of Agreement ("MOA") that was established among the City of New Haven, the Town of East Haven, the Authority and certain members of the Connecticut General Assembly. (Dkt. # 59, Stip. # 60).

The FAA noted its concern regarding the runway length limitation in the MOA[4], but it also noted its concern regarding potential violations of the Airport Noise and Capacity Act of 1990 ("ANCA") and the Anti-Head Tax Act. (Def. Ex. A). The defendant emphasizes that this agreement was entered into voluntarily by the Authority and that no evidence was presented at trial that the Authority has taken any actions to address any of the FAA's concerns regarding federal grant assurances or violations of the ANCA or the Anti-Head Tax Act. (Dkt. # 74 at 20).

The FAA has also expressed concern with the taxiways at the Airport. The parties stipulated in their joint trial memorandum that the current locations and dimensions of the taxiways are not in compliance with federal regulations in terms of their distance to Runway 2/20. (Dkt. # 59, Stip. # 39). The FAA has given the Authority until May 6, 2021 to redesign and reconstruct its taxiways, including realignment of Taxiway A, to bring the Airport into compliance with federal design standards. (Dkt. # 59, Stip. # 43). Plaintiff suggests that the taxiways might be altered as a part of the proposed runway extension project so that they are in compliance with federal law. (Dkt. # 59, Stip. # 39). But the Authority had proposed a nonstandard parallel taxiway as part of its operation safety improvements. (Dkt. # 74 at 17; See also trial transcript at 31).

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[4] The MOA limits Runway 2/20 to the existing paved runway length of 5,600 linear feet. (Dkt. # 59, Stip. # 61).

The defendant argues that it is "disingenuous for the plaintiff to claim that the runway limitation statute has prevented it from complying with federal grant assurances . . . when the plaintiff itself has proposed a nonstandard taxiway in contradiction of the FAA's requirement to create standard taxiways in 2012. (Dkt. # 74 at 18).

The Court finds that the plaintiff has failed to provide evidence of a causal relationship between Conn. Gen. Stat. § 15-120j(c) and the Authority's alleged inability to comply with federal grant requirements. The evidence suggests, instead, that the Authority's failure to comply with federal grant requirements is for the most part self-imposed.

Finally, plaintiff argues that the only commercial aircraft currently servicing the Airport will soon be retired, leaving Tweed with no commercial service. (Dkt. # 73 at 22). Plaintiff cites to a report prepared by John DeCoster, an expert witness who testified on behalf of the plaintiff.[5] (Pl. Ex. # 13). Mr DeCoster indicates in his report that the Dash-8 is "nearing the end of its useful life" at which point "a major overhaul of the airport is required." (Pl. Ex. # 13 at 3). However, he opined that since the "economics for such an

[5] The defendant objected to Mr. DeCoster's testimony, arguing it was based on insufficient and unreliable evidence. (Trial transcript at 76-77). In the interest of caution and because this was a bench trial, the Court overruled the objection and allowed the testimony.

overhaul [are] no longer supportable," the aircraft will be retired from service. (Pl. Ex. # 13 at 3).

According to Mr. DeCoster's report, the "logical aircraft that will replace the Dash 8 is the 50 seat regional jet, either the Bombardier CJ200 or the Embraer 145." (Pl. Ex. # 13 at 3). However, according to Mr. DeCoster, these aircraft are also reaching their "cycle limits" and are being phased out. (Pl. Ex. 13). According to Mr. DeCoster's report, American, Delta and United have all indicated that once their 50 seat jets "reach their maximum cycles or if fuel increases significantly, the aircraft will be retired because the flights will no longer be profitable." (Pl. Ex. # 13 at 3).

Mr. DeCoster also noted that the desired minimum runway length for the 50 seat regional jets is 6,200 linear feet in order to avoid payload hits (according to the manufacturer's specifications, 5,600 linear feet is the lowest allowable condition). (Pl. Ex. # 13 at 3). According to Mr. DeCoster, once the 50 seat regional jet is no longer available, the next size aircraft is the 70/76 regional jet, which likely requires a minimum runway length of 6,220 to 6,600 linear feet. (Pl. Ex. # 13 at 4). Thus, plaintiff argues that "there is a real and distinct possibility that the Dash 8, Bombardier CJ200 and Embraer 145 will be retired at or around the same time, leaving Tweed with absolutely no commercial service." (Dkt. # 73 at 23).

The defendant argues in response that the plaintiff has failed to show that the Dash 8 will be phased out in the near future, that a replacement plane

will need a longer runway, or that regularly schedule commercial service at the airport is jeopardized and may be terminated. (Dkt. # 74 at 7). The defendant notes that on cross examination, Mr. DeCoster testified that he does not know when the American Airlines Dash 8 will be retired.[6] (Dkt. # 74 at 8, *See* trial transcript at 119). The defendant further notes that "Mr. DeCoster agreed at trial that he 'cannot conclude that regularly scheduled commercial service is jeopardized at the moment.' " (Dkt. # 74 at 9; trial transcript at 119-20).

The defendant argues that "the plaintiff's claim of a 'possible future injury' arising from an unknown phase out date of both the Dash 8 and the two regional replacement jets does not satisfy Article III requirements necessary to establish injury in fact since such future possible events are not 'threatened injur[ies]' that are 'certainly impending.' " (Dkt. # 74 at 10). Relying upon the Second Circuit's ruling in Shain v. Ellison, 356 F.3d 211, 216 (2d Cir. 2004), the defendant argues that plaintiff's argument is based upon "an accumulation of inferences" and is "too speculative and conjectural."

As a result, the defendant urges the Court to reject the "plaintiff's hypothetical scenario that if the only type of aircraft currently providing service to the

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[6] On cross examination, Mr. DeCoster also testified that American Airlines could service Tweed with either the Bombardier CJ 200 or the Embraer 145 after the Dash 8 is retired and nothing in his report indicates that the use of those two jets would not be profitable for American Airlines. (Trial transcript at 112-14; 122-23).

Airport will soon be phased out, and if there are no replacement planes that can operate on the existing runway, and if new planes will need a longer runway, and if that development jeopardizes commercial service at the Airport, the consequence will be that enforcement of Conn. Gen. Stat. § 15-120j(c) may terminate all commercial service 'someday' in the future." (Dkt. # 74 at 11).

While the Court is quite sympathetic to plaintiff's potential situation, the Court is not persuaded that Tweed faces an imminent threat that the only commercial aircraft currently servicing the airport will be retired, thereby leaving Tweed with no commercial service. Plaintiff's witness, Mr. DeCoster, testified on cross-examination that American Airlines has been servicing Tweed since 2009 with no interruptions, and that American Airlines finds this service to be profitable. (Trial transcript, p. 105, lines 18-23; p. 107, lines 10-14). Mr. DeCoster also testified that he does not know when the Dash 8 would be retired. (Trial transcript at 118-19). On cross examination, Mr. DeCoster testified that in publications that he has "read from airlines, they are speculating, . . . , that by the end of the decade, they will have reached their cycle lives."[7]

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[7] Mr. DeCoster's report did not contain or attach any written information from American Airlines or any other airlines discussing when the Dash 8 will be retired. (Trial transcript at 68). Additionally, Mr. DeCoster has not conducted any independent analysis on the subject. (Trial transcript 69).

Thus, plaintiff has failed to offer a definitive end date, or even a definite time frame, for the useful life of the Dash 8.[8] (*See* Dkt. # 73 at 23; trial transcript at 69-70). (Trial transcript at 114). Plaintiff also cannot identify a definitive end date for the useful life of the likely replacement jets.[9] (*See* Dkt. # 73 at 23; trial transcript at 69-70, 117-19). Plaintiff's argument that "there is a real and distinct possibility that the Dash 8, Bombardier CJ200 and Embraer 145 will be retired at or around the same time," falls short without actual evidence. "Abstract injury is not enough . . . [i]t must be alleged that the plaintiff 'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged statute or official conduct." O'Shea v. Littleton, 414 U.S. 488, 494 (1974).

For these reasons, the Court finds that the Authority has failed to prove that it faces an imminent threat of losing all commercial service.

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[8] During the trial, defense counsel asked Mr. DeCoster, "[s]o isn't it true that the facts that you have to offer this court on the Dash 8 phaseout are that someday in the future the Dash 8 will be phased out but you don't know when, correct?" Mr. DeCoster replied, "Correct." Defense counsel then asked about the two logical replacement jets, "[a]nd isn't it true that your report does not identify exactly when [the Bombardier CJ200 and the Embraer 145] will reach the end of their useful lives?" Mr. DeCoster replied, "Yes." (Trial transcript at 69).

[9] Mr. DeCoster's report did not contain any written information from any of the airlines indicating when the two replacement jets will be retired from service and Mr. DeCoster did not conduct any independent analysis on that subject. (Trial transcript at 69-70).

