No. 16-1070

IN THE
Supreme Court of the United States

TOWN OF EAST HAMPTON,

Petitioner,

v.

FRIEND OF THE EAST HAMPTON AIRPORT, INC., et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE CITY OF NEW YORK AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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INTEREST OF AMICUS CURIAE AND SUMMARY OF ARGUMENT

Amicus curiae the City of New York concurs with the Town of East Hampton that Congress, when enacting the Airport Noise and Capacity Act of 1990 (ANCA), intended the right to receive federal funding and charge passenger facility fees—and the withholding of that right—to serve as the carrot and the stick encouraging local participation in the statute's "airport noise and access review program." 49 U.S.C. § 47524.[1] We do not revisit the point here; nor do we express a view as to whether the statute's approach constitutes a valid exercise of Congress's spending power.

We instead focus on explaining why this Court should correct the Second Circuit's mistaken view that ANCA authorizes private parties to challenge how state and local governments manage their airports or heliports, whether federally funded or not, when Congress did not see fit to endow private parties with enforceable rights at all. To be clear, Congress deliberately denied private parties the right to sue under ANCA, and the court below side-

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[1] No counsel for a party authored this brief in whole or in part, and no person other than the amicus curiae or its counsel made a monetary contribution to this brief's preparation or submission. All counsel of record received timely notice of the filing of the brief; their consent was not required because the brief is filed on behalf of a city, by its authorized legal representative.

stepped that legislative judgment by using the statute's modest and limited "review program"—restyled by the court as a preemption provision—as a springboard for the proliferation of private litigation under the statute. Because the private actions across the nation envisioned by the court of appeals, ostensibly sounding in equity and evidently unconstrained by concrete principles of repose and judicial review, cannot be squared with ANCA's text or purpose, this Court should grant certiorari and reverse.

By authorizing far-reaching private litigation that Congress never intended—where Congress left room for different state and local approaches to airport noise—the Second Circuit has distorted the incentives of stakeholders and injected new uncertainty and unpredictability into an area where everyone involved benefits from both. That alone undercuts the ability of state and local governments to manage their own proprietary infrastructure effectively and efficiently. Indeed, even as to those airports and heliports that do fall within ANCA's ambit, the course charted by the Second Circuit threatens to transform the local variation that Congress contemplated into outright balkanization, placing ANCA oversight in the hands of the federal courts, rather than the federal agency that the statute was meant to empower.

This change in course raises serious concerns for the City of New York. A harbor city framed by an iconic skyline and the nation's financial center, the

City's economic and social vibrancy depends on strategic, effective management of its ports. Though members of the public may be more familiar with the City's federally funded airports—LaGuardia and John F. Kennedy—its diverse transportation grid also includes two City-owned, Manhattan heliports. Operating for over four decades, the heliports function as a system: One heliport on East 34th Street, adjacent to the East River, focuses on corporate traffic. The second, built on a raised pier in the East River off downtown Manhattan, accommodates sightseeing tours. These heliports also serve a range of local uses, including emergency drills, medical evacuations, and storm recovery operations.

In Manhattan's dense environment, there is no room to zone heliports away from other land uses. The City thus employs a range of methods to address noise and other quality of life issues, including circumscribing trip volume and hours of operation by contractual agreement. The East 34th Street heliport is also governed by a special permit process—a process predating ANCA and confirmed by the Second Circuit decades ago to be a lawful exercise of the City's proprietary rights over its own heliports. *See Nat'l Helicopter Corp. of Am. v. City of New York*, 137 F.3d 81, 89-89 (2d Cir. 1998).[2] When noise or safety concerns have required

[2] *See* N.Y.C., N.Y., Zoning Resolution, Art. IV, ch. 4, § 74-66 (1964), *available at* on.nyc.gov/2nFbZ9c.

adjustment to flight routes, the City has worked closely with the Federal Aviation Administration (FAA), ensuring, for example, that sightseeing tours stick to water routes.[3]

The City thus has a strong interest in ensuring the stability of its programs and in correcting the Second Circuit's erroneous view that private parties may destabilize the long-held expectations of state and local governments by hijacking the FAA's carefully calibrated role under ANCA and unleashing a new torrent of private litigation under the statute. This Court's review is needed to clarify that equity jurisdiction, properly understood, does not permit a private party to a bring a lawsuit against a local government under ANCA, because that statute is not intended to grant private remedies but instead to allocate limited oversight authority to the federal agency best positioned to coordinate policy-based decision-making.

