Shift in Federal Court Jurisdiction Complicates Airport Development Litigation

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The federal Ninth Circuit Court of Appeals recently issued a decision that could have a significant impact on legal challenges to airport development projects. In the *City of Alameda, et al. v. Federal Aviation Administration*, 2002 U.S. App. LEXIS 6575 (Apr. 4, 2002), the Court opined that it lacked jurisdiction over a petition challenging the Federal Aviation Administration's Finding of No Significant Impact and Record of Decision approving a proposed expansion of Oakland International Airport. Both the petitioner and the respondent FAA contended that the Ninth Circuit had jurisdiction to hear the petition pursuant to 49 U.S.C. § 46110(a).

For decades, circuit courts around the country have routinely held that federal courts of appeals have exclusive jurisdiction to hear challenges on any FAA order related to an airport development project. *See, e.g., Suburban O'Hare Commission v. Dole*, 787 F.2d 186, 192 (7th Cir. 1986); *Allison v. Dep't. of Transportation*, 908 F.2d 1024 (D.C. Cir. 1990); *City of Grapevine v. Dep't. of Transportation*, 17 F.3d 1502, 1503 (D.C. Cir. 1994). The Court distinguished these cases based on the argument that jurisdiction was based on a federal aviation statute before it was re-codified in 1994 1. The precursor to 49 U.S.C. § 46110(a) was 49 U.S.C. § 1486. Section 1486 provided exclusive appellate court jurisdiction over any Department of Transportation order issued "under this chapter," which included the entire federal aviation program.

While it is open to debate whether Congress intended to change the jurisdiction of the federal courts of appeal through the re-codification of the aviation statutes, the Court in *Alameda v. FAA*, on its own initiative, rejected jurisdiction. The Court reasoned that the re-codified jurisdiction provision is divided into four parts: Part A – Air Commerce and Safety; Part B – Airport Development and Noise; Part C – Financing; Part D – Miscellaneous. 49 U.S.C. §§ 49101, *et seq*. Petitioners in *Alameda v. FAA* relied upon the jurisdictional provision of § 46110(a) located in Part A – Air Commerce and Safety that provides for direct review by the federal court of appeals. Under that provision, "persons disclosing a substantial interest in an order issued . . . under this part may apply for review of the order by filing a petition for review in the . . . court of appeals." 49 U.S.C. § 46110(a). The petitioners argued that since the FAA's decision in the case involved both Part A – Air Commerce and Safety, and Part B – Airport Development and Noise, jurisdiction in the Ninth Circuit was appropriate. The Court rejected this reasoning on the basis that the FAA actions actually challenged by petitioners concerned ***only*** matters covered by Part B, *i.e.*, the proposed airport development project at Oakland Airport and related noise impacts.

The Court cited its previous decision in *City of Los Angeles v. FAA*, 239 F. 3d 1093, 1094 (9th Cir. 2000). In that case, the Court determined that it did not have jurisdiction over a challenge to the FAA's new policy restricting the use of federal Airport Improvement Program (AIP) grant monies. In that case, too, the Court determined that the actual actions challenged — revenue use restrictions — fell solely under Part B of the Act. Based on this reasoning, the Court in *Alameda* opined that "Congress chose to cabin the availability of direct appeal to the

courts of appeals" by lodging the jurisdictional appeal provision within Part A alone. Thus, the Court determined that it had no authority to assert jurisdiction over challenges that fell under other parts of the Act.

The Ninth Circuit's ruling is likely to make legal challenges to airport development actions more complex. Petitioners now will be uncertain whether to file actions in the court of appeals or in U.S. District Court, and thus they are likely to file in both places, creating confusion as to which court has proper jurisdiction. Particularly within the Ninth Circuit, which covers California, Washington, Oregon, Montana, Idaho, Nevada, Arizona, Alaska and Hawaii, petitioners will press to have their cases heard in U.S. District Court. Historically, the FAA has fought vigorously to keep challenges out of District Court. In part, the FAA has taken this position because it feels that District Court judges are less predictable in their rulings on highly technical environmental challenges. In addition, a trial court may be more comfortable with entertaining discovery motions, which are rarely, if ever, granted in the courts of appeals. Trial courts may also be more comfortable granting stays of development projects — something that almost never occurs when these actions are filed in the appellate court.

The Ninth Circuit's ruling will likely increase the time, expense and resources that the FAA and airports will need to devote to battle litigants seeking to stop airport development projects. Accordingly, it is in airport proprietors' interest to begin to explore legal strategies to overturn or limit the applicability of the Ninth Circuit's ruling in the *City of Alameda v. FAA*.

1*But see City of Bridgeton v. Slater*, 212 F.3d 448 (8th Cir. 2000) (accepting jurisdiction over a challenge to the FAA's approval of the expansion of St. Louis International Airport based on 49 U.S.C. § 46110(a)). , 212 F.3d 448 (8th Cir. 2000) (accepting jurisdiction over a challenge to the FAA's approval of the expansion of St. Louis International Airport based on 49 U.S.C. § 46110(a)).