II. Preemption

Plaintiff argues that Conn. Gen. Stat. § 15-120j(c) violates the Supremacy Clause of the United States Constitution. (Dkt. # 75 at 10). Specifically, plaintiff argues that the statute is preempted by three federal statutes: the Federal Aviation Act ("FAAct"), the Airline Deregulation Act ("ADA"), and the Airport and Airways Improvement Act ("AAIA"). (Dkt. # 73 at 25). The defendant argues, in response, that the runway limitation in Conn. Gen. Stat. § 15-120j(c) does not violate the FAAct, the ADA or the AAIA. (Dkt. # 74 at 24).

"It is a familiar and well-established principle that the Supremacy Clause, U.S. Const., Art. VI, cl. 2, invalidates state laws that 'interfere with, or are contrary to,' federal law." Hillsborough Cty., Fla. v. Automated Med. Labs., Inc., 471 U.S. 707, 712 (1985) (citations omitted). "Preemption can be either express or implied." Air Transp. Ass'n of Am., Inc. v. Cuomo, 520 F.3d 218, 220 (2d Cir. 2008).

"In general, three types of preemption exist: (1) express preemption, where Congress has expressly preempted local law; (2) field preemption, 'where Congress has legislated so comprehensively that federal law occupies an entire field of regulation and leaves no room for state law'; and (3) conflict preemption, where local law conflicts with federal law such that it is impossible for a party to comply with both or the local law is an obstacle to the achievement of federal objectives." New York SMSA Ltd. P'ship v.

Town of Clarkstown, 612 F.3d 97, 104 (2d Cir. 2010). "The key to the preemption inquiry is the intent of Congress." Id.

A. The FAAct

Plaintiff does not argue in its post-trial brief that Conn. Gen. Stat. § 15-120j(c) is directly preempted by the FAA, and there is no evidence in the record to support direct preemption. Plaintiff instead argues that Conn. Gen. Stat. § 15-120j(c) is impliedly preempted by the FAAct under a theory of field preemption. (Dkt. # 73 at 26). Plaintiff contends that the "evidence at trial establishes that runway length is indeed a component part of the field of airline safety," and is therefore part of a field that is completely occupied by the federal government. (Dkt. # 73 at 26).

The defendant argues that the plaintiff's "claim that Conn. Gen. Stat. § 15-120j(c) attempts to regulate a field occupied by the federal government, aviation safety and service capacity is misplaced," and that "[n]o evidence has been presented showing that the runway limitation statute interferes with the Authority's ability to comply with federal aviation safety standards." (Dkt. # 74 at 26). The defendant also attempts to distinguish the current case from Tweed-New Haven Airport Auth. v. Town of East Haven, Conn., 582 F. Supp. 2d 261 (D. Conn. 2008) (Hall, J.) (hereinafter "*Tweed v. Town of East Haven.*"), a case that is integral to plaintiff's argument.

In *Tweed v. Town of East Haven*, the plaintiff brought an action against the Town of East Haven, seeking a declaratory judgment that the Town's regulations, which interfered with the Airport's "runway project," were preempted by federal law. The purpose of the runway project was to put Tweed-New Haven Airport in compliance with the FAA's current runway safety area ("RSA") requirements. Id. at 270.

The district court found that "Congress intended to occupy and regulate the field of airline safety," and that this power extends to "grounded planes and airport runways." Id. at 268. The court ruled that "because the TSAs are being created for the purpose of meeting the FAA safety standards and the Runway Project is being done within Authority property, the court finds that the East Haven defendants' regulations, as applied to the Runway project, are preempted by the FAAct." Id.

The Court agrees defendant's argument that Conn. Gen. Stat. § 15-120j(c) does not interfere with plaintiff's ability to comply with federal aviation safety standards. The Court also finds that the current case is distinguishable from *Tweed v. Town of East Haven*.

The "runway project" in *Tweed v. Town of East Haven* was undertaken in response to an FAA enforcement action for the purpose of complying with FAA safety standards. In the current case, there is no pending FAA enforcement action. (Dkt. 59, Stip. # 42). While the airport is not in compliance with FAA

standards due to non-standard taxi-way geometry, there is no evidence that extending the runway is necessary to fix this problem or for the Authority to come into compliance with FAA safety guidelines. (Dkt. # 59, Stip. ¶ 43).

Thus, plaintiff's argument that the "non-standard separation between the taxi-way and the runway could be brought into compliance as part of the proposed runway extension project," is unavailing. (Dkt. 59, Stip. # 39). Plaintiff has failed to present evidence that the runway length in this instance is a component part of the field of airline safety.

Plaintiff also argues that Conn. Gen. Stat. § 15-120j(c) is preempted by the FAAct under a theory of conflict preemption. (Dkt. # 73 at 27). Plaintiff argues that "conflict preemption does not just hinge entirely on whether the state law makes it impossible to comply with the federal law," but it also arises when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. (Dkt. # 73 at 27, *citing* Hillsborough County, 471 U.S. at 713; *see also* California v. ARC Am. Corp., 490 U.S. 93, 100-01 (1989)).

Plaintiff contends that Runway 2/20 "remains too short for almost all commercial aircraft to operate regularly scheduled service in a safe and commercially reasonable manner." (Dkt. # 73 at 27). Plaintiff also argues that Conn. Gen. Stat. § 15-120j(c) prevents it from complying with federal grant requirements. (Dkt. # 73 at 27). In response, the defendant argues that

there is no evidence showing that the statute has directly or indirectly caused the plaintiff to fail to comply with any federal safety regulations. (Dkt. # 74 at 25).

As noted above, "[c]onflict preemption arises when "local law conflicts with federal law such that it is impossible for a party to comply with both or the local law is an obstacle to the achievement of federal objectives." New York SMSA Ltd. P'ship, 612 at 104. There is no pending enforcement action by the FAA against the Authority. (Dkt. # 59, Stip. ¶ 42). The current locations and dimensions of the taxiways are not in compliance with regulations in terms of their distance from Runway 2/20, but this problem can be fixed without extending the length of Runway 2/20. (Dkt. 59, Stip. # 39). Thus, there is no evidence in the record showing that it is impossible for the Authority to comply with both Conn. Gen. Stat. § 15-120j(c) and the FAAct.

There is also no evidence in the record that Conn. Gen. Stat. § 15-120j(c) stands as an obstacle to the achievement of federal objectives. Plaintiff argues that the runway "remains too short for almost all commercial aircraft to operate regularly scheduled service in a safe and commercially reasonable manner." (Dkt. # 73 at 27). However, the airport is currently served by American Airlines with a Dash 8 turboprop aircraft that seats between 37 and 40 passengers. (Pl. Ex. 13). According to a letter written by Mr. DeCoster, who testified on behalf of the plaintiff, "[t]he current runway length is sufficient to accommodate that

aircraft in most weather conditions without a payload hit." (Pl. Ex. 13). American's continued service shows that it is possible to operate regularly scheduled service in a safe and commercially reasonable manner. (Trial transcript at 105-7, 122-23).

For the aforementioned reasons, the Court finds that Conn. Gen. Stat. § 15-120j(c) is not preempted by the FAAct.

B. The ADA

The Airline Deregulation Act "ADA" was enacted in 1978 based on Congress's determination that "'maximum reliance on competitive market forces' would best further 'efficiency, innovation, and low prices' as well as 'variety [and] quality . . . of air transportation services.'" Morales v. Trans World Airlines, Inc., 504 U.S. 374, 378, 112 S. Ct. 2031, 2033, 119 L.Ed. 2d 157 (1992). The ADA includes an express preemption provision that prohibits states from enforcing any law "'relating to rates, routes, or services' of any air carrier." Morales, 504 U.S. at 378-79. Under the ADA, "'air carrier' means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation." 49 U.S.C.A. § 40102(2) (West). Airport is defined separately as "a landing area used regularly by aircraft for receiving or discharging passengers or cargo. 49 U.S.C.A. § 40102(9) (West).

Plaintiff argues that Conn. Gen. Stat. § 15-120j(c) is expressly preempted by the ADA because the

"restriction on the Length of Runway 2/20 is related to 'a price, route or service of an air carrier.'" (Dkt. # 73 at 28). The defendant argues that the ADA does not apply because the express preemption clause in the ADA specifically applies to an "air carrier" as opposed to an airport. (Dkt. # 74 at 34).[10] Plaintiff contends that a state law does not have to specifically target an air carrier in order to be preempted by the ADA, as long as it is related to the price, route or service of an air carrier. (Dkt. # 73 at 28).

Based upon the plain language of the ADA, the Court finds that the express preemption provision at issue applies specifically to air carriers, as opposed to airports, which are defined separately in the statute. The Court further finds that the Authority lacks standing to bring this claim on behalf of a third party. "[A] party 'generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.'" Kowalski v. Tesmer, 543 U.S. 125, 129, (2004). Therefore, plaintiff cannot assert legal rights on behalf of Allegiant, or any other hypothetical air carrier who might bring service to the Airport.

Even if the preemption provision applied in this case, plaintiff still has not shown that Conn. Gen. Stat.

