LAWYER-PILOTS BAR ASSOCIATION JOURNAL®

"dedicated to aviation safety, the just administration of the law and continuing legal education."

VOL. XLIV NO. 2 CLEVELAND, OHIO SUMMER 2022

Dawn
OVER RICHMOND

Photo by the Editor

SUMMER MEETING

Grand Traverse Resort and Spa — Traverse City, MI — July 6-10, 2022

PRESERVING PUBLIC AIRPORTS BY STOPPING UNCONSTITUTIONAL AIRPORT MANAGEMENT

Professor Ronnie R. Gipson Jr.

Ronnie R. Gipson Jr. is an Assistant Professor of Law at the University of Memphis. Professor Gipson conducts research and scholarship in the crossover areas of International Trade and Aviation law issues. Professor Gipson's scholarship on aviation appears in the Congressional record of the U.S. House of Representatives. In addition to his academic contributions, Professor Gipson is a private pilot and he holds a certification as an International Commercial Arbitrator from the Chartered Institute of Arbitrators in London.

Introduction

In late 2021, Santa Clara County in California announced that it was ending the sale of leaded gasoline at the Reid-Hillview and the San Martin airports,[1] two general aviation reliever airports. The decision was purportedly based on an environmental study commissioned by the County that showed elevated levels of lead in children in the neighborhoods around the airport property. The decision by Santa Clara County was meant to promote the public policy of removing dangerous hydrocarbons released into the air by the operation of aircraft engines that use leaded fuel.[2]

The press releases and news headlines surrounding the publication of Santa Clara County's environmental study caused public distress and alarm. However, when the data and conclusions from the study are taken in context, the levels of lead in the area surrounding the airports is at the lower range of the spectrum of lead levels in comparison to the entire state of California. Independent examination of the study tells this different story:

> The report, released last week, found that out of 17,000 blood samples from children ages 0-18 within 1.5 miles of the airport, only 1.7 percent have elevated lead levels which call for further testing and observation, according to the Centers for Disease Control and Prevention's threshold. The statewide average of children who meet the same criteria is between 1.5 percent and 2.6 percent depending on age.[3]

The amount of lead detected in children around the airport is at the lower end for all the areas within California included in Santa Clara County's own study. In essence, the children around these airports have not been exposed to levels of lead at a rate that is disproportionately higher than other areas in California.

Drawing the conclusion that lead emanating from the sale of leaded gasoline at these airports is a dubious connection based on the data from Santa Clara County's commissioned study. The excitement caused by the study's publication is nothing more than a public relations stunt meant to embolden Santa Clara County in its long going effort to close the Reid-Hillview airport.

These two public use airports serve the general aviation community with capacity for flight training, charter flights, and limited freight operations, the latter occurring mainly at Reid-Hillview. The category of aircraft that are served by these airports is predominantly single- and multi-engine piston aircraft that operate using leaded aviation fuel. In fact, a significant portion of the aircraft in the general aviation category of aircraft nationally operate on leaded fuel. Therefore, the decision to eliminate the supply and sale of leaded fuel at these airports significantly disrupts operations for aircraft based at these airports and aircraft inflight that would need to land at either of these airports for fuel.

Both the Reid-Hillview and San Martin airports are integral components to the National Airspace System.[4] Despite the importance of these airports in the National Airspace System, these airports are under attack from Santa Clara County councilmembers who do not appreciate the significance to the economy that these airports provide. Prior to the latest decision to cease the sale of leaded aviation fuel, Santa Clara County announced plans to close the Reid-Hillview Airport as part of an effort to sell the land to real-estate developers to boost the County's revenue and provide affordable housing.[5]

From a legal standpoint, however, the steps being taken to minimize operations at these airports through prohibitions on the sale of leaded gas for aircraft pose two problems. They are violative of the Commerce Clause of the United States Constitution, and are preempted by the Federal Aviation Act of 1958.[6]

I. Commerce Clause

The Commerce Clause of the U.S. Constitution provides in pertinent part, that Congress shall have the power "(t)o regulate commerce with foreign nations, and among the several States… " Here, the Commerce Clause analysis begins with the seminal case of *Gibbons v. Ogden*, wherein the Supreme Court held that in the context of ferry licenses, a state could not issue regulations that impeded or limited the progress of interstate trade because there already existed federal laws authorizing the ferry service trade.[7] In *Ogden*, the Supreme Court endorsed Congresional exercise of its Commerce Clause powers in setting regulations for interstate trade.

