No. 16-1070

IN THE

Supreme Court of the United States

TOWN OF EAST HAMPTON,

Petitioner,

v.

FRIENDS OF THE EAST HAMPTON AIRPORT, *et al.*,

Respondents.

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

BRIEF OF *AMICUS CURIAE* FOR THE TOWN OF SOUTHOLD, NEW YORK IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

Whether consistent with Heckler v. Cheney, 470 U.S. 821 (1985), a decision of a federal agency not to enforce a regulatory procedure is immune from judicial review in a private action and is beyond the equitable injunctive power of a district court to enforce, where the federal agency has decided not to enforce the procedure and has embodied that decision in a "so ordered" settlement agreement.

Whether consistent with Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7 (2008), it is an abuse of discretion for a federal district court to enjoin a local law alleged to conflict with a federal regulatory procedure without finding that the balance of equities tips in favor of the party seeking the injunction, that the public interest is not disserved by its issuance and that the existence of irreparable harm warrants its issuance.

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INTEREST OF *AMICUS CURIAE*

This case directly addresses the line between judicial and executive power, the deference due to the discretionary act of a regulatory agency and the proper exercise of equitable discretion, all of which are of great importance to all federal courts and regulatory agencies, local governments and the public.

Upon the complaint of commercial helicopter operators, the Second Circuit held that Petitioner East Hampton could not enact aircraft noise mitigation legislation for its own airport, unless it followed a federal regulatory process found in the Airport Noise and Capacity Act of 1990 ("ANCA"). In the end, the ANCA process would have concluded with Federal Aviation Administration ("FAA") approval of the noise control measures, or not. Compliance with the process was the result of contractual assurances given by East Hampton when it accepted a $1.4 million FAA airport improvement grant in 2001. The court below held that ANCA preempted East Hampton's legislation under the Supremacy Clause. Yet, in a settlement agreement, the FAA agreed not to enforce the ANCA procedure at issue and, in addition, consented to the very act of local government alleged to be preempted. The legal import of the FAA's agreement and consent is at the heart of this case.

Amicus Town of Southold, New York poses the additional questions of whether the injunction against East Hampton's noise mitigation legislation should not have been granted and upheld, in light of the FAA's agreement and consent, as well as the Second Circuit's stated departure from this Court's standard for the granting of

equitable injunctive relief. Petitioner presents the question of whether a district court possessed the general power to enjoin in a most compelling fashion. Southold fully endorses the position of Petitioner East Hampton.

From Southold's perspective, and that of the FAA, the holistic solution to the noise problem rests primarily in noise control measures at East Hampton airport, like the curfew and access restrictions enjoined by the Second Circuit here. Hence, Southold's interest in East Hampton's petition for review by this Court.

a. Southold Has Sustained Collateral Damage

Southold, settled by English colonists in 1640, is about 14 air miles from the Town of East Hampton and its airport. Southold is a bucolic, rural community of vineyards, farms and beaches located about 94 miles east of Manhattan's East 34th Street heliport. With a residential population of about 20,000, Southold occupies most of Long Island's North Fork. East Hampton is on the South Fork across Peconic Bay, recognized by the Nature Conservancy as one of the "Last Great Places in the Western Hemisphere."

Noisy helicopter overflights between Manhattan's East Side and East Hampton have inflicted collateral damage on Southold by depriving many town residents, visitors and businesses of the natural quiet of the place. This Amicus estimates that 75% of all helicopter flights between Manhattan and East Hampton overfly Southold. Helicopters with their distinctive "thumpa-thumpa-thumpa" blade slap noise have blighted the skies over the North Fork overwhelmingly due to 21,330 helicopter

takeoffs and landings at the East Hampton airport during 2014, 2015 and 2016 (August - January) which generated 42,677 complaints of helicopter noise during that three year period, 2,336 of those complaints from Southold residents in 2014 alone.[1]

b. The FAA is the "Elephant-in-the-Room"