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[10] "It is worth emphasizing that it is the effect on the 'price, route or service' of an air *carrier*—not an airport—that is prohibited by the ADA." Goodspeed Airport, LLC v. E. Haddam Inland Wetlands & Watercourses Comm'n, 681 F. Supp. 2d 182, 207 (D. Conn. 2010) (Kravitz, J.), aff'd, 634 F.3d 206 (2d Cir. 2011).

§ 15-120j(c) relates to rates, routes or services. "State enforcement actions having a connection with or reference to airline 'rates, routes, or services' are pre-empted" under the ADA. Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384, 112 S. Ct. 2031, 2037, 119 L.Ed. 2d 157 (1992). However, the Court is hard pressed to find any clear connection between Conn. Gen. Stat. § 15-120j(c) and air carrier rates, routes or services.

Plaintiff argues that the statute relates to the route and service of an air carrier because it is preventing Allegiant from bringing service to the Airport and it is preventing the Authority from attracting new service. (Dkt. # 73 at 30). This argument is not supported by the evidentiary record. Allegiant has not committed to bringing service to the Airport, even if the runway is extended. (*See* P. Ex. # 10, "Allegiant letter"). And, American Airlines continues to operate the same service that it operated prior to the passage of Conn. Gen. Stat. § 15-120j(c). (Trial transcript at 119). There is no evidence in the record to suggest that American Airlines would expand its service if the runway were extended. Furthermore, the Court cannot find preemption based upon hypothetical future carriers who might want to bring service to Tweed at some undisclosed future date.

For these reasons, the Court finds that the express preemption provision in the ADA does not apply in this case, and even if it did apply, the Court finds that Conn. Gen. Stat. § 15-120j(c) is not preempted by the ADA.

C. The AAIA

The Airport and Airway Improvement Act ("AAIA") "serves the purpose of providing federal funding to airport construction projects to promote a wide variety of policy goals." City of Cleveland, Ohio v. City of Brook Park, Ohio, 893 F. Supp. 742, 749 (N.D. Ohio 1995). "The Act imposes no requirements, nor does it authorize the promulgation of any regulations, that govern airports generally or that govern projects for which no federal funding is being sought." Id. at 752.

Plaintiff argues that Conn. Gen. Stat. § 15-120j(c) is impliedly preempted by the AAIA under theories of field and conflict preemption. Plaintiff notes that the "comprehensive statutory scheme of the AAIA demonstrates the supremacy of federal interest in commercial air service expansion, particularly with regard to development of airport facilities. (Dkt. # 73 at 31). Plaintiff states that "the AAIA, in conjunction with the FAAct and ADA, demonstrates the dominance of the federal interest in aviation safety and airport improvement projects and requires the FAA to develop and maintain a national plan of integrated airport systems." (Dkt. # 73 at 31).

Plaintiff also argues that Conn. Gen. Stat. § 15-120j(c) directly conflicts with the AAIA because it serves as an impediment to the federal government's and Tweed's objective of expanding service, to the implementation of the Master Plan adopted by the FAA that contemplates the expansion of Runway 2/20

and to increasing compliance with federal safety standards. (Dkt. # 73 at 31).

The defendant argues that the AAIA does not fully occupy the field of aviation safety and service capacity. (Dkt. # 74 at 38). Instead, "the AAIA provides a mechanism through which the FAA is to determine whether to provide federal funding to airport development and improvement projects." (Dkt. # 74, *quoting* City of Cleveland, 893 F.Supp. at 752). The defendant also argues that there is no actual conflict between Conn. Gen. Stat. § 15-120j(c) and the AAIA. This is because "the AAIA does not set regulatory requirements for the construction of airport runways; it only sets requirements for those wishing to secure federal funding for that type of project." (Dkt. # 74 at 36).

The Court does not find that Conn. Gen. Stat. § 15-120j(c) is preempted by the AAIA under a theory of field preemption. Plaintiff does not offer any case law in support of its legal conclusion that the AAIA occupies the field of aviation safety and airport improvement projects. Unlike the FAAct, which "was enacted to create a 'uniform and exclusive system of federal regulation' in the field of air safety," the AAIA does not impose any requirements or authorize the promulgation of federal regulations, unless funding is being sought. *See* Air Transp. Ass'n of Am., Inc., 520 F.3d at 224.

Regarding the issue of conflict preemption, the Court again finds that the AAIA does not impose

affirmative obligations unless an Airport is seeking federal funding. Plaintiff is not obligated to seek federal funding. Thus, plaintiff has not demonstrated that it is impossible to adhere with Conn. Gen. Stat. § 15-120j(c) and the AAIA.

For the reasons set forth above, the undersigned finds that Conn. Gen. Stat. § 15-120j(c) is not preempted by the AAIA.

CONCLUSION

For the reasons set forth herein, plaintiff's declaratory judgment action is DENIED.

This is not a recommended ruling. The consent of the parties allows this magistrate judge to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Appeals can be made directly to the appropriate United States court of appeals from this judgment. See 28 U.S.C. § 636(c)(3).

SO ORDERED at Hartford, Connecticut, this 30th day of September, 2017.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

TWEED-NEW HAVEN AIRPORT AUTHORITY, Plaintiff, v. GEORGE JEPSEN, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF CONNECTICUT Defendant.	:	CASE NO. 3:15cv01731 (RAR)

RULING ON DEFENDANT'S MOTION TO DISMISS

(Filed Dec. 9, 2016)

Plaintiff, Tweed-New Haven Airport Authority, brings this action seeking declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*. (Dkt. # 1). Defendant, State of Connecticut Attorney General George Jepsen, in his official capacity, moves to dismiss the action for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, and failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6). (Dkt. # 39). For the following reasons, defendant's motion to dismiss is denied.

FACTUAL BACKGROUND

The following facts are taken from plaintiff's Complaint for Declaratory Relief ("complaint"), and are presumed true for the purposes of the pending motion. Plaintiff, Tweed-New Haven Airport Authority ("Tweed") is a public instrumentality and political subdivision of the State of Connecticut, pursuant to Connecticut General Statutes § 15-120i, et seq. (Dkt. # 1, at ¶ 5). The City of New Haven owns the Airport property and leases it to the Airport Authority. (Id., at ¶ 12). The Airport is situated in both East Haven and New Haven. (Id., at ¶ 13). The Airport's main runway runs north/south and is referred to as "Runway 2/20." (Id., at ¶ 13). The runway is approximately 5,600 linear feet, with Runway 2 at the South end and Runway 20 at the North end. (Id., at ¶¶ 13, 19).

The Airport is among the public use airports included in the National Plan of Integrated Airport Systems. (Id., at ¶ 14). The Airport is classified by the Federal Aviation Administration ("FAA") as a primary commercial service airport and it holds a Part 139 certification to provide regularly scheduled passenger air service. (Id., at ¶ 14). The Airport Authority has accepted tens of millions of dollars in grants from the FAA for construction and maintenance of facilities, the acceptance of which requires compliance with a long list of federal statutes and regulations. (Id., at ¶¶ 15, 16).

The Airport consists of numerous structures, including an airport terminal, an administration

building, hangars and offices leased to a fixed base operator, an air rescue and fire safety facility, a control tower, and two runways with related taxiways. (Id., at ¶ 17). All of these structures are part of the Airport Layout Plan ("ALP"), and any modifications of the ALP require the approval of the FAA. (Id., at ¶ 18). The FAA requires that each airport with a 139 certification develop a Master Plan. (Id., at ¶ 20). Tweed has a Master Plan for the Airport, which identifies future improvements for the Airport, and which was approved by the State of Connecticut and by the FAA in 2002. (Id., at ¶¶ 20, 21).

In 2009, the State of Connecticut, through Public Act 09-7, amended Connecticut General Statutes § 15-120j by adding subsection (c), which provides: "[n]otwithstanding the provisions of subsections (a) and (b) of this section, Runway 2/20 of the airport shall not exceed the existing paved runway length of five thousand six hundred linear feet." (Id., at ¶ 22). The current length of Runway 2/20, at 5,600 linear square feet, "remains too short for almost all commercial aircraft to operate regularly scheduled service in a safe and commercially reasonable manner." (Id., at ¶ 24).

Currently scheduled commercial service at the Airport is provided by a single type of aircraft, and the Authority understands that this type of aircraft will be phased out in the near future and replaced with an aircraft that will require a longer runway than the current Runway 2/20. (Id., at ¶ 26). Thus, "regularly scheduled service at the airport is not only jeopardized at the moment but also may be terminated in the

future if the length of Runway 2/20 is not extended." (Id., at ¶ 26).

Numerous airlines have notified the plaintiff that they would like to bring regularly scheduled service to the Airport, but that they cannot do so until Runway 2/20 is lengthened. (Id., at ¶ 28). The Airport has not attracted any new commercial carriers since 2009 and service remains low. (Id., at ¶ 29). The length of Runway 2/20 is a "key factor" in both of these circumstances. Id.

The Authority has started planning a runway extension project to increase the functional length of Runway 2/20, including using private funds to hire a consulting engineering firm to conduct a preliminary Environmental Assessment. (Id., at ¶ 32). However, the FAA has refused to provide funding for the project or to review the alternative layouts presented in the preliminary Environmental Assessment while there is a state law that limits the length of Runway 2/20. (Id., at ¶ 33).

