State Senator
Rick Gudex
District 18

January 27, 2016

To: The Senate Committee on Judiciary and Public Safety
From: Sen. Rick Gudex
Re: Senate Bills 497 & 498

Mr. Chairman, members of the committee, thank you for hearing our bills today and for allowing me to speak on their behalf.

As many of you may know, drones are becoming one of the most popular devices for people to own. While they have entertainment value, they also have the capacity to be used to commit crimes that affect the safety and security within our communities and critical infrastructures.

Senate Bill (SB) 498 will make it clear that the use of drones around prisons is prohibited, and it is coupled with granting local authorities the ability to establish no-fly zones tailored to their needs. This bill does not require local authorities to establish "no-drone-zones", and the intent is to address the growing public safety concern stemming from drones and eliminate the need for multiple efforts from the State Legislature.

Why is this bill necessary? SB 498 was brought forward at the request of our Correctional Officers as a security enhancement tool. What happened at the correctional facility in Mansfield, OH, which was referenced in the co-sponsorship memo, is a very possible scenario our Correctional Officers (CO's) can be faced with without the proper legal deterrents in place. We cannot allow our CO's to remain vulnerable. With that said, we also made sure to respect personal property owners' rights in accordance with FAA rules. Additionally, we have provided an exemption for the authorized use of drones (i.e. contractors and surveyors) when express permission is granted by property owners.

SB 497 is meant as a compliment to SB 498 because it enhances our criminal penalty standards across the misdemeanor and felony spectrums for illegal drone usage, and increases the previous Class A misdemeanor penalties to felonious. This penalty enhancement will serve multiple purposes. First, the enhancement will serve to deter other would-be criminals from committing the same crime. Second, giving longer punishments helps to keep the criminals incarcerated and therefore, away from the public. I believe that drones can provide the vehicle for a new level of drug activity in our communities, and we need to respond by providing our prosecutors with an enhanced criminal code to enforce. I would like to add that SB 497 is not an excessive penalty enhancement since §939.645 was referenced, which has a history of justifiable use.

Thank you.

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MICHAEL SCHRAA

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Rep.Schraa@legis.wi.gov

Testimony on SB 498

Thank you Chairman Wanggaard, Vice Chair Vukmir, and members of the committee for giving me the opportunity to provide testimony on this legislation dealing with the use of drones.

The goal of SB498 is quite simple. It is extremely important that we have a statewide standard that drones may not be used over correctional institutions in our state. Senator Gudex and I introduced this legislation at the request of correctional officers who work at the many prisons in our districts. With the increase in use of drones by businesses, hobbyists, and even criminals, it is important to establish "No Drone Zones" over our state Department of Corrections facilities. As recently as this last Christmas, a drone was accidentally flown onto the grounds of Waupun Correctional Institute. The drones owner who is a City of Waupun resident who received the drone as a Christmas present, lost control of his UAV. We have also seen in other states that it is possible for criminals to try and deliver drugs, weapons, and other items into prisons with the use of drones. For example, last October, a drone carrying drugs, blades, and other contraband crashed inside the perimeter of an Oklahoma State Penitentiary. By establishing in state statute that it is unlawful to fly a drone over state corrections facilities, we will help our correctional officers more safely and effectively do their important jobs.

SB498 prohibits the operation of a drone over a state correctional institution and establishes a possible fine of up to $5,000 for any violation. Additionally, the bill outlines in statute that a city, village, town, or county can prohibit the use of drones over certain areas in their jurisdiction. Giving local units of government the flexibility to enact additional regulations allows them to decide what is best for their communities. Examples of additional local restrictions would be banning drones over facilities like water treatment plants, power-grid facilities or other critical infrastructure. I think we can all agree that the use of this relatively new technology will continue to grow exponentially. In the future, any local ordinances would need to conform to federal regulations imposed by the FAA. We have already seen that the FAA is in the process of releasing new rules related to drone usage. They have recently stated that with the large projected increase in the number of privately owned drones, a potential safety risk is immediately imminent with regards to our nation's air traffic control system. SB 498 is common sense legislation that is vitally needed at this time and we are hopeful to have your support. I would be happy to answer any questions the committee might have at this time.