With the promulgation of *Wickard v. Filburn*[8] and two other companion cases in the 1940's, the Supreme Court held that Congress alone had the power to regulate any activity that cumulatively influenced interstate commerce. After *Wickard* and its progeny, the Tenth Amendment's reservation of rights to the States no longer served as a limit on congressional power in interstate commerce.[9]

With Congress's power to regulate commerce settled, it is fundamental that Congress may construct, maintain, operate, and regulate instrumentalities of such commerce. The definition of an instrumentality of commerce includes trade, commerce, the use of the mail, and methods of communication and travel between any foreign country and any State, or between any States.[10] "It is clear that in the light of modern developments an airport is an instrumentality of both foreign and interstate commerce."[11] Congress maintains the power to regulate an airport as an instrumentality of commerce through a federal agency or through a corporation.[12] Congress elected to regulate public airports with the passage of the Federal Aviation Act of 1958, through the Federal Aviation Agency, an independent agency

which in 1967 became a modal administration of the Department of Transportation.[13]

The Act gave the FAA Administrator the power to frame rules for the safe and efficient use of the nation's airspace.[14] The FAA constructed the National Airspace System (NAS) to regulate the broad range of the instrumentalities of commerce within the field of aviation. The NAS is a network of both controlled and uncontrolled airspace that includes air navigation facilities, equipment and services, aeronautical charts, airports and landing areas, rules, and regulations, as well as procedures and technical information and manpower.[15] Recognizing the importance of this act by Congress, courts have held that federal regulation occupies the field of air safety, to the exclusion of state and local regulation.[16]

Both the San Martin and the Reid-Hillview airports are recognized components within the National Airspace System as instrumentalities of commerce.[17] The FAA is the sole federal executive agency assigned responsibility for aviation and its corresponding components inclusive of airspace, airports, material, and manpower. On this basis, the attempt by Santa Clara County to use environmental regulations published by the Environmental Protection Agency (EPA) to regulate activity at public use airports is erroneous. Santa Clara County is attempting to pit one federal agency's powers (the FAA's) against another agency's powers (the EPA's). Congress has already resolved this conflict by assigning the responsibility for aviation regulations and operation of airports to the FAA.[18]

In 2014, the FAA initiated a process to study and propose a solution for the elimination of leaded gasoline in all aircraft.[19] The process contains four distinct phases that will ultimately lead to the elimination of the use of leaded fuel in aviation on a timeline designated so as not to hamper interstate commerce or debilitate the NAS. The process must run its course so that infrastructure exists to support the continuance of aviation operations that currently depend on leaded fuel.[20] An attempt to bypass the FAA's timeline and force the removal of leaded fuel at two airports in the entire network of national airports wreaks havoc on the entire NAS system and threatens to restrict both intrastate and interstate trade in violation of the Commerce Clause.

There are approximately 167,000 aircraft in the United States that rely on leaded fuel for safe operations.[21] The aircraft operating at public use airports, such as San Martin and Reid-Hillview, are involved in a multitude of purposes such as firefighting, medical emergency relief, agriculture support, aerial surveys, flight instruction, and business and personal travel. The prohibition of the sale of leaded fuel effectively ends all leaded fuel piston aircraft operations into and out of these two airports which are only separated by 20 nautical miles.

II. Local Government Restrictions on Leaded Fuel Sales Violate the Commerce Clause

Article I, Section 8 of the United States Constitution states that "[t]he Congress shall have power ... to regulate Commerce with foreign nations, and among the several states.... " A regulation enacted by local government becomes impermissible under the Commerce Clause when on its face it is nondiscriminatory and furthers a legitimate state interest, but incidentally burdens interstate commerce. These types of local regulations are unconstitutional when the burden on interstate trade is clearly excessive in relation to local benefits. Where a regulation affirmatively discriminates against interstate commerce on its face or in practical effect, then the regulation violates the Constitution unless the discrimination is demonstrably justified by a valid factor.[22]

Santa Clara County's policy that prohibits the sale of leaded gas affirmatively discriminates against interstate commerce in practical effect and is therefore violative of the Commerce Clause. With a significantly high percentage of general aviation aircraft that operate on leaded gasoline, the prohibition of the sale of leaded gasoline at two airports in the County effectively halts all interstate commerce by piston powered aircraft into and out of Santa Clara County's public use airports.