Plaintiff alleges that "[b]y restricting the length of Runway 2/20, Connecticut General Statutes §15-120j(c) attempts to regulate aviation safety and the service capacity at the Airport, a field occupied by the United States Government." (Id., at ¶ 57). Plaintiff adds that "[a]ny enforcement of Connecticut General Statutes §15-120j(c) is an illegal usurpation of federal jurisdiction in violation of the Supremacy Clause, Art. VI, cl. 2, of the United States Constitution. (Id., at ¶ 62).

LEGAL STANDARD

A Rule 12(b)(1) motion seeks dismissal for lack of subject matter jurisdiction. Fed.R.Civ.P. 12(b)(1). "When considering a motion to dismiss for lack of subject matter jurisdiction . . . , a court must accept as true all material factual allegations in the complaint. Shipping Fin. Servs. Corp v. Drakos, 140 F.3d 129, 131 (2d Cir. 1998). However, "[t]he burden of proving jurisdiction is on the party asserting it." Malik v. Meissner, 82 F.3d 560, 562 (2d Cir. 1996).

Specifically, "[t]he party asserting subject matter jurisdiction has the burden of proving, by a preponderance of the evidence, that the court has subject matter jurisdiction." Augienello v. F.D.I.C., 310 F. Supp. 2d 582, 587-88 (S.D.N.Y. 2004). On a Rule 12(b)(1) motion, "the court may resolve disputed jurisdictional factual issues by reference to evidence outside the pleadings." Id. at 588.

A Rule 12(b)(6) motion seeks dismissal for failure to state a claim upon which relief can be granted. Fed.R.Civ.P. 12(b)(6). "When considering a Rule 12(b)(6) motion to dismiss, the court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff." Kinney v. Connecticut, 622 F. Supp. 2d 1, 5 (D. Conn. 2009) (citations omitted). "Dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted." Id.

DISCUSSION

A. Article III Standing

The defendant argues in its reply brief that the plaintiff fails to satisfy traditional Article III standing requirements because it fails to allege a non-hypothetical injury. (Dkt. # 45 at 4-6).

Article III, § 2 of the United States Constitution restricts federal courts to deciding "'Cases' and 'Controversies.'" Lujan v. Defs. of Wildlife, 504 U.S. 555, 559 (1992). The "case-or-controversy requirement is satisfied only where a plaintiff has standing." Sprint Commc'ns Co., L.P. v. APCC Servs., Inc., 554 U.S. 269, 273 (2008). "Three elements comprise the 'irreducible constitutional minimum' of standing: (1) the plaintiff must have suffered an injury-in-fact—an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the challenged conduct; and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." All. for Open Soc'y Int'l, Inc. v. U.S. Agency for Int'l Dev., 651 F.3d 218, 228 (2d Cir. 2011), aff'd sub nom. Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., 133 S. Ct. 2321, 186 L. Ed. 2d 398 (2013).

"The party invoking federal jurisdiction bears the burden of establishing these elements." Lujan, 504 U.S. at 561. However, "[a]t the pleading stage, general factual allegations of injury resulting from the

defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" Id.

In arguing that the plaintiff fails to satisfy the elements of Article III standing, the defendant focuses specifically on the injury in fact requirement. *See* Dkt. # 45 at 4-5. In support of its argument, the defendant cites Benjamin v. Malcolm, 803 F.2d 46 (2d Cir. 1986), in which detainees claimed that overcrowded prison conditions in a detention facility operated by the City of New York violated their constitutional rights. The Court found that the City had standing because it faced a "direct injury." Id. at 54. The Court noted that the City would face contempt sanctions for noncompliance with an existing court order, the City also would be forced to spend millions of dollars for additional prison space, and faced the threat of a major riot at the detention facility due to the overcrowded conditions. Id.

The defendant also cites Rogers v. Brockette, 588 F.2d 1057, 1059 (5th Cir. 1979) and Branson Sch. Dist. RE-82 v. Romer, 161 F.3d 619 (10th Cir. 1998), in support of the proposition that an injury in fact cannot be hypothetical. In Rogers, 588 F.2d at 1057, a school district brought an action against the state and others challenging the constitutionality of a state statute which required certain school districts to participate in subsidized breakfast program. In determining whether the plaintiffs satisfied Article III standing, the Fifth Circuit stated that a federal court may not

resolve 'hypothetical or contingent questions.'" Id. at 1063.

In Branson, 161 F.3d at 630, the Tenth Circuit held that three Colorado school districts had standing to challenge an amendment to the Colorado Constitution which altered the terms of the trust in which Colorado places school land for the benefit of public schools. Plaintiff alleged that the revisions injected a series of conflicting interests into the management of the school lands trust. The court held that the school districts had alleged a "sufficient actual and particularized injury to their legal interests." Id. at 631.

The Court finds, contrary to the defendant's argument, that Tweed has demonstrated a direct injury that is both actual and imminent. During oral argument, the plaintiff asserted that it had a judicially cognizable injury and cited a variety of examples, including chronically low service levels, specific lost business opportunities, and an inability to comply with federal grant requirements. (*See* also Dkt. # 1, ¶¶ 28-31). Thus, the Court finds that the plaintiff has alleged a concrete and direct injury, including the current and future loss of business and an inability to comply with federal grant requirements. The plaintiff has also shown that this injury is both actual and imminent, because the plaintiff is already experiencing its effects. As a result, the Court finds that the plaintiff has satisfied its burden of establishing Article III standing.

B. Eleventh Amendment Immunity

The defendant argues that the Court lacks subject matter jurisdiction over this lawsuit under the Eleventh Amendment of the United States Constitution and the principles of sovereign immunity. In this respect, the defendant argues that the plaintiff's claim does not fall within one of the exceptions to sovereign immunity. (Dkt. # 40 at 6-13). The plaintiff responds that it's claim falls under the Ex parte Young exception to the Eleventh Amendment. (Dkt # 44 at 4-10).

The principle of sovereign immunity is a constitutional limitation on the federal judicial power established in Art. III of the Constitution. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89 (1984). Under the Eleventh Amendment, a state is immune from suits in federal court brought by its own citizens, and such immunity extends to officers acting on behalf of the state, and to state agencies. *See* Deadwiley v. New York State Office of Children & Family Servs., 97 F. Supp. 3d 110, 115 (E.D.N.Y. 2015). There are only three exceptions to this rule: (1) a state may waive its Eleventh Amendment defense; (2) Congress may abrogate the sovereign immunity of the states by acting pursuant to a grant of Constitutional authority; or (3) under the doctrine of Ex Parte Young, 209 U.S. 123 (1908), the Eleventh Amendment does not bar a suit against a state official when the suit seeks relief that is properly characterized as prospective. Deadwiley, 97 F. Supp. 3d at 115. "A plaintiff may use Ex Parte Young to seek injunctive or declaratory relief, but the relief must address an ongoing or threatened violation of federal

law and be prospective only." Goodspeed Airport, LLC v. E. Haddam Inland Wetlands & Watercourses Comm'n, 632 F. Supp. 2d 185, 187 (D. Conn. 2009) (citations omitted); *see also* Friends of the East Hampton Airport, Inc. v. Town of East Hampton, 841 F.3d 133, 144 (2d Cir. 2016).

The doctrine of Ex Parte Young "ensures that state officials do not employ the Eleventh Amendment as a means of avoiding compliance with federal law" and it is "regarded as carving out a necessary exception to Eleventh Amendment immunity." Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 146 (1993). Thus, "[r]ather than defining the nature of Eleventh Amendment immunity, Young and its progeny render the Amendment wholly inapplicable to a certain class of suits." Id. In determining whether plaintiff's claim falls under the Ex parte Young exception, the Court "need only conduct a 'straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland, 535 U.S. 635, 645 (2002).[1]

[1] The Court does not address the defendant's arguments regarding whether the State waived its Eleventh Amendment immunity or whether Congress abrogated the sovereign immunity of the state by acting pursuant to a grant of Constitutional authority, because the plaintiff makes no such claims. The plaintiff argues solely that its claim falls under the *Ex parte Young* exception to sovereign immunity.

Plaintiff asserts that its claim "fits squarely within the Ex Parte Young exception," because it alleges that Connecticut General Statutes § 15-120j(c) violates the Supremacy Clause of the United States Constitution by impermissibly regulating areas within the exclusive jurisdiction of the federal government. (Dkt. # 44 at 6). Plaintiff also asserts that it does not seek money damages or any other type of retroactive relief, but instead seeks prospective relief. (Dkt. # 44 at 7).

Citing Goodspeed, 632 F. Supp. 2d at 187 (D. Conn. 2009), the defendant argues that plaintiff's claim does not address an ongoing or threatened violation of federal law. More specifically, the defendant argues that Tweed has not alleged that the state has threatened or is about to commence an enforcement action against it. (Dkt. # 45 at 3).

