

No Fly Zone for Municipal Standing Against FAA

Municipalities cannot rely on aircraft noise or expenditure of municipal resources to establish standing when they challenge a final order by the Federal Aviation Administration (FAA), according to a recent decision by the First Circuit Court of Appeals. *See Town of Milton v. Federal Aviation Administration*, 87 F.4th 91 (1st Cir. 2023). In *Town of Milton*, the municipality sought to challenge the FAA's decision to shift from ground-based navigation to satellite-based navigation at Logan Airport, which Milton contended would result in heavier air traffic over the town. *Id.* at 94. After FAA entered a final order authorizing this shift, Milton sought judicial review, alleging that the FAA's environmental analysis failed to comply with the National Environmental Policy Act (NEPA) and that the noise from this new flight procedure disturbed town residents. *Id.*

The First Circuit did not reach the merits of this challenge. Instead, it dismissed the town's petition for lack of Article III standing. Milton alleged two kinds of harms, but neither was enough to establish standing.^[1] *Id.* at 94-95.

Noise and Environmental Harm. The town first argued that it was harmed because of the "impact of noise on its residents." *Id.* at 95. The First Circuit joined other circuits to find that municipalities cannot assert an injury on behalf of their residents. *Id.* at 96. This claim would be akin to associational standing, which was unavailable to Milton, because municipalities do not have voluntary "members" and contesting noise from aircraft does not fall within the "purpose" of a municipality.

The First Circuit then analyzed whether Milton could advance its claim under a theory of *parens patriae*. But that theory is unavailable to municipalities that sue the federal government. *Id.* at 96-97. States cannot sue the federal government on behalf of its citizens under *parens patriae*, so municipalities (which derive their existence from the state) also cannot. *Id.* at 96.

Milton next argued that it suffered environmental impacts under NEPA because of the FAA's final order. *Id.* at 97. But Milton could not show the FAA's final order would result in any additional regulatory or economic requirements with which the town must comply. Without these direct harms, Milton could not rely on impacts under NEPA.

Finally, Milton tried to analogize its environmental and noise harms to traffic issues caused by FAA actions, which had previously been recognized as sufficient to confer standing. *Id.* at 97-98. But the First Circuit pointed out that those prior cases involved, as co-plaintiffs, individual landowners that would be directly affected by increased noise, air pollution, or traffic. In *Town of Milton*, the municipality was the sole plaintiff and so those cases failed to save the Town's claim.

Municipal Expenditure. Milton next sought to establish standing by pointing to the town's expenditure of "considerable time and money" in addressing residents' complaints and coordinating a response to the FAA's final order, including the litigation. *Id.* at 98-99. The diversion of these resources, the town claimed, established a harm sufficient for standing.

The First Circuit rejected this too. *Id.* at 99. The court reasoned that "municipal government exists to support its citizens," so "any action that it takes inherently serves that purpose and cannot be an injury to it." *Id.* The allocation of town resources to address residents' concerns is simply a policy decision, not a harm.

Takeaways

The First Circuit's decision has lessons for municipalities that seek to challenge action by the FAA:

- The municipality itself must suffer some direct harm to establish standing, because associational harm and *parens patriae* are not available to municipalities.
- Advocacy on behalf of residents is a proper function of municipal government, not injury in fact sufficient to establish Article III standing.
- A municipality could sue alongside other individuals or entities that have shown standing, which would allow the municipality to advance its claim as well.

[1] The First Circuit noted one standing argument that Milton made only in its reply brief and so had been waived: that it suffered fiscal and reputational harm when town residents moved away because of the noise impacts. *Id.* at 99-100.