We are concerned that the decision below gives no effect to the exercise of the authority of the FAA "to relieve and protect the public health and welfare from aircraft noise." Since at least 2003, the FAA has been fully engaged with the problem of helicopter noise on Long Island's East End and has tried to do something about it. The FAA's regulatory oversight paralleled East Hampton's struggle to find a way to deal with the problem. First, in 2005, the FAA entered into a settlement agreement in which the FAA agreed not to enforce the ANCA procedures enforced here by the district court. The FAA had the freedom to decide not to enforce, as a matter of administrative discretion and settlement authority. Its decision is immune from judicial review. Heckler v. Cheney, 470 U.S. 821, 832 (1985) (agency decision not to enforce is presumed immune from judicial review since such a decision has traditionally been "committed to agency discretion.") Then, in 2008 and thereafter, the FAA designated helicopter flight routes with special flight rules through the agency's rulemaking process. In 2013, the FAA prevailed in the Court of Appeals for the District of Columbia Circuit against a challenge to its authority to designate flight routes.

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1. Petition for Rulemaking, Docket No. FAA–2010–0302 dated November 15, 2016, p. 10 *available at* http://www.southoldtownny.gov/DocumentCenter/View/5186.

Amicus Southold requests this Court to address the legal effect of a) the FAA's decision not to enforce, and b) its explicit consent for East Hampton to proceed without going through the ANCA process contested in this case. Southold believes it be an abuse of discretion for a federal court to override the FAA's discretionary executive decision not to enforce the ANCA process and to give no effect to the FAA's consent for East Hampton to proceed with reasonable noise mitigation measures.

The FAA's judgment is essential to the effective exercise of its national regulatory authority. In 2016 alone, for example, the FAA made 563 grants totaling over $2.0 billion to airports throughout the nation, including Cold Bay, Alaska ($71,000) and Tucumcari, New Mexico ($77,729).[2] The FAA and local government need to know the parameters of the FAA's discretion, for example, whether the FAA needs to treat Cold Bay and Tucumcari the same as Los Angeles International Airport when it comes to noise control measures. The decision below indicates that the FAA has no discretion at all.

Were this decision to stand, it would produce uncertainty and gridlock in the relationship between local government and the FAA. Local government needs to be able to rely on the decisions of the federal government, especially where a decision results in a settlement agreement.

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2. Airport Improvement Program (AIP) Grant Histories *available at* https://www.faa.gov/airports/aip/grant_histories/media/FY2016-AIP-grants-by-state.pdf.

c. The Second Circuit Does Not Adhere to the Winter Standard

We are further concerned that, in upholding the preliminary injunction, the Second Circuit failed to consider at all, let alone de novo: 1) whether respondents established that the balance of equities tipped in their favor and not East Hampton's, 2) the public interest, and 3) the existence of irreparable harm and to whom. In this respect, the Second Circuit decision conflicts with Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008) which requires "balancing the equities," considering the public interest and finding irreparable harm before federal courts may issue or uphold a preliminary injunction. The Second Circuit did not do so, but began and ended its analysis with a contested finding of a regulatory procedural violation which was the basis of its finding of a likelihood of success on the merits.[3]

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3. The law of the Second Circuit explicitly does not recognize Winter as fully controlling precedent. Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd., 598 F.3d 30, 35, 38 (2d Cir.2010)("For the last five decades, this circuit has required a party seeking a preliminary injunction to show '...(a) irreparable harm and... (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation'....Thus, we hold that our venerable standard for assessing a movant's probability of success on the merits remains valid and that the district court did not err in applying the 'serious questions' standard....")

We believe the law of the Second Circuit permitting a "serious questions" alternative to be in direct conflict with Winter. If the Second Circuit requires more clarity on Winter, granting the petition provides a clear opportunity to do so.