In Goodspeed, the plaintiff airport had inland wetlands on its property. The plaintiff wanted to remove or cut down trees that were within 75 feet of the wetlands because it believed that the trees were obstructions to navigable airspace as defined by federal regulations promulgated under the Federal Aviation Act. The plaintiff had the option of requesting a permit from the East Haddam Inland Wetlands and Watercourses Commission ("IWWC") but the plaintiff did not want to risk a potential adverse decision by submitting to that process. Therefore, the plaintiff brought an action against the IWWC and the Commissioner of the Connecticut Department of Environmental Protection for a declaration that the

Connecticut Inland Wetlands and Watercourses Act ("IWWA") and the Connecticut Environmental Protection Act ("CEPA") were preempted by federal aviation law. The district court granted the Commissioner's motion to dismiss on the basis of the Eleventh Amendment, because the plaintiff "failed to allege that the Commissioner [was] involved in an ongoing violation of federal law or [had] threatened an enforcement action. . . ." Id. at 188.

Specifically, the district court in Goodspeed dismissed the case as to the Commissioner because the Commissioner explicitly stated that she had no plans to bring suit: "Unlike the IWWC, which has represented to the Court that it would take action against Goodspeed if it proceeded to cut or remove trees in or near the inland wetlands without a permit . . . the Commissioner has threatened no such action. . . ." Id. at 188. Indeed, as the court noted, the Commissioner had consistently maintained that it would evaluate the plaintiff's actions and determine whether an enforcement action was even appropriate after the plaintiff trimmed or cut down the trees, based on the extent of the trimming and the location of the trees. The court further noted that the plaintiff had previously trimmed trees on its property without the Commissioner taking any action. Id.

The Court finds that Goodspeed is distinguishable from the present case. The defendant in the present case is more akin to the IWCC, which was not dismissed on Eleventh Amendment grounds, than it is to the Commissioner in Goodspeed, who was dismissed.

The defendant in the current case, like the IWCC, has at least implied that it will bring suit if Tweed violates Connecticut General Statutes § 15-120j.

The defendant has given no indication that it does not intend to bring suit. Despite the fact that this case has been pending since November of 2015, when the defendant was asked during oral argument if it would bring suit if the plaintiff violated Connecticut General Statutes § 15-120j, the defendant responded that it did not know. Connecticut General Statutes § 15-120j was amended to specifically restrict the runway length of Airport 2/20. (Dkt. # 1 at 22). It seems counterintuitive that the legislature would make such a specific and exacting statutory change if the state did not intend to enforce it. Therefore, the Court disagrees that plaintiff's allegations "are as conjectural as those alleged in Goodspeed." (Dkt. # 45 at 3).

Additionally, the defendant argues that the plaintiff fails to allege a "substantial and nonfrivolous" violation of federal law. (Dkt. # 45 at 2). The plaintiff alleges that Connecticut General Statutes is pre-empted by the Federal Aviation Act ("FAAct"), the Airline Deregulation Act ("ADA"), and the Airline and Airways Improvement Act ("AAIA"). (Dkt. # 44 at 2). The Court finds, as discussed in greater detail in Section D of the Court's decision, that Connecticut General Statutes § 15-120j is at least impliedly preempted by the FAAct, because Congress intended to fully occupy the field of airline safety. (See Dkt. # 1 at 8). Therefore, the plaintiff's alleged violation of federal law is not frivolous.

Thus, the Court finds that the plaintiff satisfies the requirements of the Ex Parte Young doctrine by alleging an ongoing or threatened violation of federal law and relief that is properly characterized as prospective.

C. Political Subdivision

Defendant argues that the plaintiff, as a political subdivision of the state, lacks standing to sue the state. (Dkt. # 40 at 13). In response, plaintiff argues that despite its status as a political subdivision, "[t]he prohibition on a political subdivision's ability to sue the state does not apply to Supremacy Clause challenges which seek to vindicate the "collective" or "structural" protections afforded by the Supremacy Clause. (Dkt. 44 at 10).

The defendant cites a variety of cases in support of the proposition that a political subdivision of the state lacks standing to sue that state. (Dkt. # 40 at 13-16). In City of Trenton v. New Jersey, 262 U.S. 182, 192 (1923), the Court found that political subdivisions constituted mere creatures of the state, and held that the city could not invoke the Fourteenth Amendment Due Process Clause to prevent New Jersey from enforcing a state law which imposed licensing fees for diverting water from the Delaware River. In Williams v. Mayor, 289 U.S. 36, 38-40 (1933), the Court held that two cities could not invoke the Fourteenth Amendment Equal Protection Clause to prevent Maryland from exempting a railroad from all local taxes.

The defendant suggests that the Second Circuit has "adopted a *per se* rule that political subdivisions lack standing to sue their creator states," citing Aguayo v. Richardson, 473 F.2d 1090 (2d Cir. 1973), in which the Second Circuit held that the city lacked standing to assert constitutional claims related to individual liberties. (Dkt. # 40 at 14). The defendant also cites New York v. Richardson, 473 F.2d 923 (2d Cir. 1973), in which the Second Circuit held that political subdivisions could not challenge a state statute under the Fourteenth Amendment. Finally, the defendant cites Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank, 136 F.3d 1360 (9th Cir. 1998), in which the Ninth Circuit held that a political subdivision lacked standing to sue its parent state based on a Supremacy Clause claim.

The plaintiff attempts to distinguish all of these cases by arguing that these cases only address a political subdivision's ability to seek redress through the Contract Clause and the Fourteenth Amendment, and that they say nothing about plaintiff's standing to bring a claim under the Supremacy Clause. The plaintiff asserts that the Second Circuit has not established a *per se* rule that political subdivisions lack standing to sue a state, but that the Second Circuit has merely "reached the unremarkable conclusion that a political subdivision lacks standing to bring a Fourteenth Amendment claim against the state." (Dkt. # 44 at 13). The plaintiff states that the Supreme Court has never held that a political subdivision lacks standing to bring a Supremacy Clause claim against

the state in reference to an unconstitutional state statute. (Dkt. # 44 at 11).

The plaintiff notes that the Fifth, Tenth and Eleventh Circuits allow political subdivisions to maintain Supremacy clause claims against their parent states. (Dkt. # 44 at 14). The plaintiff argues that the Ninth Circuit's treatment of this issue is the "outlier not the rule," in that the Ninth Circuit is the only Circuit to bar Supremacy Clause challenges. (Dkt. # 44 at 18).

During oral argument, both parties conceded that there is no case directly on point in the Second Circuit. Nonetheless, the Court is persuaded by the plaintiff's arguments. Since the defendant fails to cite any Second Circuit cases supporting the premise that a political subdivision lacks standing to sue its parent state based upon a Supremacy Clause claim, and the Supreme Court has not ruled directly on the issue and has certainly not adopted a *per se* rule on the issue, the Court is not convinced that the plaintiff lacks standing to sue the state based upon its status as a political subdivision.[2]

D. Preemption

Finally, defendant claims that plaintiff has failed to state a claim upon which relief can be granted

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[2] *See* Josh Bendor, Municipal Constitutional Rights: A New Approach, 31 Yale L. & Pol'y Rev. 389 (2013), suggesting that the Supremacy Clause properly constrains state power over municipalities.

pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because Connecticut General Statutes § 15-120j(c) is not preempted by FAAct, the ADA, or the AAIA. (Dkt. # 40 at 16). Plaintiff responds that it has adequately pled that the Statute is preempted by one or more of the three federal statutes. (Dkt. # 44 at 20). During oral argument the parties conceded that if the Court finds that §15-120j(c) is preempted by any one of the three federal statutes, the defendant's motion to dismiss should be denied.

"It is a familiar and well-established principle that the Supremacy Clause, U.S. Const., Art. VI, cl. 2, invalidates state laws that 'interfere with, or are contrary to,' federal law." Hillsborough Cty., Fla. v. Automated Med. Labs., Inc., 471 U.S. 707, 712 (1985) (citations omitted). "Federal preemption of state law can be express or implied." Goodspeed Airport LLC v. E. Haddam Inland Wetlands & Watercourses Comm'n, 634 F.3d 206, 209 (2d Cir. 2011) (citations omitted).

"In general, three types of preemption exist: (1) express preemption, where Congress has expressly preempted local law; (2) field preemption, 'where Congress has legislated so comprehensively that federal law occupies an entire field of regulation and leaves no room for state law'; and (3) conflict preemption, where local law conflicts with federal law such that it is impossible for a party to comply with both or the local law is an obstacle to the achievement of federal objectives." New York SMSA Ltd. P'ship v. Town of Clarkstown, 612 F.3d 97, 104 (2d Cir. 2010). "The key

to the preemption inquiry is the intent of Congress." Id.

The plaintiff alleges that §15-120j(c) is impliedly preempted by the FAAct because the FAAct regulates the entire field of airline safety and also because §15-120j(c) impedes the FAAct's objectives. (Dkt. # 44 at 21). Thus the plaintiff alleges field preemption and conflict preemption, both of which are types of implied preemption. (Dkt. # 44 at 26).[3]

Plaintiff argues that Congress occupies and regulates the entire field of airline safety, citing to a recent case in which it made similar allegations against the Town of East Haven. In Tweed-New Haven Airport Auth. v. Town of East Haven, Conn., 582 F. Supp. 2d 261 (D. Conn. 2008), Tweed-New Haven Airport Authority brought an action against the Town of East Haven, seeking a declaratory judgment that the Town's regulations, which interfered with the Airport's "runway project," were preempted by federal law.