For example, consider that an aircraft piloted from the southerly direction travels into the San Francisco Bay area and needs to stop for fuel due to stronger than forecast winds in flight. The pilot in command, operating within the National Airspace System, determines that the best location to stop for fuel for safety reasons is either the Reid-Hillview or San Martin airports. The inability to obtain leaded fuel at either of those airports requires that the pilot fly further with less fuel reserves, which increases the potential for an accident due to fuel starvation. If the pilot were carrying cargo or passengers, then the new leaded fuel sale prohibition negatively impacts and interrupts the stream of commerce. At the very least, the available airports within the NAS that can provide the resource needed -- leaded fuel -- diminishes to an unacceptable level in the area surrounding these two public-use airports.

The NAS was put together by the Department of Transportation to provide resources, such as airports along predicted routes of travel and airways, as a means of expeditiously supplying maintenance, fuel, and emergency services when needed. The removal of these two airports' capacity to provide leaded fuel serves as a detriment to the proper functioning of the entire NAS. Moreover, the elimination of leaded fuel to aircraft owners and commercial operation tenant users of these airports deprives them of their envisioned use of a component within the NAS.

It is open and obvious that the prohibition on access to leaded gasoline for aircraft at a public airport constitutes an impermissible interference with interstate commerce. The lack of access prevents airplanes on both airports that utilize leaded fuel to initiate operations from those airports without first securing fuel at another airport. The lack of access to leaded fuel, which almost the entire general aviation fleet uses for normal operations, also prevents other aircraft not based at those airports from using those airports either as part of routine commerce or in an emergency to obtain fuel.

A. Conflict Preemption

The Supreme Court has held that under the Supremacy Clause, U.S. Const. Art. VI, state law may be preempted by an express provision in a statute, by implication, or by a conflict between federal and state law.[23] Express preemption results from an express congressional directive in the statutory text that ousts state law.[24] Implied preemption results from an inference that Congress intended to oust state law in order to achieve its objectives.[25] Conflict preemption results from the operation of the Supremacy Clause when federal and state law actually conflict, even when Congress says nothing about it.[26]

In the preemption analysis relevant here, the starting point is the Federal Aviation Act of 1958 which provides, "The United States Government has exclusive sovereignty of the airspace of the United States."[27] In the context of aviation, the doctrine of field preemption has been held by many courts to generally prohibit state regulation of aircraft safety and operations.[28] The Federal Aviation Act of 1958 assigns exclusive sovereignty of the regulation of airspace to the federal government.[29] The Supreme Court explained nearly 50 years ago, when it invalidated a locally imposed

curfew on aircraft noise, "a uniform and exclusive system of federal regulation" is required "if the congressional objectives underlying the Federal Aviation Act are to be fulfilled."[30] In the field of aviation, federal preemption long has been understood to sweep with a wide broom.[31]

Imbued with authority in 2014, the FAA embarked on a multi-phase plan to eliminate leaded gasoline from the aviation industry. The first stage of the process is the study of the problem, followed by recommendations to the agency on the proper scope and course of an eventual regulation on the issue in compliance with the Administrative Procedures Act.[32] As evidenced by the creation of the National Airspace System, airports are an integral part of that system. Therefore, the operations that can and cannot be regulated at an airport cannot be so restricted to jeopardize the benefit that one airport provides to the greater system. In Santa Clara County, the removal of the ability to provide the sale of leaded gas to aircraft operators at two public use airports detrimentally weakens the entire NAS and jeopardizes safety. Such action can only be taken by the federal government.

Make no mistake, Santa Clara County understands the administrative process of rulemaking in this instance is arduous and lengthy. The County's argument and hope is that a court will reason that since the FAA has not yet promulgated a final rule, then no conflict preemption actually exists. This viewpoint misconstrues the authority of the FAA in this arena, and it must be stopped. Otherwise, a dangerous precedent would be established opening the door for every local government that wants to close its airport and sell the land to a real estate developer to do so with a dubious environmental study followed by a subsequent leaded-fuel sales ban.

B. Declaratory and Injunctive Relief

Since Santa Clara County has already promulgated the ordinance and the airport tenants are required to operate without a source of leaded fuel,[33] then what is the remedy? Clear heads and reasoned decision-making that considers the needs of the National Airspace System, its users, and the aviation industry as a whole are warranted here. Based on the machinations to date, Santa Clara County is ignoring the bigger picture and the fact that the federal government has already prioritized the removal of leaded gas from the aviation industry. This commitment is evident in the Federal Aviation Administration's initiation of the rulemaking process under the Administrative Procedure Act. The first step was the commissioning of the study on how to remove leaded fuel from the industry while simultaneously maintaining an operational fleet. The study is ongoing and must run its course, which is the eventual recommendation of an alternative fuel and a plan for implementation of the supporting infrastructure to make the alternative fuel accessible to the flying community. The solution is to seek injunctive relief.

