

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

FRIENDS OF THE EAST HAMPTON AIRPORT, INC.,
ANALAR CORPORATION, ASSOCIATED AIRCRAFT
GROUP, INC., ELEVENTH STREET AVIATION LLC,
HELICOPTER ASSOCIATION INTERNATIONAL,
INC., HELIFLITE SHARES LLC, LIBERTY
HELICOPTERS INC., SOUND AIRCRAFT SERVICES,
INC. and NATIONAL BUSINESS AVIATION
ASSOCIATION INC.,

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

No. 15 Civ. 2246 (JS) (ARL)

MEMORANDUM IN SUPPORT OF MOTION TO FILE AMICUS CURIAE BRIEF

The Committee to Stop Airport Expansion, Pat Trunzo, Jr., and Pat Trunzo, III (together, the “Committee”) respectfully submit this memorandum of law in support of their motion to file amicus curiae brief.

ARGUMENT

District courts have broad discretion to permit or deny an appearance as amicus curiae. *See, e.g., Jamaica Hosp. Medical Ctr., Inc. v. United Health Group, Inc.*, 584 F. Supp.2d 489, 497 (E.D.N.Y.2008). “An *amicus* brief should normally be allowed . . . when the *amicus* has an interest in some other case that may be affected by the decision in the present case . . . or when the *amicus* has unique information or perspective that can help the court beyond the help that lawyers for the parties are able to provide.” *Id.* (quoting *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062–3 (7th Cir.1997)). As the association that brought the lawsuit that paved

the way for the noise-control legislation now at issue, the Committee easily meets these standards. *See* Transcript of 5/18/15 TRO Hearing at 7, 31-32; *Friends of East Hampton Airport v. FAA*, No. CV-15-441 (JS) (ARL) (ECF Docket # 25 (Committee’s Memorandum in Support of Motion to Intervene). Like the associations in *C & A Carbone, Inc. v. County of Rockland*, NY, 2014 WL 1202699, at *4 (S.D.N.Y. 2014), the Committee’s perspective “helps ensure that there has been a complete and plenary presentation of difficult issues so that the Court may reach a proper decision.” *Id.* at *4; *see Automobile Association of New York v. Port Authority*, 2011 WL 5865296 (S.D.N.Y. 2011).¹

The Committee submits the following crucial argument as yet ignored or only indirectly addressed by the parties:

National Helicopter Corp. of Am. v. City of New York, 137 F.3d 81 (2d Cir. 1998) specifically ruled that the proprietor exception applies to *both* the express preemption provisions of the Airline Deregulation Act, codified at 49 U.S.C. § 41713(b)(1), *and* the implied preemption of noise regulation by the Airport Noise and Capacity Act of 1990 (“ANCA”) and other aviation statutes. *See* 137 F.3d at 88-89. Plaintiffs’ claim that the Second Circuit in *National Helicopter* “did not address” ANCA is completely wrong. *See* Reply Memorandum in Support of TRO at 18-19; Transcript of 5/18/15 TRO Hearing at 24. Far from not mentioning ANCA, the Court of

¹ District Courts sometimes look to Federal Rule of Appellate Procedure 29 (“Rule 29”) for guidance in reviewing a request to file an amicus brief. *See, e.g., Automobile Association of New York*, 2011 WL 5865296, at *2 n.1. The Committee submits this memorandum both in support of its motion and as the proposed brief under Rule 29(b). As required by Rule 29(c)(5), the Committee states that no party’s counsel authored the brief in whole or in part; that no party or party’s counsel has contributed money that was intended to fund preparing or submitting the brief; and that no person other than the Committee, its members, or its counsel has contributed money that was intended to fund preparing or submitting the brief, except insofar as the Quiet Skies Coalition, Inc. has contributed money intended to fund the litigation expenses of the Committee in this action as well as in *Friends of East Hampton Airport v. FAA*, No. CV-15-441 (JS) (ARL).