The district court found that "Congress intended to occupy and regulate the field of airline safety." Id. The Court held that the FAAct impliedly preempted the East Haven defendants' regulations because "Congress intended to regulate, i.e., to fully occupy the field of airline safety within which field the Runway

[3] The plaintiff does not argue that the FAAct expressly preempts §15-120j(c), so the Court will limit its discussion to implied preemption.

Project lies." Id. at 267. In reaching its conclusion, the Court quoted relevant parts of the FAAct:

> Under the FAAct, "the United States has asserted that it possesses and exercises 'complete and exclusive national sovereignty in the airspace of the United States.' " United States v. City of New Haven, 447 F.2d 972, 973 (2d Cir.1971) (*quoting* the FAAct, 49 U.S.C. § 1508(a), as amended 49 U.S.C. § 40103(a)). The FAAct defines navigable airspace as "including airspace needed to ensure safety in the takeoff and landing of aircraft." 49 U.S.C. 40102(32); *see also* City of New Haven, 447 F.2d at 973. "This power extends to grounded planes and airport runways." *Id.* (citing 14 C.F.R. §§ 91.123 and 139.329). Thus, by the passage of the FAAct, Congress intended to occupy the entire field of airline safety, including runways.

Id. at 268 (citations omitted). The court's findings in Tweed New Haven Airport Authority v. Town of East Haven provide strong support for plaintiff's argument that the FAAct impliedly preempts Connecticut General Statutes § 15-120j(c). Section 15-120j(c) attempts to regulate runway length, which is a component part of the field of airline safety, and is therefore part of a field completely occupied by the federal government.

The plaintiff also alleges that Connecticut General Statutes § 15-120j(c) is in actual conflict with the FAAct. (Dkt. # 44 at 26). The defendant argues that the plaintiff "alleges insufficient facts from which the

Court can infer that the impossibility of compliance, and therefore conflict preemption, exists in regard to the FAAct." (Dkt. # 40 at 27). The Court agrees. The plaintiff fails to provide any specific examples of a direct conflict between a federal law and a state law.[4]

The Court finds, considering the facts in the light most favorable to the plaintiff, that plaintiff's allegations give rise to the inference that Connecticut General Statutes § 15-120j(c) is impliedly preempted by the FAAct under a theory of field preemption. Accordingly, the Court need not address whether § 15-120j(c) is preempted by the ADA or the AAIA.

CONCLUSION

For the reasons set forth herein, defendant's motion to dismiss is DENIED.

SO ORDERED at Hartford, Connecticut, this 9th day of December, 2016.

/s/
Robert A. Richardson
United States Magistrate Judge

[4] When asked during oral argument to provide specific examples of a direct conflict between Connecticut General Statutes § 15-120j(c) and a federal law, the plaintiff did not provide a direct answer.

C.G.S.A. § 15-120g. Short title:
Tweed-New Haven Airport Authority Act

Sections 15-120g to 15-120*o*, inclusive, shall be known and may be cited as the "Tweed-New Haven Airport Authority Act".

C.G.S.A. § 15-120h. Definitions

As used in sections 15-120g to 15-120*o*, inclusive, the following terms shall have the following meanings:

(1) "Authority" means the Tweed-New Haven Airport Authority as created under section 15-120i;

(2) "Procedure" means each statement, by the authority, of general applicability, without regard to its designation, that implements or prescribes law or policy or describes the organization or procedure of the authority. The term includes the amendment or repeal of a prior regulation, but does not include, unless otherwise provided by any provision of the general statutes, (A) statements concerning only the internal management of the authority and not affecting procedures available to the public and (B) intra-authority memoranda;

(3) "Proposed procedure" means a proposal by the authority under the provisions of section 15-120k for a new procedure or for a change in, addition to or repeal of an existing procedure.

C.G.S.A. § 15-120i. Tweed-New Haven Airport Authority. Board of directors

(a) There is created a body politic and corporate to be known as the "Tweed-New Haven Airport Authority". Said authority shall be a public instrumentality and political subdivision of this state and the exercise by the authority of the powers conferred by sections 15-120g to 15-120*o*, inclusive, shall be deemed and held to be the performance of an essential public and governmental function. The Tweed-New Haven Airport Authority shall not be construed to be a department, institution or agency of the state.

(b) The authority shall be governed by a board of directors consisting of fifteen members, each member serving not more than two consecutive four-year terms. The terms of the members shall be staggered so that not more than four members' terms shall expire at the same time. Eight members of the board shall be appointed by the mayor of New Haven and five members shall be appointed by the mayor of East Haven, at least six of whom shall be residents of New Haven or East Haven. Two members of the board shall be appointed by the South Central Regional Council of Governments, each of whom shall be a resident of any of the following towns or cities: Bethany, Branford, Guilford, Hamden, Madison, Milford, North Branford, North Haven, Orange, Wallingford, West Haven or Woodbridge. The board of directors shall elect a chairperson from among its members and shall annually elect one of its members as vice-chairperson and shall elect other members as officers, and

establish bylaws as necessary for the operation of the authority. Members of the board of directors shall receive no compensation for the performance of their duties. No member of the board shall have any financial interest in Tweed-New Haven Airport or any of its tenants or concessions.

(c) The thirteen members of the board of directors appointed by the mayors of New Haven and East Haven shall be special directors vested with additional powers set forth in the bylaws of the Tweed-New Haven Airport Authority.

(d) The powers of the authority shall be vested in and exercised by the board. Eight members of the board shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the board shall be sufficient for any action taken by the board. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board. Any action taken by the board may be authorized by resolution at any regular or special meeting and shall take effect immediately unless otherwise provided in the resolution. Notice of any meeting, whether special or regular, shall be given orally, not less than forty-eight hours prior to the meeting. The board may delegate to three or more of its members, or its officers, agents and employees, such board powers and duties as it may deem proper.

(e) The authority shall have perpetual succession and shall adopt procedures for the conduct of its affairs

in accordance with section 15-120k. Such succession shall continue as long as the authority shall have obligations outstanding and until the existence of the authority is terminated by law at which time the rights and properties of the authority shall pass to and be vested in the city of New Haven.

C.G.S.A. § 15-120j. Purposes and powers. Airport runway

Effective: October 5, 2009

(a) The authority shall maintain and improve Tweed-New Haven Airport as an important economic development asset for the south central Connecticut region which is comprised of the towns and cities of Bethany, Branford, East Haven, Guilford, Hamden, Madison, Milford, New Haven, North Branford, North Haven, Orange, Wallingford, West Haven and Woodbridge. The authority shall have the following powers and duties and may exercise such powers in its own name: (1) To manage, maintain, supervise and operate Tweed-New Haven Airport; (2) do all things necessary to maintain working relationships with the state, municipalities and persons, and conduct the business of a regional airport, in accordance with applicable statutes and regulations; (3) to charge reasonable fees for the services it performs and modify, reduce or increase such fees, provided fees shall apply uniformly to all airport users; (4) to enter into contracts, leases and agreements for goods and equipment and for services with airlines, concessions,

counsel, engineers, architects, private consultants and advisors; (5) to contract for the construction, reconstruction, enlargement or alteration of airport projects with private persons and firms in accordance with such terms and conditions as the authority shall determine; (6) to make plans and studies in conjunction with the Federal Aviation Administration or other state or federal agencies; (7) to apply for and receive grant funds for airport purposes; (8) to plan and enter into contracts with municipalities, the state, businesses and other entities to finance the operations and debt of the airport, including compensation to the host municipalities of New Haven and East Haven for the use of the land occupied by the airport; (9) to borrow funds for airport purposes for such consideration and upon such terms as the authority may determine to be reasonable; (10) to employ a staff necessary to carry out its functions and purposes and fix the duties, compensation and benefits of such staff; (11) to issue and sell bonds and to use the proceeds of such bonds for capital improvements to the airport; (12) to acquire property by purchase or lease for airport purposes, subject to applicable requirements of federal law and regulation; (13) to prepare and issue budgets, reports, procedures, audits and such other materials as may be necessary and desirable to its purposes; and (14) to exercise all other powers granted to such an authority by law.

(b) The authority shall have full control of the operation and management of the airport, including land, buildings and easements by means of a lease to

the authority by the city of New Haven and the town of East Haven.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, Runway 2-20 of the airport shall not exceed the existing paved runway length of five thousand six hundred linear feet.