The Second Circuit decision also conflicts with the Court of Appeals of the District of Columbia Circuit which adheres to the Winter requirement that the movant must establish "that the balance of equities tips in his favor" and the other three factors which might justify a court's exercise of equity discretion. Gordon v. Holder, 632 F.3d 722, 723 (D.C. Cir. 2011).

d. The Injunction Leaves East Hampton Without Adequate Recourse

Lastly, we are concerned that the Second Circuit's truncated analysis leads to a dead-end. East Hampton now has nowhere to go, certainly not to the FAA which agreed not to enforce the ANCA procedure. This outcome is a remarkable feat of litigation strategy. But it is not a result that equity should countenance. "The law does not require the doing of a nugatory act." Tacey v. Irwin. 85 U.S. 549, 18 Wall. 549 (1873), nor does equity. "Equity does not require an idle gesture." See, e.g., Georgia v. Pennsylvania Railroad Co., 324 U.S. 439, 461 (1945).

Accordingly, Amicus Southold urges this Court to grant the petition for certiorari in order to remedy conflict with decisions of this Court and restore uniformity among the circuits on this question of utmost importance to the proper exercise of the equity jurisdiction of federal courts, and because the petition raises questions of national importance to the FAA, to small towns with airports throughout the country and to the public.

This is not a case of an errant panel. Prior to filing, the deciding panel circulated its opinion to all active members of the court on the issue of whether National Helicopter was controlling precedent. Petition 38a, n. 19. Citations to "Petition" refer to the Petition for a Writ of Certiorari.

ARGUMENT

I. THE SECOND CIRCUIT ERRED BY ENFORCING A REGULATORY PROCEDURE WHICH THE FAA DECIDED NOT TO ENFORCE AND HAS EMBODIED THAT DECISION IN A "SO ORDERED" SETTLEMENT AGREEMENT

Under the circumstances of this case, the exercise of the FAA's discretion in deciding not to enforce ANCA's procedural requirement was immune from judicial review. In Heckler v. Cheney, 470 U.S. 821, 832 (1985), this Court rejected the challenge of death row inmates to the Food and Drug Administration's refusal to initiate an enforcement action to block the use of certain drugs in lethal injection. This Court held that "an agency's decision not to prosecute or enforce...is a decision generally committed to an agency's absolute discretion." Id. at 831. Agency enforcement decisions, involve a "complicated balancing of a number of factors which are peculiarly within [the agency's] expertise" including,

> whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall policies, and, indeed, whether the agency has enough resources to undertake the action at all. An agency generally cannot act against each technical violation of the statute it is charged with enforcing.

Id. Agencies are "far better equipped" to evaluate "the many variables involved in the proper ordering of its

priorities" than are the courts. Id. at 831-832. An "agency's decision not to take enforcement action should be presumed immune from judicial review."Id. at 831-832. Where as here, an agency's decision not to enforce expressed in a settlement agreement is entirely discretionary, "there is no law to apply," and the decision not to enforce is immune from judicial review. Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 410 (1971).

East Hampton's enactment of curfew and access restrictions was the product of the democratic process. Represented by the United States Attorney, the FAA balanced a number of local and federal interests in reaching its decision not to enforce and consent to proceed, which was formalized in a carefully crafted settlement agreement, and thereafter explained in response to a congressional inquiry. This is the sort of federal-local cooperation that equity would welcome, not frustrate. All of this was detailed in the record below and is recounted in the decision of the Second Circuit. (Petition 4).

We include here the text of the assurances, the 2005 settlement agreement and the FAA's 2012 responses to Congressman Bishop which conclude with this: "[East Hampton] is not required to comply with the requirements under the Airport Noise and Capacity Act of 1990 (ANCA)...§ 49 U.S.C 47524(e).... The FAA consents to reasonable, nonarbitrary, and nondiscriminatory restrictions that establish acceptable noise levels for the airport and its immediate environs." The relevant grant assurances, settlement provisions and Bishop responses read sequentially as follows:

> 22. **Economic Nondiscrimination.**
>
> a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

Grant Assurances Excerpt ¶ 22(a) (Petition 51a).

> 7. Defendant FAA agrees, with respect to East Hampton Airport grants issued prior to the effective date of this Agreement, that the following grant assurances will not be enforced beyond December 31, 2014:
>
> • It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport (grant assurance 22.a.).

Settlement Agreement dated May 5, 2005, ¶ 7 (Petition 51a).