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[3] *See* N.Y.C. Econ. Dev. Corp., *New York City Economic Development Corporation Releases New York City Helicopter Sightseeing Plan* (Apr. 30, 2010), http://bit.ly/2nRmpU1.

ARGUMENT

This Court should review the lower court's creation of an equitable ANCA remedy in conflict with this Court's precedent and congressional intent.

The Second Circuit's fashioning of a private remedy to enforce ANCA is at odds with congressional intent, undermines the statute's purpose, and violates constitutional limits on federal-court jurisdiction. Responsibility for protecting local residents from aviation noise has historically been shouldered primarily by local, governmental airport proprietors. *See Di Perri v. Fed. Aviation Admin.*, 671 F.2d 54, 57-58 (1st Cir. 1982); *British Airways Bd. v. Port Auth. of N.Y.*, 558 F.2d 75, 82-84 (2d Cir. 1977). When Congress enacted a series of statutes empowering the FAA to address aviation noise, it preserved the authority of local, governmental proprietors to implement reasonable restrictions at their own facilities.[4] Rather than preempting this local, proprietary authority, ANCA reaffirmed it.

The ANCA provision on which the Second Circuit relied—titled "airport noise and access restriction review program"—does not afford private parties a right of action or legal remedy

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[4] *See* 49 U.S.C. § 41713(b)(3); *see also generally Nat'l Helicopter Corp. of Am. v. City of New York*, 952 F. Supp. 1011, 1022-27 (S.D.N.Y. 1997) (Sotomayor, J.), *aff'd in part, rev'd in part*, 137 F.3d 81 (2d Cir. 1998).

against state and local governments. Instead, it gives the FAA a means to review the regulatory choices related to those airports and heliports that come within the statute's reach—an important but limited mechanism that is consistent with the statute's purpose of encouraging coordination between governments about aviation policy. Misapplying federal equity jurisdiction, however, the Second Circuit erroneously transformed the modest and narrow review program Congress crafted for the FAA into a license for private parties to sue to enjoin local noise restrictions and dictate compliance with the procedural trappings of the statute's review program. *See Friends of the E. Hampton Airport, Inc. v. Town of E. Hampton*, 841 F.3d 133, 144-47 (2d Cir. 2016). This Court should grant certiorari to correct the Second Circuit's misapplication of equity-jurisdiction doctrine.

A. This Court's precedent holds that federal courts lack jurisdiction to entertain claims that Congress did not intend to put before them.

The primacy of congressional intent in determining how a law should be enforced is a necessary corollary of the Supremacy Clause, *see Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1383-84 (2015), and stems from fundamental separation-of-powers principles. *See Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 164-65 (2008) ("In the absence of congressional intent the Judiciary's recognition of an implied private right of action necessarily extends its

authority to embrace a dispute Congress has not assigned it to resolve."). Determination of who can seek a remedy has significant consequences for the reach of federal power. *Id*.

Equity jurisdiction is a judge-made remedy, fashioned to enjoin ongoing unconstitutional actions by government actors. *See Armstrong*, 135 S. Ct. at 1384-85. There is no "simple, fixed legal formula" for determining whether a statute permits equitable relief. *Id*. at 1388 (Breyer, J., concurring). Generally, when Congress creates procedures designed to permit agency expertise to be brought to bear on particular issues, those procedures are exclusive, precluding assertion of equity jurisdiction. *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 489 (2010) (citing *Whitney Nat'l Bank v. Bank of New Orleans & Trust Co.*, 379 U.S. 411, 420 (1965)). A limited exception applies where the subject matter of a lawsuit is wholly collateral to the purpose of the statute and outside of the agency's expertise—circumstances not presented here. *See id*.