C.G.S.A. § 15-120k. Adoption of written procedures

(a) The board of directors of the authority shall adopt written procedures, in accordance with subsections (b) and (c) of this section, for: (1) Adopting an annual budget and plan of operations, which shall include a requirement of board approval before the budget or plan may take effect; (2) hiring, dismissing, promoting and compensating employees of the authority, which shall include an affirmative action policy and a requirement of board approval before a position may be created or a vacancy filled; (3) acquiring real and personal property and personal services, which shall include a requirement of board approval for any nonbudgeted expenditure in excess of five thousand dollars; (4) contracting for financial, legal, bond underwriting and other professional services which shall include a requirement that the authority solicit proposals at least once every three years for each such service which it uses; (5) issuing and retiring bonds, notes and other obligations of the authority; (6) awarding loans, grants and other financial assistance, which shall include eligibility criteria, the application

process and the role played by the authority's staff and board of directors; and (7) the use of surplus funds.

(b) Before adopting a proposed procedure, the authority shall give at least thirty days' notice by publication in the Connecticut Law Journal of its intended action. The notice shall include (1) either a statement of the terms or of the substance of the proposed procedure or a description sufficiently detailed so as to apprise persons likely to be affected of the issues and subjects involved in the proposed procedure, (2) a statement of the purposes for which the procedure is proposed and (3) when, where and how interested persons may present their views on the proposed procedure. The authority may only adopt a proposed procedure by a two-thirds vote of the full membership of its board of directors.

(c) If the authority finds that an imminent peril to the public health, safety or welfare requires adoption of a proposed procedure upon fewer than thirty days' notice and states in writing its reasons for such finding and the authority's board of directors, by a three-fourths vote of the statutory membership, approves the finding in writing, the authority may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency proposed procedure not later than ten days, excluding Saturdays, Sundays and holidays, prior to the proposed effective date of the proposed procedure. An approved emergency procedure may be effective for a period of not more than one hundred twenty days and renewable once for a period of not more than sixty

days. If the necessary steps to adopt a permanent procedure, including publication of notice of intent to adopt, are not completed prior to the expiration date of an emergency procedure, the emergency procedure shall cease to be effective on that date.

C.G.S.A. § 15-120*l*. Bonds of the authority. Trust agreements. Liability and indemnification of directors

(a) The board of directors of the authority is authorized from time to time to issue its bonds, notes and other obligations in such principal amounts as in the opinion of the board shall be necessary to provide sufficient funds for carrying out the purposes set forth in sections 15-120*g* to 15-120*o*, inclusive, including the payment, funding or refunding of the principal of, or interest or redemption premiums on, any bonds, notes and other obligations issued by it whether the bonds, notes or other obligations or interest to be funded or refunded have or have not become due, the establishment of reserves to secure such bonds, notes and other obligations and all other expenditures of the authority incident to and necessary or convenient to carry out the purposes set forth in said sections.

(b) Except as otherwise expressly provided in sections 15-120*g* to 15-120*o*, inclusive, or by the board, every issue of bonds, notes or other obligations, shall be a general obligation of the authority payable out of any moneys or revenues of the authority subject

only to any agreements with the holders of particular bonds, notes or other obligations pledging any particular moneys or revenues. Any such bonds, notes or other obligations may be additionally secured by any grant or contributions from any department, agency or instrumentality of the United States or person or a pledge of any moneys, income or revenues of the authority from any source whatsoever.

(c) Any provision of any law to the contrary notwithstanding, any bonds, notes or other obligations issued by the authority pursuant to sections 15-120g to 15-120*o*, inclusive, shall be fully negotiable within the meaning and for all purposes of title 42a. Any such bonds, notes or other obligations shall be legal investments for all trust companies, banks, investment companies, savings banks, building and loan associations, executors, administrators, guardians, conservators, trustees and other fiduciaries and pension, profit-sharing and retirement funds.

(d) Bonds, notes or other obligations of the authority shall be authorized by resolution of the board of directors of the authority and may be issued in one or more series and shall bear such date or dates, mature at such time or times, in the case of any such note, or any renewal thereof, not exceeding the term of years as the board shall determine from the date of the original issue of such notes, and, in the case of bonds, not exceeding thirty years from the date thereof, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration

privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without this state, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide.

(e) Bonds, notes or other obligations of the authority may be sold at public or private sale at such price or prices as the board shall determine.

(f) Bonds, notes or other obligations of the authority may be refunded and renewed from time to time as may be determined by resolution of the board, provided any such refunding or renewal shall be in conformity with any rights of the holders thereof.

(g) Bonds, notes or other obligations of the authority issued under the provisions of sections 15-120g to 15-120*o*, inclusive, shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof other than the authority or a pledge of the faith and credit of the state or of any such political subdivision other than the authority, and shall not constitute bonds or notes issued or guaranteed by the state within the meaning of section 3-21, but shall be payable solely from the funds herein provided therefor. All such bonds, notes or other obligations shall contain on the face thereof a statement to the effect that neither the state of Connecticut nor any political subdivision thereof other than the authority shall be obligated to pay the same or the interest thereof except from revenues or other

funds of the authority and that neither the faith and credit nor the taxing power of the state of Connecticut or of any political subdivision thereof other than the authority is pledged to the payment of the principal of or the interest on such bonds, notes or other obligations.

(h) Any resolution authorizing the issuance of bonds, notes or other obligations may contain provisions, except as expressly limited in sections 15-120g to 15-120*o*, inclusive, and except as otherwise limited by existing agreements with the holders of bonds, notes or other obligations, that shall be a part of the contract with the holders thereof, as to the following: (1) The pledging of all or any part of the moneys received by the authority to secure the payment of the principal of and interest on any bonds, notes or other obligations or of any issue thereof; (2) the pledging of all or part of the assets of the authority to secure the payment of the principal and interest on any bonds, notes or other obligations or of any issue thereof; (3) the establishment of reserves or sinking funds, the making of charges and fees to provide for the same, and the regulation and disposition thereof; (4) limitations on the purpose to which the proceeds of sale of bonds, notes or other obligations may be applied and pledging such proceeds to secure the payment of the bonds, notes or other obligations, or of any issues thereof; (5) limitations on the issuance of additional bonds, notes or other obligations; the terms upon which additional bonds, bond anticipation notes or other obligations may be issued and secured; the refunding or purchase

of outstanding bonds, notes or other obligations of the authority; (6) the procedure, if any, by which the terms of any contract with the holders of any bonds, notes or other obligations of the authority may be amended or abrogated, the amount of bonds, notes or other obligations the holders of which must consent thereto, and the manner in which such consent may be given; (7) limitations on the amount of moneys to be expended by the authority for operating, administrative or other expenses of the authority; (8) the vesting in a trustee or trustees of such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of any trustee appointed by the holders of any bonds, notes or other obligations and limiting or abrogating the right of the holders of any bonds, notes or other obligations of the authority to appoint a trustee under this chapter or limiting the rights, powers and duties of such trustee; (9) provision for a trust agreement by and between the authority and a corporate trustee which may be any trust company or bank having the powers of a trust company within or without the state, which agreement may provide for the pledging or assigning of any assets or income from assets to which or in which the authority has any rights or interest, and may further provide for such other rights and remedies exercisable by the trustee as may be proper for the protection of the holders of any bonds, notes or other obligations of the authority and not otherwise in violation of law. Such agreement may provide for the restriction of the rights of any individual holder of bonds, notes or other

obligations of the authority. All expenses incurred in carrying out the provisions of such trust agreement may be treated as a part of the cost of operation of the authority. The trust agreement may contain any further provisions which are reasonable to delineate further the respective rights, duties, safeguards, responsibilities and liabilities of the authority; individual and collective holders of bonds, notes and other obligations of the authority and the trustees; (10) covenants to do or refrain from doing such acts and things as may be necessary or convenient or desirable in order to better secure any bonds, notes or other obligations of the authority, or which, in the discretion of the authority, will tend to make any bonds, notes or other obligations to be issued more marketable notwithstanding that such covenants, acts or things may not be enumerated herein; (11) any other matters of like or different character, which in any way affect the security or protection of the bonds, notes or other obligations.

(i) Any pledge made by the authority of income, revenues, or other property shall be valid and binding from the time the pledge is made, and shall constitute a pledge within the meaning and for all purposes of title 42a. The income, revenue, or other property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the

authority, irrespective of whether such parties have notice thereof.

(j) The board of directors of the authority is authorized and empowered to obtain from any department, agency or instrumentality of the United States any insurance or guarantee as to, or of or for the payment or repayment of, interest or principal, or both, or any part thereof, on any bonds, notes or other obligations issued by the authority pursuant to the provisions of sections 15-120g to 15-120*o*, inclusive, and, notwithstanding any other provisions of said sections, to enter into any agreement, contract or any other instrument whatsoever with respect to any such insurance or guarantee except to the extent that such action would in any way impair or interfere with the authority's ability to perform and fulfill the terms of any agreement made with the holders of the bonds, bond anticipation notes or other obligations of the authority.