> Question 1: In the absence of FAA Grant Assurances, are municipal restrictions to mitigate or reduce noise impacts on the surrounding community permissible?

* * *

> The FAA' s agreement not to enforce means that as of December 31, 2014, unless and until the FAA awards a new grant to the town, the FAA will not initiate or commence an administrative grant enforcement proceeding in response to a complaint from aircraft operators under title 14 CPR, part 16, or seek specific performance of Grant Assurances 22a, 22h, and 29.
>
> The FAA's agreement not to enforce also means that unless the town wishes to remain eligible to receive future grants of Federal funding, it is not required to comply with the requirements under the Airport Noise and Capacity Act of 1990 (ANCA), as implemented by title 14 CPR, part 161, in proposing new airport noise and access restrictions. See title 49 United States Code (U.S.C.), § 47524(e).
>
> * * *
>
> The FAA consents to reasonable, nonarbitrary, and nondiscriminatory restrictions that establish acceptable noise levels for the airport and its immediate environs.

FAA Responses to Questions from Rep. Tim Bishop dated February 2012, pp. 1, 5 (Petition 11a).

The settlement agreement[4] is a contract subject to enforcement by specific performance. Kokkonen v. Guardian Life Ins., 511 U.S. 375 (1994). East Hampton and those in its "immediate environs" are third party beneficiaries to the settlement agreement by its very terms and the FAA's stated intention to that effect.

> The FAA's agreement not to enforce also means that unless the town wishes to remain eligible to receive future grants of Federal funding, it is not required to comply with the requirements under the Airport Noise and Capacity Act of 1990 (ANCA)....

Bishop Responses p. 5 (Petition 4, 28, 11a); see, e.g., Astra USA, Inc. v. Santa Clara County, Cal., 563 US 110, 117-18 (2011) ("A nonparty becomes legally entitled to a benefit promised in a contract . . . only if the contracting parties so intend." Five years after the settlement agreement, the FAA stood fast to its decision not to enforce, and on February 29, 2012, so advised East Hampton's town attorney through the Bishop Responses. (Petition 11a).

The public interest was clearly at stake in this democratic process, i.e., the FAA's exercise of its statutory authority and discretion, the rights of individuals to the quiet enjoyment of their property, the rights of beneficiaries of the settlement agreement to have federal courts honor that agreement, and the interest

4. We note that East Hampton was not a party to the settled litigation. The settling plaintiffs were the Committee to Stop Airport Expansion and three East Hampton residents. The United States Department of Transportation and the FAA were settling defendants.

of commercial helicopter operators in flying in airspace subject to federal regulation.

The FAA's decision not to enforce and its consent to proceed were the product of its expertise, years long study of the Long Island noise problem and the statutory obligation to protect "individuals and property on the ground [and] the public health and welfare from aircraft noise." 49 U.S.C. §§ 40103(b)(2)(B) and 44715(a). The district court second guessed the FAA's judgment-driven decision with none of the FAA's knowledge and expertise with the problem and its solution.

In 2010, 2012, 2014 and 2016, the FAA conducted extensive rulemaking regarding flight routes.[5] In 2013, Respondent Helicopter Association International, Inc. unsuccessfully challenged the FAA's authority to order flight routes and rules. The District of Columbia Circuit held that the FAA may properly exercise its noise abatement authority based on complaints from elected officials and Long Island residents. Helicopter Ass'n Int'l, Inc. v. F.A.A., 722 F.3d 430 (D.C. Cir. 2013)("Because we conclude that the FAA acted within its authority under § 40103(b)(2) in promulgating the Final Rule, we need not address whether § 44715 could serve as an independent source of such authority.) In a November 15, 2016 petition for rulemaking which is pending, Southold requested the

5. Notice of Proposed Rulemaking, 75 Fed. Reg. 29,471 (May 26, 2010); The New York North Shore Helicopter Route, 77 Fed. Reg.39,911 (July 6, 2012); The Extension of the Expiration Date of the New York North Shore Helicopter Route, 79 Fed. Reg.35,488 (June 23, 2014); Extension of the Requirement for Helicopters to Use the New York North Shore Helicopter Route, Final Rule, 81 Fed. Reg. 48,323 (July 25, 2016).