Consumer
Technology
Association

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703-907-7600
CTA.tech

January 26, 2016

Chairman Van Wanggaard and Committee Members
Senate Committee on Judiciary and Public Safety
Room 319 South
State Capitol
Madison, WI 53707-7882

Re: **Drone Operations – Proposed Senate Bill 498 (SB498)**

Dear Chairman Wanggaard and Committee Members:

We are writing today in strong opposition to enactment of SB498 which proposes to establish no fly zones for drones (unmanned aircraft systems, or UAS) in Wisconsin and to authorize localities to establish additional no fly zones. Although well-intended, the proposed legislation should be rejected because it would thwart a growing and innovative industry and is preempted by Federal Law. As discussed below, the State of Wisconsin and the localities therein lack authority to establish no fly zones.[1]

The Consumer Technology Association (CTA, formerly the Consumer Electronics Association) represents more than 2,200 companies, 80 percent of which are small businesses and startups. As a champion of innovation, CTA has been a long-time advocate of clear rules authorizing UAS in a safe manner within the national airspace. CTA is involved in the FAA's current rulemaking on the operation and certification of small UAS. We also are a partner with several other organizations and the FAA in the *Know Before You Fly* campaign which is educating prospective drone users about the safe and responsible operation of UAS.

The Supremacy Clause of the U.S. Constitution states that "the Constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land."[2] As noted by the Supreme Court, this gives Congress the power to preempt state law.[3] There are three types of preemption: express preemption when Congress specifically preempts a state law;[4] field preemption when a federal framework of regulation is "'so pervasive . . . that Congress left no room for the States to supplement it' or where a 'federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject;'"[5] and conflict preemption

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[1] SB498 attempts to protect private property rights by regulating areas where drones can takeoff and land. There is no need to adopt drone-specific regulation. Existing Wisconsin trespass, privacy, and property laws can be applied to drone activity without the need for new legislation.

[2] U.S. Const., Art. VI, Cl 2.

[3] *See, e.g., Arizona v. United States,* 132 S. Ct. 2492 (2012).

[4] *Id.*

[5] *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

when state laws "conflict with federal law, including when they stand 'as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'"[6] Congress has occupied the field with regard to air navigation. As the Supreme Court has observed:

> Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxis onto a runway it is caught up in an elaborate and detailed system of controls.[7]

Pursuant to this federal regime, the Federal Aviation Administration ("FAA") has adopted specific "no fly zones" for drones and has authorized specific commercial operations subject to limited restrictions. SB498 proposes to create additional "no fly zones" within national airspace. This violates the Supremacy Clause and is preempted by federal law. Federal control of the national airspace "is *intensive and exclusive*."[8]

Even if preemption was not justified by the FAA occupying the field, it would be justified on a conflict basis. The FAA has issued thousands of authorizations to individuals and companies permitting the commercial operation of drones in the national airspace. These authorizations contain certain geographic and altitude restrictions on operations, but do not restrict operations in the no fly zones that would be established pursuant to SB498. The proposal thus would modify these federal authorizations and limit the airspace available for drone operations. Wisconsin lacks authority to modify federal authorizations in this manner.

Just last month, the FAA issued a Fact Sheet (copy attached) reminding states and localities of this federal regime and noting that state and local regulation of airspace is preempted. Specifically:

> Substantial air safety issues are raised when state or local governments attempt to regulate the operation or flight of aircraft. If one or two municipalities enacted ordinances regulating UAS in the navigable airspace and a significant number of municipalities followed suit, fractionalized control of the navigable airspace could result. In turn, this "patchwork quilt" of differing restrictions could severely limit the flexibility of FAA in controlling the airspace and flight patterns, and ensuring safety and an efficient air traffic flow. A navigable airspace free from inconsistent state and local

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[6] *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

[7] *Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 633-34 (1973)(quoting *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (Jackson, concurring)).

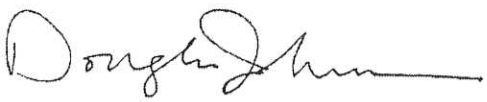
[8] *Burbank*, 411 U.S. at 633-34.

> restrictions is essential to the maintenance of a safe and sound air transportation system.[9]

Rather than adopt legislation that is clearly preempted, Wisconsin should work with the FAA to address any concerns regarding the operations of drones over state correctional facilities. The FAA has expressed its willingness to work with states to address operational concerns regarding drones.[10] Further, to avoid creating a patchwork of illegal local regulations (and the litigation that likely will flow from such regulation), CTA urges Wisconsin to preempt local regulation of drone operations. This approach has been successfully implemented in various states, such as Maryland and Oregon.[11]

For the above reasons, CTA urges you not to pass SB498. The drone industry is expected to approach $105 million in revenue and Wisconsin could be a major part of this growth.[12] CTA stands ready to work with the Wisconsin legislature on potential steps that can be taken to address their concerns without raising the aforementioned legal issues.