(k) Neither the members of the board of directors of the authority nor any person executing bonds, notes or other obligations of the authority issued pursuant to sections 15-120g to 15-120*o*, inclusive, shall be liable personally on such bonds, notes or other obligations or be subject to any personal liability or accountability by reason of the issuance thereof, nor shall any director or employee of the authority be personally liable for damage or injury, not wanton, reckless, wilful or malicious, caused in the performance of his duties and within the scope of his employment or appointment as such director, officer or employee. The authority shall

protect, save harmless and indemnify its directors, officers or employees from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, suit or judgment by reason of alleged negligence or alleged deprivation of any person's civil rights or any other act or omission resulting in damage or injury, if the director, officer or employee is found to have been acting in the discharge of his duties or within the scope of his employment and such act or omission is found not to have been wanton, reckless, wilful or malicious.

(*l*) The board of directors of the authority shall have power to purchase bonds, notes or other obligations of the authority out of any funds available therefor. The authority may hold, cancel or resell such bonds, notes or other obligations subject to and in accordance with agreements with holders of its bonds, notes and other obligations.

(m) All moneys received pursuant to the authority of sections 15-120g to 15-120*o*, inclusive, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in said sections. Any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of sections 15-120g to 15-120*o*, inclusive, subject to such regulations as said sections and the resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide.

(n) Any holder of bonds, notes or other obligations issued under the provisions of sections 15-120*g* to 15-120*o*, inclusive, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any such trust agreement securing, such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by said sections or by such resolution or trust agreement to be performed by the authority or by any officer, employee or agent thereof, including the fixing, charging and collecting of the rates, rents, fees and charges herein authorized and required by the provisions of such resolution or trust agreement to be fixed, established and collected.

(o) The authority may make representations and agreements for the benefit of the holders of any bonds, notes or other obligations of the state which are necessary or appropriate to ensure the exclusion from gross income for federal income tax purposes of interest on bonds, notes or other obligations of the state from taxation under the Internal Revenue Code of 1986[1] or any subsequent corresponding internal revenue code of the United States, as from time to time amended, including agreement to pay rebates to the federal government of investment earnings derived

[1] 26 U.S.C.A. § 1 et seq.

from the investment of the proceeds of the bonds, notes or other obligations of the authority. Any such agreement may include: (1) A covenant to pay rebates to the federal government of investment earnings derived from the investment of the proceeds of the bonds, notes or other obligations of the authority, (2) a covenant that the authority will not limit or alter its rebate obligations until its obligations to the holders or owners of such bonds, notes or other obligations are finally met and discharged, and (3) provisions to (A) establish trust and other accounts which may be appropriate to carry out such representations and agreements, (B) retain fiscal agents as depositories for such fund and accounts and (C) provide that such fiscal agents may act as trustee of such funds and accounts.

C.G.S.A. § 15-120m. Exemption from state and local taxes

The exercise of the powers granted by sections 15-120g to 15-120*o*, inclusive, constitute the performance of an essential governmental function and the authority shall not be required to pay any taxes or assessments upon or in respect of the project, levied by any municipality or political subdivision or special district having taxing powers of the state and the project and the principal and interest of any bonds and notes issued under the provisions of said sections, their transfer and the income therefrom, including revenues derived from the sale thereof, shall at all times be free from taxation of every kind by the state of Connecticut

or under its authority, except for estate or succession taxes.

C.G.S.A. § 15-120n. State pledge re bonds or notes

The state of Connecticut does hereby pledge to and agree with the holders of any bonds or notes issued under sections 15-120g to 15-120*o*, inclusive, or with those parties who may enter into contracts with the authority, pursuant to said sections, that the state shall not limit or alter the rights hereby vested in the authority until such obligations, together with the interest thereon, are fully met and discharged, and such contracts are fully performed on the part of the authority, provided nothing contained herein shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of such bonds, notes and other obligations of the authority or those entering into contracts with the authority. The authority is authorized to include this pledge and undertaking for the state in such bonds, notes and other obligations or contracts.

C.G.S.A. § 15-120*o*. Annual reports. Audits

(a) Within the first ninety days of each fiscal year of the authority, the board of directors of the authority shall submit a report to the Governor, the Auditors of Public Accounts and the joint standing committee of

the General Assembly having cognizance of matters relating to finance, revenue and bonding. Such report shall include, but not be limited to, the following: (1) A list of all bonds issued during the preceding fiscal year, including, for each such issue, the financial advisor and underwriters, whether the issue was competitive, negotiated or privately placed, and the issue's face value and net proceeds; (2) a description of the project, its location, and the amount of funds, if any, provided by the authority with respect to the construction of the project; (3) a list of all outside individuals and firms receiving in excess of five thousand dollars in the form of loans, grants or payments for services; (4) a comprehensive annual financial report prepared in accordance with generally accepted accounting principles for governmental enterprises; (5) the cumulative value of all bonds issued, the value of outstanding bonds, and the amount of the state's contingent liability; (6) the affirmative action policy statement, a description of the composition of the work force of the authority by race, sex and occupation and a description of the affirmative action efforts of the authority; and (7) a description of planned activities for the current fiscal year.

(b) The board of directors of the authority shall annually contract with a person, firm or corporation for a compliance audit of the authority's activities during the preceding authority fiscal year. The audit shall determine whether the authority has complied with its regulations concerning affirmative action, personnel practices, the purchase of goods and services and the

use of surplus funds. The board shall submit the audit report to the Governor, the Auditors of Public Accounts and the joint standing committee of the General Assembly having cognizance of matters relating to finance, revenue and bonding.

(c) The board of directors of the authority shall annually contract with a firm of certified public accountants to undertake an independent financial audit of the authority in accordance with generally accepted auditing standards. The board shall submit the audit report to the Governor, the Auditors of Public Accounts and the joint standing committee of the General Assembly having cognizance of matters relating to finance, revenue and bonding. The books and accounts of the authority shall be subject to annual audits by the state Auditors of Public Accounts.

C.G.S.A. § 15-120p. Reserved for future use

Effective: July 1, 2011

C.G.S.A. § 15-120z. Reserved for future use

Effective: July 1, 2011

Supremacy Clause of the
United States Constitution,
Article VI, Clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, 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.

Connecticut Constitution, Article Tenth, § 1

§ 1. Delegation of legislative authority to political subdivisions. Terms of town, city and borough elective officers. Special legislation

Sec. 1. The general assembly shall by general law delegate such legislative authority as from time to time it deems appropriate to towns, cities and boroughs relative to the powers, organization, and form of government of such political subdivisions. The general assembly shall from time to time by general law determine the maximum terms of office of the various town, city and borough elective offices. After July 1, 1969, the general assembly shall enact no special legislation relative to the powers, organization, terms of elective offices or form of government of any single town, city or borough, except as to (a) borrowing power, (b) validating acts, and (c) formation, consolidation or dissolution of any town, city or borough, unless in the delegation of legislative authority by general law the

general assembly shall have failed to prescribe the powers necessary to effect the purpose of such special legislation.

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49 U.S.C.A. § 40103

§ 40103. Sovereignty and use of airspace

(a) Sovereignty and public right of transit.—(1) The United States Government has exclusive sovereignty of airspace of the United States.

(2) A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.

(b) Use of airspace.—(1) The Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The Administrator may modify or revoke an assignment when required in the public interest.

(2) The Administrator shall prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for—

(A) navigating, protecting, and identifying aircraft;

(B) protecting individuals and property on the ground;

(C) using the navigable airspace efficiently; and

(D) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

(3) To establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security, the Administrator, in consultation with the Secretary of Defense, shall—

(A) establish areas in the airspace the Administrator decides are necessary in the interest of national defense; and

(B) by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate, and control with available facilities in those areas.

(4) Notwithstanding the military exception in section 553(a)(1) of title 5, subchapter II of chapter 5 of title 5 applies to a regulation prescribed under this subsection.

(c) Foreign aircraft.—A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States as provided in section 41703 of this title.

(d) Aircraft of armed forces of foreign countries.—Aircraft of the armed forces of a foreign country may be navigated in the United States only when authorized by the Secretary of State.

(e) No exclusive rights at certain facilities.—A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

(1) it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and

(2) allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

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14 C.F.R. § 139.1

§ 139.1 Applicability.

(a) This part prescribes rules governing the certification and operation of airports in any State of the United States, the District of Columbia, or any

territory or possession of the United States serving any—

(1) Scheduled passenger-carrying operations of an air carrier operating aircraft configured for more than 9 passenger seats, as determined by the regulations under which the operation is conducted or the aircraft type certificate issued by a competent civil aviation authority; and

(2) Unscheduled passenger-carrying operations of an air carrier operating aircraft configured for at least 31 passenger seats, as determined by the regulations under which the operation is conducted or the aircraft type certificate issued by a competent civil aviation authority.

(b) This part applies to those portions of a joint-use or shared-use airport that are within the authority of a person serving passenger-carrying operations defined in paragraphs (a)(1) and (a)(2) of this section.

(c) This part does not apply to—

(1) Airports serving scheduled air carrier operations only by reason of being designated as an alternate airport;

(2) Airports operated by the United States;

(3) Airports located in the State of Alaska that only serve scheduled operations of small air carrier aircraft and do not serve scheduled or unscheduled operations of large air carrier aircraft;

(4) Airports located in the State of Alaska during periods of time when not serving operations of large air carrier aircraft; or

(5) Heliports.