A declaratory action that seeks an injunction against the ban on leaded fuel sales achieves this goal. In California, a party seeking an injunction through a declaratory action must first show that there is a strong likelihood that the plaintiff will prevail on the merits at trial.[34] The party must also show that the interim harm that the plaintiff is likely to sustain if the injunction were denied is greater than the harm that the defendant is likely to suffer if the preliminary injunction were issued.[35]

Using the standard set forth in *IT Corp. v. County of Imperial*, the putative plaintiffs are the stakeholders in the NAS: the tenant aircraft operators at both Santa Clara County airports, and the set of aircraft operators nationwide that access these airports. Evaluating the first prong, the County regulation sets up a conflict preemption issue.

The FAA is charged by Congress to establish and effectuate national policy when it comes to airspace and its component part regulations. State and local actors are preempted from legislating in the field of aviation when those regulations impact or serve to denigrate safety.[36] In a trial on the merits, plaintiffs could successfully show that Santa Clara County's actions are preempted, and would therefore prevail on the merits. With respect to the second requirement, the aircraft operators must show that they would suffer more harm than Santa Clara County if the injunction were denied.

In this case, if the injunction were denied, residents of Santa Clara County would not earn any benefit from a reduction in the emissions of hydrocarbons around the airport, because the citizenry in this geographic region is not being disproportionately exposed to lead through those emissions from the airport operations based on Santa Clara County's own environmental study. The issuance of the leaded-fuel sales prohibition was untimely and premature.

In the absence of a positive benefit health-wise for Santa Clara residents, then the piston-aircraft operators nationwide are the group that is harmed by the regulation through the forced cessation of flight operations for aircraft that operate on leaded fuel. Those aircraft would be able to operate out of any other airport within the National Airspace System, except for the two airports in Santa Clara County. The harm is exacerbated for tenant aircraft operators at the two Santa Clara County airports because originating aircraft operations are severely restricted, if not completely terminated, with no source of leaded fuel on the field. The opportunity to pull over at the next fluffy white cloud for fuel does not exist. Fuel must be obtained on the ground.[37]

In the quantification of the harm accruing in the interim timeframe until the Notice of Proposed Rulemaking process concludes, as between the aircraft operators and Santa Clara County, it is clear that the aircraft operators are likely to suffer more significant harm if the injunction were not issued.

III. Conclusion

The efforts by Santa Clara County are a blatant attempt to effectuate an end run around Federal Aviation Regulations, the authority of the Federal Aviation Administration, and the Commerce Clause so as to terminate operations at two of their public airports. The County regulations banning leaded-fuel sales violate the Commerce Clause because they inhibit both intrastate and interstate trade as protected under Article I, section 8 of the Constitution.

The effort to eventually halt leaded fuel sales is admirable and a goal worth achieving. However, the task of eliminating leaded fuel use in piston aircraft nationally falls within the purview of the Federal Aviation Administration and not Santa Clara County. The solution eventually selected to achieve the goal of eliminating leaded fuel use must have the national infrastructure in place to serve the aviation community and maintain local public airports' place as instrumentalities of commerce within the National Airspace System. The most expeditious route to correcting the problem is an injunction that prohibits Santa Clara County from enforcing their leaded-fuel sales ban.

Granted, seeking an injunction is a costly option. However, the positive impact of establishing legal precedent that hampers the machinations of local airport governing bodies as they reach for tools to use to close public airports is well worth the fight. A line must be drawn in the sand to preserve public use general aviation airports. If the call to arms is ignored in

Santa Clara County over the leaded fuel sales ban, then the next fight attempting to close a local airport using unconstitutional means could be at an airport near you.