FAA to reconsider and repeal a recent decision to extend the flight routes and rules until 2020, because they have not reduced helicopter noise which has only gotten worse. Petition for Rulemaking, Docket No. FAA–2010–0302, supra,

East Hampton's legislative process was fair and open, conducted in consultation with FAA officials. Though the East Hampton process did not exactly mirror the ANCA process, (Petition 5-6, 8a), it was its functional equivalent. Fewer flights on designated routes and none at night means less noise; simple as that. The process was also entirely appropriate for East Hampton's small seasonal airport which has no operational control tower from September 12th to May 22nd.[6]

The FAA used its considered judgment and expertise to enter a settlement agreement that it believed was in the best interests of the government, all things taken into account. That agreement addressed many issues, not just the ANCA process, and settled two civil actions and reopened an administrative proceeding, Settlement Agreement, ¶¶ 2-3, supra, which was "part of the consideration for" the settlement agreement. Kokkonen v. Guardian Life Ins., 511 U.S. at 831.

In effect, the preliminary injunction constituted an impermissible judicial review of the FAA's decision not to enforce regulatory procedures regarding submission and approval of East Hampton's noise mitigation measures.

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6. FAA Chart Supplements effective March 2, 2017, p. 189 *available at* http://aeronav.faa.gov/afd/02mar2017/ne_189_02MAR2017.pdf.

The injunction also negated the FAA's consent to proceed. The Second Circuit decision, therefore, was in conflict with Heckler and Volpe, thus rendering the preliminary injunction an abuse of discretion. This Court should grant East Hampton's petition for these reasons.

II. THE DECISION BELOW CONFLICTS WITH WINTER BY UPHOLDING A PRELIMINARY INJUNCTION SOLELY BASED ON A FINDING OF A LIKELIHOOD OF SUCCESS ON THE MERITS

In an appeal from a preliminary injunction, this Court reviews the district court's legal rulings *de novo*, and its ultimate conclusion for abuse of discretion. McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky., 545 U.S. 844, 867 (2005). The Court of Appeals failed to review *de novo* the balance of the equities, the public interest and the existence of irreparable harm, all prerequisites to the granting of a preliminary injunction.

> We begin with the basics. A preliminary injunction is an "extraordinary and drastic remedy"... it is never awarded as of right....

Munaf v. Geren, 553 U.S. 674, 689–90 (2008) citing Yakus v. United States, 321 U. S. 414, 440 (1944) .

> A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.

Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008). "It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Maurek v. Armstrong, 520 U.S. 968, 972 (1997).

The Court of Appeals went wrong when it failed to require that the helicopter operators establish that the balance of the equities tipped in their favor, a factor absent from the Second Circuit's standard of review used below:

> When, as here, a preliminary injunction "will affect government action taken in the public interest pursuant to a statute or regulatory scheme," the moving party must demonstrate (1) irreparable harm absent injunctive relief, (2) a likelihood of success on the merits, and (3) public interest weighing in favor of granting the injunction.

(Petition 12a).[7]

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7. In this case, the Second Circuit and the district court cite Red Earth LLC v. United States, 657 F.3d 138, 143 (2d Cir. 2011) as authority for this standard. (Petition at 18a, 56a). Red Earth adheres to the "serious questions" standard, in conflict with Winter:

> To obtain a preliminary injunction, the moving party must demonstrate "...(2) either a likelihood of success on the merits, or a serious question going to the merits to make them a fair ground for trial...."

Id. The Second Circuit's fluid standard for granting a preliminary injunction is further reason to grant the petition.