Sincerely,



Douglas K. Johnson
Vice President, Technology Policy
djohnson@ce.org

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[9] State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet, FAA Office of the Chief Counsel at 2 (Dec. 17, 2015) ("Fact Sheet"), http://www.faa.gov/uas/regulations_policies/media/UAS_Fact_Sheet_Final.pdf.

[10] Fact Sheet at 3.

[11] In May 2015, the Governor of Maryland signed into law the Unmanned Aircraft Systems (UAS) Research, Development, Regulation and Privacy Act of 2015. This law preempts municipalities and counties from adopting drone ordinances. *See* http://mgaleg.maryland.gov/2015RS/Chapters_noln/CH_164_sb0370e.pdf. Similarly, Oregon prohibits local governments from enacting any "ordinance or resolution that regulates the ownership or operation of drones or otherwise engage in the regulation of the ownership or operation of drones." ORS § 837.385.

[12] *See* New Tech to Drive CE Industry Growth in 2015, Projects CEA's Midyear Sales and Forecasts Report, https://www.ce.org/News/News-Releases/Press-Releases/2015-Press-Releases/New-Tech-to-Drive-CE-Industry-Growth-in-2015,-Proj.aspx.

U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

DEC 17 2015

By electronic mail

RE: Fact Sheet on State and Local Regulation of Unmanned Aircraft Systems (UAS)

Dear Colleague:

We write to share with you the Federal Aviation Administration's (FAA) new Fact Sheet on legal policy considerations applicable to State and Local Regulation of UAS (also commonly referred to as "drones"). It is intended to serve as a guide for state and local governments as they respond to the increased use of UAS in the national airspace.

The Fact Sheet summarizes well-established legal principles as to the Federal responsibility for regulating the operation or flight of aircraft, which includes, as a matter of law, UAS. It also summarizes the Federal responsibility for ensuring the safety of flight as well as the safety of people and property on the ground as a result of the operation of aircraft.

Substantial air safety issues are implicated when state or local governments attempt to regulate the operation of aircraft in the national airspace. The Fact Sheet provides examples of state and local laws affecting UAS for which consultation with the FAA is recommended and those that are likely to fall within state and local government authority.

As noted on the Fact Sheet, the FAA's Office of the Chief Counsel maintains offices throughout the United States which are available to provide additional guidance as state and local governments continue to respond to the use of UAS in the national airspace. A copy of the Fact Sheet is attached to this letter. The document is also available at: www.faa.gov/uas/regulations_policies/ .

Thank you in advance for your consideration.

Sincerely,

Reginald C. Govan
Chief Counsel

Earl Lawrence
Director, UAS Integration Office

Enclosure

State and Local Regulation of Unmanned Aircraft Systems (UAS)
Fact Sheet

Federal Aviation Administration
Office of the Chief Counsel

December 17, 2015

BACKGROUND

Unmanned aircraft systems (UAS) are aircraft subject to regulation by the FAA to ensure safety of flight, and safety of people and property on the ground. States and local jurisdictions are increasingly exploring regulation of UAS or proceeding to enact legislation relating to UAS operations. In 2015, approximately 45 states have considered restrictions on UAS. In addition, public comments on the Federal Aviation Administration's (FAA) proposed rule, "Operation and Certification of Small Unmanned Aircraft Systems" (Docket No. FAA-2015-0150), expressed concern about the possible impact of state and local laws on UAS operations.

Incidents involving unauthorized and unsafe use of small, remote-controlled aircraft have risen dramatically. Pilot reports of interactions with suspected unmanned aircraft have increased from 238 sightings in all of 2014 to 780 through August of this year. During this past summer, the presence of multiple UAS in the vicinity of wild fires in the western U.S. prompted firefighters to ground their aircraft on several occasions.

This fact sheet is intended to provide basic information about the federal regulatory framework for use by states and localities when considering laws affecting UAS. State and local restrictions affecting UAS operations should be consistent with the extensive federal statutory and regulatory framework pertaining to control of the airspace, flight management and efficiency, air traffic control, aviation safety, navigational facilities, and the regulation of aircraft noise at its source.

Presented below are general principles of federal law as they relate to aviation safety, and examples of state and local laws that should be carefully considered prior to any legislative action to ensure that they are consistent with applicable federal safety regulations. The FAA's Office of the Chief Counsel is available for consultation on specific questions.