Endnotes

1 Both airports are public use airports designated to serve general aviation and to relieve congestion and traffic at San Francisco International Airport, Oakland International Airport, and San Jose International Airport.
2 The Clean Air Act of 1970 banned the use of leaded fuel effective January 1, 1996, in automobiles; however, the prohibition on the use of leaded fuels in aviation was specifically exempted. See 42 U.S.C. § 42701 et seq. (1970).
3 Vicente Vera, *Blood lead levels near San Jose airport are average, despite alarm*, San Jose Spotlight (Aug. 13, 2021).
4 These airports sit within a sixty-mile radius of San Francisco International Airport, Oakland International Airport, and San Jose International Airport. As such, the San Martin and Reid-Hillview airports function to relieve congestion and divert smaller aircraft away from the larger commercial airports. The greater San Francisco Bay area benefits from the presence of these smaller airports because they provide a fixed geographical point into which emergency supplies can be flown into the local area for speedy distribution in a time of crisis. The smaller airports also function as a location where flight training is conducted away from airways congested with frequent passenger flights.
5 Lloyd Alaban, *Affordable Housing at East San Jose Airport? Experts say its in the Soil*, https://sanjosespotlight.com/affordable-housing-at-east-san-jose-reid-hillview-airport-experts-say-its-in-the-soil/ (accessed Feb. 3, 2022).
6 U.S. Const. Art. I, §viii.
7 *Gibbons v. Ogden*. 22 U.S. 1 (1824).
8 *Wickard. v. Filburn*, 317 U.S. 111 (1942).
9 Erwin Chemerinsky, *Constitutional Law Principles and Policies*, 264 (4th Ed. 2011).
10 15 U.S.C.A. § 78c(a)(17) (2022).
11 Jasper v. Sawyer, 100 F. Supp 421, 423 (Dist. C. Columbia 1951).
12 *Id*.
13 *Charlima, Inc. v. United States*, 873 F.2d 1078, 1081 fn.6 (8th Cir. 1989).
14 *Air Line Pilots Ass'n, Int's v. Quesada*, 276 F.2d 892, 894 (2d Cir. 1960).
15 Federal Aviation Administration, "National Airspace System", https://www.faa.gov/air_traffic/nas/, accessed January 27, 2022.
16 *U.S. Airways, Inc. v. O'Donnell*, 627 F.3d 1318, 1326-27 (10th Cir. 2010).
17 These airports received funding from the Federal Aviation Administration to support their ongoing contributions and participation in the National Airport System as reflected in the National Plan of Integrated Airport Systems for 2021-2025, published by the FAA. See https://www.faa.gov/airports/planning_capacity/npias/current/media/NPIAS-2021-2025-Appendix-A.pdf, accessed January 27, 2022.
18 The Environmental Protection Agency must defer and consult with the Federal Aviation Administration if it wants to embark on promulgating a rule that eliminates the sale of leaded gas in the aviation industry.
19 Federal Aviation Administration, Leaded Aviation Fuel and the Environment, https://www.faa.gov/newsroom/leaded-aviation-fuel-and-environment, accessed January 27, 2022.
20 In this situation, it is a waste of taxpayer resources and time to implement a local rule in an area that will be superseded by federal administrative regulation. In any ensuing challenge, a court should defer to the federal agency's administrative rule making process because the agency has already begun its problem-resolution process through the commissions of a study of a problem. That act alone by the FAA should be enough for a court to prohibit a state or local government from enacting an ordinance or regulation that bypasses the federal rulemaking process.
21 *Supra*, note 17.
22 *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 401 (1994).
23 *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins*., 514 U.S. 645, 654 (1995).
24 *Morales v. Trans World Airlines, Inc*., 504 U.S. 374 (1992).
25 *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).
26 *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 143 (1963).
27 49 U.S.C. §40103(a)(1) (WEST 2022).
28 Field preemption has been held by courts to generally prohibit state regulation of aircraft safety and operations. *Abdullah v. American Airlines*, Inc., 181 F.3d 363, 365 (3d Cir. 1999).
29 49 U.S.C. §40103(a)(1) (2022).
30 *City of Burbank v. Lockheed Air Terminal, Inc*., 411 U.S. 624, 639 (1973).
31 Silversmith, Jol, *You Can't Regulate This: State Regulation of the Private Use of Unmanned Aircraft*, Air and Space Lawyer, 26 NO.3 ASPLAW 1 (2013).
32 5 U.S.C. §§551-559 (WEST 2022).
33 Shortly after the leaded fuel ban went into effect, the FAA, citing safety concerns, initiated an investigation for possible violations of federal law arising from Santa Clara County's actions.
34 *IT Corp. v. County of Imperial*, 35 Cal. 3d 63, 70 (Cal. 1983).
35 *Id*.
36 *Air Line Pilots Ass'n v. Quesada*, 276 F. 2d 892, 894 (2d. Cir. 1960).
37 Per the Federal Aviation Regulations, the leaded fuel prohibition in Santa Clara County could effectively ground some aircraft because they do not have enough fuel to safely complete a refueling flight. Pursuant to 14 CFR §91.151, an aircraft flying under visual conditions cannot initiate a flight unless it has enough fuel to fly to its destination plus be able to sustain flight for an additional 30 minutes.