The Court has thus made clear that federal equity jurisdiction is bounded. Any other approach would be hard to reconcile with the broader principles that generally guide this Court in determining when a federal statute creates a private cause of action. In making that judgment, legislative intent about how a particular law should be enforced is determinative. *See, e.g.*, *Gonzaga Univ. v. Doe*, 536 U.S. 273, 280-86 (2002);

Alexander v. Sandoval, 532 U.S. 275, 286-87 (2001). The relevant judicial task, this Court has found, "is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy." *Sandoval*, 532 U.S. at 286; *see also California v. Sierra Club*, 451 U.S. 287, 297 (1981) ("The federal judiciary will not engraft a remedy on a statute, no matter how salutary, that Congress did not intend to provide.").

The Court's recent decision in *Armstrong* confirms that equity-jurisdiction doctrine stands in close harmony with the principles regarding private rights of action. In *Armstrong*, this Court found that equity jurisdiction did not apply where a statute (i) specified the exclusive, administrative method of enforcement and (ii) imposed a judgment-laden substantive standard that was not judicially administrable. *See Armstrong*, 135 S. Ct. at 1385. The malleable nature of the statutory standard was important to this Court not because of practical concerns, as the Second Circuit appeared to assume, *see Friends of the E. Hampton Airport, Inc.*, 841 F.3d at 146-47, but instead because it was a clear sign of legislative intent—an indication that Congress wanted to rely on agency expertise, enhance uniformity, and avoid the risk of inconsistent interpretations and distorted incentives that might accompany enforcement by private parties. *See Armstrong*, 135 S. Ct. at 1385. *Armstrong* thus centers equity-jurisdiction analysis squarely around Congressional intent.

B. The decision below conflicts with this precedent by disregarding Congress's intent to confer limited ANCA oversight to the FAA, and none to private parties.

The Second Circuit's decision conflicts with *Armstrong* and other precedents of this Court by permitting private lawsuits to enforce ANCA, despite congressional intent to the contrary. Enacted against a broader aviation law backdrop reflecting a robust enforcement scheme centered on the FAA,[5] ANCA's text, purpose, and legislative history all confirm that it was designed to empower the FAA to superintend the "airport noise and access restriction review program," 49 U.S.C. § 47524, not to serve as a font of private litigation over such matters. Where Congress wished to depart from this structure in ANCA, it explicitly identified the matters that are subject to direct judicial review, none of which are implicated here.

ANCA's judicial review provision is thus carefully circumscribed: it permits private parties to seek direct review of action taken only by the FAA, not airport operators, and only in connection with the statute's phase-out of noisier, "Stage 2" aircraft in favor of more advanced, quieter "Stage 3" vessels. *See* 49 U.S.C. § 47532. The fact that

[5] Private parties can generally seek judicial review of a final FAA order and may file a complaint with the FAA about any matter within its jurisdiction. *See* 49 U.S.C. § 46110(a); 14 C.F.R. §§ 13.5, 16.247(a) (2017).

Congress authorized judicial review in that narrow respect, and did not authorize judicial review of private suits against airport operators related to the statute's review program speaks volumes.

In that arena, ANCA's enforcement mechanisms are more targeted. The statute authorizes the FAA to seek rescission of federal grants from those airports and heliports that choose to receive them, *see* 49 U.S.C. §§ 47524(e), 47526, or perhaps in some cases judicial remedies such as injunctive relief, *see id.* § 47533(3). Meanwhile, Congress considered—and rejected—granting aircraft operators or other private parties a right of action against airport proprietors under ANCA. *See* 136 Cong. Rec. S13616-05, S13621 (1990) (proposed Title III, Section 304 of the Airport Capacity Act).

Congress acted wisely in choosing to limit the remedies that would be available under ANCA. To the extent ANCA's review program imposes procedural requirements on certain airports and heliports, it does so to enable the FAA to oversee and coordinate policy-based decision-making when it elects to do so.[6] *See generally* 49 U.S.C. § 47521.