WHY THE FEDERAL FRAMEWORK

Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source. 49 U.S.C. §§ 40103, 44502, and 44701-44735. Congress has directed the FAA to "develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace." 49 U.S.C. § 40103(b)(1). Congress has further directed the FAA to "prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes)" for navigating, protecting, and identifying aircraft; protecting individuals and property on the ground; using the navigable

airspace efficiently; and preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects. 49 U.S.C. § 40103(b)(2).

A consistent regulatory system for aircraft and use of airspace has the broader effect of ensuring the highest level of safety for all aviation operations. To ensure the maintenance of a safe and sound air transportation system and of navigable airspace free from inconsistent restrictions, FAA has regulatory authority over matters pertaining to aviation safety.

REGULATING UAS OPERATIONS

In § 333 of the FAA Modernization and Reform Act of 2012 (Public Law No. 112-95), Congress directed the Secretary to determine whether UAS operations posing the least amount of public risk and no threat to national security could safely be operated in the national airspace system (NAS) and if so, to establish requirements for the safe operation of these systems in the NAS.

On February 15, 2015, the FAA proposed a framework of regulations that would allow routine commercial use of certain small UAS in today's aviation system, while maintaining flexibility to accommodate future technological innovations. The FAA's Notice of Proposed Rulemaking offered safety rules for small UAS (under 55 pounds) conducting non-recreational or non-hobby operations. The proposed rule defines permissible hours of flight, line-of-sight observation, altitude, operator certification, optional use of visual observers, aircraft registration and marking, and operational limits.

Consistent with its statutory authority, the FAA is requiring Federal registration of UAS in order to operate a UAS. Registering UAS will help protect public safety in the air and on the ground, aid the FAA in the enforcement of safety-related requirements for the operation of UAS, and build a culture of accountability and responsibility among users operating in U.S. airspace. No state or local UAS registration law may relieve a UAS owner or operator from complying with the Federal UAS registration requirements. Because Federal registration is the exclusive means for registering UAS for purposes of operating an aircraft in navigable airspace, no state or local government may impose an additional registration requirement on the operation of UAS in navigable airspace without first obtaining FAA approval.

Substantial air safety issues are raised when state or local governments attempt to regulate the operation or flight of aircraft. If one or two municipalities enacted ordinances regulating UAS in the navigable airspace and a significant number of municipalities followed suit, fractionalized control of the navigable airspace could result. In turn, this 'patchwork quilt' of differing restrictions could severely limit the flexibility of FAA in controlling the airspace and flight patterns, and ensuring safety and an efficient air traffic flow. A navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system. *See Montalvo v. Spirit Airlines*, 508 F.3d 464 (9th Cir. 2007), and *French v. Pan Am Express, Inc.*, 869 F.2d 1 (1st Cir. 1989); *see also Arizona v. U.S.*, 567 U.S. ___, 132 S.Ct. 2492, 2502 (2012) ("Where Congress occupies an entire field . . . even complimentary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any

state regulation in the area, even if it is parallel to federal standards."), and *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 386-87 (1992).

EXAMPLES OF STATE AND LOCAL LAWS FOR WHICH CONSULTATION WITH THE FAA IS RECOMMENDED

- Operational UAS restrictions on flight altitude, flight paths; operational bans; any regulation of the navigable airspace. For example – a city ordinance banning anyone from operating UAS within the city limits, within the airspace of the city, or within certain distances of landmarks. Federal courts strictly scrutinize state and local regulation of overflight. *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973); *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1117 (9th Cir. 2002); *American Airlines v. Town of Hempstead*, 398 F.2d 369 (2d Cir. 1968); *American Airlines v. City of Audubon Park*, 407 F.2d 1306 (6th Cir. 1969).
- Mandating equipment or training for UAS related to aviation safety such as geo-fencing would likely be preempted. Courts have found that state regulation pertaining to mandatory training and equipment requirements related to aviation safety is not consistent with the federal regulatory framework. *Med-Trans Corp. v. Benton*, 581 F. Supp. 2d 721, 740 (E.D.N.C. 2008); *Air Evac EMS, Inc. v. Robinson*, 486 F. Supp. 2d 713, 722 (M.D. Tenn. 2007).

EXAMPLES OF STATE AND LOCAL LAWS WITHIN STATE AND LOCAL GOVERNMENT POLICE POWER

Laws traditionally related to state and local police power – including land use, zoning, privacy, trespass, and law enforcement operations – generally are not subject to federal regulation. *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002). Examples include:

- Requirement for police to obtain a warrant prior to using a UAS for surveillance.
- Specifying that UAS may not be used for voyeurism.
- Prohibitions on using UAS for hunting or fishing, or to interfere with or harass an individual who is hunting or fishing.
- Prohibitions on attaching firearms or similar weapons to UAS.

