

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Phil Kerpen v. Metropolitan Washington Airports Authority

Phil Kerpen v. Metropolitan Washington Airports Authority, 907 F.3d 152 (4th Cir. 2018) · No. 17-1735 ·
Decided October 22, 2018

SUMMARY

The Fourth Circuit held that the Metropolitan Washington Airports Authority (MWAA) is not a federal instrumentality under **Lebron v. National Railroad Passenger Corporation** because it was created by an interstate compact between Virginia and the District of Columbia, not by the federal government, and the federal government appoints only a minority of its board members. Consequently, the court rejected Appointments Clause, non-delegation, and Administrative Procedure Act claims, as MWAA exercises state rather than federal power. The court also dismissed a Guarantee Clause challenge, finding MWAA does not deny any state a republican form of government, and upheld MWAA’s use of toll revenues to fund the Silver Line metro extension to Dulles Airport as a permissible airport-purpose expenditure under the Transfer Act and Lease, deferring to the Secretary of Transportation’s reasonable interpretation.

CASE DETAILS

COURT	United States Court of Appeals for the Fourth Circuit
WRITING FOR THE COURT	Wilkinson; Duncan; Keenan
JURISDICTION	Federal
DECIDED	October 22, 2018
DOCKET	17-1735
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (1:16-cv-01307-JCC-TCB) The district court granted defendants' motion to dismiss all claims.
STANDARD OF REVIEW	De novo (review of motion to dismiss)
PRECEDENTIAL VALUE	Published

PARTIES

Phil Kerpen, Austin Ruse, Cathy Ruse, Charlotte Sellier, Joel Sellier, Michael Gingras v. Metropolitan Washington Airports Authority; Elaine L. Chao, Secretary of Transportation; United States Department of Transportation; District of Columbia; Karl Anthony Racine

TOPICS

constitutional law

administrative law

statutory interpretation

appellate procedure

standard of review

motions to dismiss

QUESTIONS PRESENTED

1. Whether MWAA is a federal instrumentality under *Lebron v. National Railroad Passenger Corporation*.
2. Whether MWAA's structure violates the non-delegation principle regarding legislative, governmental, or federal power.
3. Whether MWAA violates the Guarantee Clause of the U.S. Constitution.
4. Whether MWAA's use of toll road funds to build the Silver Line metro violates the Transfer Act and the Lease.

HOLDINGS

1. MWAA is not a federal instrumentality because it was not created by the federal government and is not controlled by the federal government.
2. MWAA does not violate the non-delegation principle because it exercises no power delegated by Congress (it is a state-created entity), and even if it did, it is a public body and the Transfer Act provides an intelligible principle.
3. MWAA does not violate the Guarantee Clause because it does not deny any state a republican form of government.
4. The expenditures are permissible because the Secretary of Transportation certified them as compliant, and the interpretation is reasonable.

KEY QUOTATIONS

"In Lebron, the Supreme Court explained that entities that are both created and controlled by the federal government may be considered federal entities that are subject to the limitations of the Constitution." (at 7)

"The Guarantee Clause of the U.S. Constitution provides that '[t]he United States shall guarantee to every State in this Union a Republican Form of Government.'" (at 15)

"There is no basis in law for finding that the dedicated funding mechanism here was impermissible." (at 19)

FACTUAL BACKGROUND

Dulles Airport was built by the federal government in 1962 with an access road. In 1983, the government gave Virginia an easement to build a toll road. The Metropolitan Washington Airports Authority (MWAA) was created by interstate compact between Virginia and the District of Columbia in 1985 to manage Dulles and National airports. The Transfer Act of 1986 leased the airports to MWAA. In 2006, Virginia transferred operation of the toll road to MWAA, which used toll revenues to finance the Silver Line metro extension to Dulles. Plaintiffs, users of the toll road and airport facilities, brought a class action challenging the constitutionality and legality of this arrangement.

PROCEDURAL HISTORY

Plaintiffs, a putative class of toll road users, filed a lawsuit challenging the constitutionality and legality of MWAA's use of toll revenues to fund the Silver Line metro extension. The district court dismissed all claims. Plaintiffs appealed. The Fourth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- *Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374 (1995)
- *Meridian Investments v. Fed. Home Loan Mortg. Corp.*, 855 F.3d 573 (4th Cir. 2017)
- *Corr v. Metro. Wash. Airports Auth.*, 702 F.3d 1334 (Fed. Cir. 2012)
- *Gray v. Virginia Secretary of Transportation*, 662 S.E.2d 66 (Va. 2008)
- *Parkridge 6, LLC v. U.S. Dept. of Transp.*, 420 F. App'x 265 (4th Cir. 2011)
- *Corr v. Metro. Wash. Airports Auth.*, 800 F. Supp. 2d 743 (E.D. Va. 2011)
- *Buckstaff Bath House Co. v. McKinley*, 308 U.S. 358 (1939)
- *United States v. New Mexico*, 455 U.S. 720 (1982)
- *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982)
- *Metro. Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252 (1991)
- *Hechinger v. Metro. Wash. Airports Auth.*, 36 F.3d 97 (D.C. Cir. 1994)
- *Pittston v. United States*, 368 F.3d 385 (4th Cir. 2004)
- *Whitman v. Whitman Trucking Assn.*, 531 U.S. 457 (2001)
- *Touby v. United States*, 500 U.S. 160 (1991)
- *J.W. Hampton Jr. Co. v. United States*, 276 U.S. 394 (1928)
- *Loving v. United States*, 517 U.S. 748 (1996)
- *Mistretta v. United States*, 488 U.S. 361 (1989)
- *Nat'l Broadcasting Co. v. United States*, 319 U.S. 190 (1943)
- *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944)
- *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935)
- *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936)

- United States v. Frame, 885 F.2d 1119 (3d Cir. 1989)
- Holly v. Scott, 434 F.3d 287 (4th Cir. 2006)
- Rosborough v. Management & Training Corp., 350 F.3d 459 (5th Cir. 2003)
- New York v. United States, 505 U.S. 144 (1992)
- Duncan v. McCall, 139 U.S. 449 (1891)
- Consol. Gas Supply Corp. v. FERC, 745 F.2d 281 (4th Cir. 1984)
- Cajun Elec. Power Coop. v. FERC, 924 F.2d 1132 (D.C. Cir. 1991)

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