The district court also did not consider the public interest evident in the FAA's agreement and consent. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982); see also, Railroad Comm'n of Tex. v. Pullman Co., 312 U. S. 496, 500 (1941). In addition, the district court adopted its own irreparable harm balancing standard as follows: "The balance of hardships inquiry asks which of the two parties would suffer most grievously if the preliminary injunction motion were wrongly decided." (Petition 78a). The district court found harm to the business of the helicopter operators, (Id. at 65a - 68a), but never even considered (as the FAA found) "...that helicopter overflights during the summer months are unbearable and negatively impact their quality of life." Helicopter Ass'n Int'l, Inc. v. F.A.A., 722 F.3d at 430. This underscores the importance of the Second Circuit's failure to conduct a complete *de novo* review of the district court's legal rulings.

The heart of Respondents' complaint is that East Hampton has enacted curfew and access restrictions without following ANCA's regulatory process.[8] This alleged procedural violation justifies the preliminary injunction, so they argue and so the Second Circuit

8. Both the Second Circuit and the district court repeatedly and correctly characterize the 49 U.S.C. § 47524 FAA approval process as procedural. (Petition 30a) ("In sum, ANCA's text and context unambiguously indicate Congress's intent for the § 47524 procedural mandates to apply to all public airport proprietors regardless of their funding eligibility."); (Petition 59a) ("There is no dispute that the Town did not comply with ANCA's procedural requirements before adopting the Town Laws.")

agreed. (Petition 41a). ("Because plaintiffs are thus likely to succeed on their preemption claim, they are entitled to a preliminary injunction barring enforcement of all three challenged Local Laws.")[9] Yet, this Court has repeatedly held that an alleged violation of law alone does not *ipso facto* mandate the issuance of a preliminary injunction.

> An injunction is a matter of equitable discretion; it does not follow from success on the merits as a matter of course. (Citation omitted) ("a federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law").

Winter v. Natural Resources Defense Council, Inc., 555 U.S. at 32.

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9. The Second Circuit did not conduct a *de novo* review of the irreparable harm, balance of the equities and the public interest because "the Town does not contest the other factors required for a preliminary injunction." (Petition 41a, n. 20). That is a statement of the problem not a legal justification. It also impermissibly shifts the burden of persuasion from the helicopter operators to East Hampton.

In light of this Court's binding precedent and the "drastic" and nature of a preliminary injunction, federal courts "must" review the four factors relevant to the granting of a preliminary injunction which are condition precedents to the exercise of equity jurisdiction, whether or not they are challenged by a party to the action. "[C]ourts, including [the Supreme] Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." Ruhrgas AG v. Marathon Oil Co., 526 U. S. 574, 583 (1999). This is especially true where the decision of an agency not to enforce is immune from judicial review. See Point I *supra*.

Federal courts must engage in equitable balancing before deciding whether or not to grant or uphold an injunction in such a case. Id. at 20; Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 542 (1987).

> In each case, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief."

Amoco Production Co., 480 U. S. at 542.

The competing interests here are East Hampton's ability to control noise from helicopter traffic and the ability of commercial helicopter operators to fly when and where they please. Each of these interests depends on national aviation policy as administered by the FAA. East Hampton's right of local control is found: 1) in local legislation adopted in reliance the FAA's decision and agreement not to enforce the FAA submission and approval process, and 2) in the FAA's exercise of its obligation to protect the public from aircraft noise. The operators' freedom-to-fly interest rests on judicial enforcement of the FAA approval process which the FAA will not enforce.

The balance of the equities tips one way, i.e., in favor of East Hampton which relied on the FAA's decision not to enforce, conducted its own expansive public notice and hearing process and commissioned a surely expensive expert analysis of the problem to find the fairest and most effective way to address it by a local ordinance. East Hampton's local ordinance followed "its decade-long attempt to develop voluntary noise-abatement procedures for aircraft operators...[and] communications with various

industry constituencies, FAA officials, and members of New York's congressional delegation." (Petition 12a). On the other hand, the helicopter operators seek to misdirect the equitable powers of the federal courts in order to shunt East Hampton to the FAA knowing that the FAA has committed not to enforce its approval process. There is no equity in that.

CONCLUSION

The petition for a writ of certiorari to the Second Circuit should be granted.

DATED: April 5, 2017

Respectfully submitted,

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