Government Litigation

continued from page 17

engineer alleged that the inspector never examined him or met with him individually, and simply determined—as did the two other members of the ERC—that he was fit to return to work. Nothing in these allegations went beyond all possible bounds of decency, the court found and therefore the engineer had not properly pled an IIED claim.

In sum, the court concluded that it lacked subject matter jurisdiction and that the engineer did not state a claim upon which the court may grant him relief. The case is *Mark v. United States*, No. 2:17-cv-13894-GAD-EAS (E.D. Mich. Aug. 14, 2018).

Endnotes

1 Federal Aviation Administration, Advisory Circular 120-66B, Aviation Safety Action Program (Nov. 15, 2002).
2 *Id.* at 1.
3 *Id.* at 3.
4 28 U.S.C. § 2680(h).
5 *Fitch v. United States*, 513 F.2d 1013, 1015 (6th Cir. 1975).
6 *Milligan v. United States*, 670 F.3d 686, 695 (6th Cir. 2012).
7 *Johnson v. United States*, 547 F.2d 688, 691-92 (D.C. Cir. 1976). *Accord Garling v. EPA*, 849 F.3d 1289, 1298 (10th Cir. 2017) ("[W]e look to the substance of their claims and not how they labeled them in their complaint.").
8 28 U.S.C. §§ 1346(b), 2674; *see also United States v. Olson*, 546 U.S. 43, 46 (2005).
9 *Myers v. United States*, 17 F.3d 890, 905 (6th Cir. 1994).
10 *Id.* at 894.
11 *Id.* at 905.
12 Mich. Comp. Laws Ann. § 333.17001(j).
13 Mich. Comp. Laws Ann. § 333.16294.
14 *See Michigan State Chiropractic Ass'n v. Kelley*, 262 N.W.2d 676, 677 (Mich. Ct. App. 1977).
15 *See* 14 C.F.R. § 61.53 (prohibition on operations during medical deficiency).
16 *VanVorous v. Burmeister*, 687 N.W.2d 132, 141 (Mich. Ct. App. 2004), *overruled on other grounds*, *Odom v. Wayne Cty.*, 760 N.W.2d 217, 224 n.33 (Mich. 2008)).
17 *Id.* at 141-42.
18 *Id*. at 142 (citing *Sawabini v. Desenberg*, 372 N.W.2d 559, 565 (Mich. Ct. App. 1985)); *see also Valdez v. United States*, 58 F. Supp. 3d 795, 831 (W.D. Mich. 2014).
19 *Roberts v. Auto-Owners Ins. Co*., 374 N.W.2d 905, 911 (Mich. 1985).
20 *Charest v. Citi Inv. Grp. Corp*., No. 330775, 2017 WL 2212110, at *6 (Mich. Ct. App. May 18, 2017).
21 750 N.W.2d 121 (Mich. 2008).
22 *Id.* at 129.
23 *Milligan v. United States*, 670 F.3d 686, 695 (6th Cir. 2012) (collecting cases).
24 *Meeks v. Larsen*, 999 F. Supp. 2d 968, 976 (E.D. Mich. 2014) ("Courts must construe the requirements of the FTCA strictly because it is a waiver of sovereign immunity.") (citing *Blakely v. United States*, 276 F.3d 853, 864 (6th Cir. 2002)).
25 *See Kuznar v. Raksha Corp.*, 750 N.W.2d 121, 123 (Mich. 2008).
26 *Id.*
27 *Id.* at 128.
28 *See* Mich. Comp. Laws Ann. § 333.17741 (requiring pharmacy to be licensed and under the personal charge of a pharmacist).
29 *Jones v. Muskegon Cty.*, 625 F.3d 935, 948 (6th Cir. 2010) (citing *Vredevelt v. GEO Grp., Inc.*, 145 F. App'x 122, 135 (6th Cir. 2005)).
30 *Salser v. Dyncorp Intl. Inc.*, 170 F. Supp. 3d 999, 1005 (E.D. Mich. 2016) (internal quotation marks omitted) (quoting *Doe v. Mills*, 536 N.W.2d 824, 833 (Mich. Ct. App. 1995)).
31 *Jones*, 625 F.3d at 948 (quoting *Graham v. Ford*, 604 N.W.2d 713, 716 (Mich. Ct. App. 1999)).