[6] The procedures mapped out by the statute's review program do not apply uniformly even as to covered airports and heliports. Restrictions negotiated as part of a contractual agreement with an individual aircraft operator are effectively exempt from FAA review. *See* 49 U.S.C. § 47524(c)(1); 14 C.F.R. § 161.01(d) (2017). Nor does the program apply to restrictions in place when ANCA was passed. *See* 49 U.S.C. § 47533(1).

That interest is best served by vesting the FAA with the discretion to determine in the first instance whether a locality's particular approach to noise restriction triggers ANCA and, if so, whether the statute's requirements have been satisfied. Where Congress has created a particular remedial scheme that it deems most appropriate to vindicate a particular federal right or interest, this Court has "refused to supplement the scheme with one created by the judiciary." *Seminole Tribe v. Florida*, 517 U.S. 44, 74 (1996).

The absence of any provision specifying judicial review in connection with ANCA's local noise restriction review program stands in marked contrast to other federal statutory schemes. Take, for example, ANCA's notice-and-comment procedures for local restrictions on Stage 2 aircraft. *See* 49 U.S.C. § 47524(b). Where Congress intends notice-and-comment provisions to be subject to judicial review, it makes that intent clear. Most notably, in the Administrative Procedure Act, Congress sets forth carefully calibrated provisions that define, and circumscribe, when judicial review is available and how it is to be undertaken. *See* 5 U.S.C. §§ 701-706; *see also* 29 U.S.C. § 655 (Occupational Health and Safety Act); 30 U.S.C. § 811 (Federal Mine and Safety Health Act).

But ANCA's notice-and-comment requirements have no analogous provisions to guide the conduct of litigation or judicial review, reflecting that the statute's review program is what it purports to be—

a limited oversight tool available to the FAA, not a font for private litigation. Private litigation over these procedural matters not only displaces the statutory scheme, but also raises a host of practical and legal difficulties. Unlike statutory enforcement procedures, the Second Circuit's application of equity-jurisdiction doctrine delineates no clear boundaries for judicial review—no statute of limitations, no guidelines for the scope of review, nor any specified role for the FAA, which would be compelled to intervene in litigation across the country, fragmenting, rather than crystallizing, its review.

Equity jurisdiction may make sense as a default rule where Congress has completely preempted a field or announced a federal substantive standard from which state and local governments may not depart. In those situations, it is clear that a private party could assert that federal law wholly "immunizes" her from local enforcement proceedings. *See Armstrong*, 135 S. Ct. at 1384 (citing *Ex Parte Young*, 209 U.S. 123, 155-56 (1908)). That was the case in this Court's equity-jurisdiction decisions cited by the Second Circuit.[7] But it makes far less sense to assume, as the Second Circuit did, that the procedures attendant

[7] *See Friends of the E. Hampton Airport*, 841 F.3d at 144 (citing *Verizon Md., Inc. v. PSC*, 535 U.S. 635 (2002) (conflict in substantive standard); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363 (2000) (same); *Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624 (1973) (field preemption)).

to the ANCA's review program could be used as a shield in a local enforcement proceeding. *See Friends of the E. Hampton Airport*, 841 F.3d at 144. The point is only underscored by ANCA's specific statutory design: to the extent that ANCA spells out steps for implementing local, proprietary measures for covered facilities, the statute makes it the right and role of the FAA, not private parties or the federal courts, to monitor them. Where the FAA has not stepped in, the statute affords no defense to a private party who has refused to comply with the locality's chosen approach.

The Second Circuit's assertion of equity jurisdiction strays far afield from the modest set of remedies and forms of judicial review crafted by ANCA. Where Congress intended to enhance certainty and rational decision-making, it would inject uncertainty and create a risk of inconsistent interpretations and distorted incentives. The ruling leaves unclear whether equity jurisdiction may be used by private parties to challenge a municipality's compliance with procedural requirements long after the fact, or even in instances where the FAA is aware of a local measure and declines to bring suit itself (as it appears to have done in response to a query from the Town of East Hampton). This Court should grant certiorari to clarify that ANCA does not confer private, free-wheeling remedies against state and local governments.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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