Appeals deliberately referenced the “Airport Noise and Capacity Act” as one among several “acts implying preemption of noise regulation at airports.” 137 F.3d at 88. In the court below, then-Judge Sotomayor was even more explicit in applying the proprietor exception regardless of the plaintiff’s assertion that ANCA and other aviation statutes supported a “general claim of implied preemption.” *National Helicopter*, 952 F. Supp. 1011, 1023 (S.D.N.Y. 1997).

ANCA directed the Secretary of Transportation to establish a “program for reviewing airport noise and access restrictions” on certain aircraft. 49 U.S.C. § 47524(a). The sole consequence of not submitting noise restrictions for review under this program is ineligibility for airport-improvement grants. *Id.* § 47524(e).² Not surprisingly therefore, nothing in ANCA addresses the proprietor exception or even mentions 49 U.S.C. § 41713(b)(3), the statutory provision expressly recognizing the exception.³ That *National Helicopter* did not wade into the details of the ANCA noise-review program only goes to show the force and clarity of the proprietor exception. Plaintiffs’ contrary suggestion that Circuit Judges Cardamone, Newman, and Winter, and Justice Sotomayor, bungled a lawsuit involving *aviation noise* by ignoring a statute entitled “*Aviation Noise and Capacity Act*” is nothing less than an invitation for this Court to ignore controlling authority.

The Town has yet to rebut directly plaintiffs’ mischaracterization of *National*

² This is typical of many programs that use grant restrictions to encourage but not mandate federal objectives of one kind or another. *See generally* Congressional Budget Office, *Federal Grants to State and Local Governments* (Pub. No. 4472 March 5, 2013) (<https://www.cbo.gov/publication/43967>).

³ *See* 49 U.S.C. § 41713(b)(3) (“This subsection [§ 41713(b)] does not limit a State, political subdivision of a State, or political authority of at least 2 States that owns or operates an airport served by an air carrier holding a certificate issued by the Secretary of Transportation from carrying out its proprietary powers and rights.”).

Helicopter.⁴ Instead, counsel for the Town has stressed the Town's reliance on the determination in the Bishop Responses that the 2005 settlement between the Committee and the United States has freed the Town to legislate reasonable, nonarbitrary, and nondiscriminatory noise restrictions. *See* Transcript of 5/18/15 TRO Hearing at 6-10. While true that the Town understandably took comfort in views expressed by the FAA to the Member of Congress for the Town's congressional district, that circumstance is largely beside the point. What is important about the Bishop Responses is that their conclusion as to the Town's right to set noise restrictions under the proprietor exception is entirely correct under *National Helicopter*.

In sum, *National Helicopter* specifically held that the proprietor exception applies to implied preemption under ANCA and other aviation statutes, as well as to express preemption under the Airline Deregulation Act, 49 U.S.C. § 41713(b)(1). With the exception thus in full effect, the Town is free to impose noise restrictions on the East Hampton Airport, provided only that they are reasonable, nonarbitrary, and nondiscriminatory. The tailored curfews and limitation on noisy aircraft operations at issue in this case easily meet those standards as applied by the Second Circuit in upholding considerably more stringent measures in *National Helicopter*, as well as in *SeaAir NY, Inc. v. City of New York*, 250 F.3d 183, 187 (2d Cir. 2001).

For all these reasons, plaintiffs' claims have no substantial likelihood of success, and the Court should deny any form of preliminary relief.

⁴ As the Court has noted, prior to this lawsuit, the Town's counsel stated that *National Helicopter* does not address ANCA in a brief filed in *Trump v. Palm Beach County*, a Florida state-law nuisance action. *See* Transcript of 5/18/15 TRO Hearing at 6. That oversight is, of course, not in any way binding on the Town.

CONCLUSION

The Committee respectfully submits that its motion to file amicus curiae brief should be granted.

Dated: New York, New York
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