CONTACT INFORMATION FOR QUESTIONS

The FAA's Office of the Chief Counsel is available to answer questions about the principles set forth in this fact sheet and to consult with you about the intersection of federal, state, and local regulation of aviation, generally, and UAS operations, specifically. You may contact the Office of Chief Counsel in Washington, D.C. or any of the following Regional Counsels:

FAA Office of the Chief Counsel
Regulations Division (AGC-200)
800 Independence Ave. SW
Washington, DC 20591
(202) 267-3073

Alaskan Region
Office of the Regional Counsel
222 West 7th Ave.
Anchorage, AK 99513
(909) 271-5269
(AK)

Central Region
Office of the Regional Counsel
901 Locust St., Room 506
Kansas City, MO 61406-2641
(816) 329-3760
(IA, KS, MO, NE)

Eastern Region
Office of the Regional Counsel
1 Aviation Plaza, Room 561
Jamaica, NY 11434-4848
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Great Lakes Region
Office of the Regional Counsel
O'Hare Lake Office Center
2300 East Devon Ave.
Des Plaines, IL 60018
(847) 294-7313
(IL, IN, MI, MN, ND, OH, SD, WI)

New England Region
Office of the Regional Counsel
12 New England Executive Park
Burlington, MA 01803
(781) 238-7040
(CT, ME, MA, NH, RI, VT)

Northwest Mountain Region
Office of the Regional Counsel
1601 Lind Ave. SW
Renton, WA 98055-4056
(425) 227-2007
(CO, ID, MT, OR, UT, WA, WY)

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Office of the Regional Counsel
1701 Columbia Ave., Suite 530
College Park, GA 30337
(404) 305-5200
(AL, FL, GA, KY, MS, NC, SC, TN)

Southwest Region
Office of the Regional Counsel, 6N-300
10101 Hillwood Parkway Dr.
Fort Worth, TX 76177
(817) 222-5099
(AR, LA, NM, OK, TX)

Western-Pacific Region
Office of the Regional Counsel
P.O. Box 92007
Los Angeles, CA 90009
(310) 725-7100
(AZ, CA, HI, NV)

APPENDIX – LIST OF AUTHORITIES

Federal Statutes

- 49 U.S.C. §§ 40103, 44502, and 44701- 44735 (former Federal Aviation Act of 1958, as amended and recodified).

- FAA Modernization and Reform Act of 2012, Public Law No. 112-95 (Feb. 14, 2012), Subtitle B, "Unmanned Aircraft Systems."

Federal Regulations

- Title 14 of the Code of Federal Regulations, Chapter 1.

The U.S. Supreme Court

- "Congress has recognized the national responsibility for regulating air commerce. Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxies onto a runway it is caught up in an elaborate and detailed system of controls. It takes off only by instruction from the control tower, it travels on prescribed beams, it may be diverted from its intended landing, and it obeys signals and orders. Its privileges, rights, and protection, so far as transit is concerned, it owes to the Federal Government alone and not to any state government." *Northwest Airlines v. State of Minnesota*, 322 U.S. 292, 303 (1944)(Jackson, R., concurring).

- "If we were to uphold the Burbank ordinance [which placed an 11 p.m. to 7 a.m. curfew on jet flights from the Burbank Airport] and a significant number of municipalities followed suit, it is obvious that fractionalized control of the timing of takeoffs and landings would severely limit the flexibility of FAA in controlling air traffic flow. The difficulties of scheduling flights to avoid congestion and the concomitant decrease in safety would be compounded." *Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 639 (1973).

- "The Federal Aviation Act requires a delicate balance between safety and efficiency, and the protection of persons on the ground ... The interdependence of these factors requires a uniform and exclusive system of federal regulation if the congressional objectives underlying the Federal Aviation Act are to be fulfilled." *Burbank* at 638-639.

- "The paramount substantive concerns of Congress [in enacting the FAA Act] were to regulate federally all aspects of air safety ... and, once aircraft were in 'flight,' airspace management...." *Burbank* at 644 (Rehnquist, J. dissenting).

U.S. Courts of Appeals

- "Air traffic must be regulated at the national level. Without uniform equipment specifications, takeoff and landing rules, and safety standards, it would be impossible to operate a national air transportation system." *Gustafson v. City of Lake Angeles*, 76 F.3d 778, 792-793 (6th Cir. 1996)(Jones, N., concurring).

- "The purpose, history, and language of the FAA [Act] lead us to conclude that Congress intended to have a single, uniform system for regulating aviation safety. The catalytic events leading to the enactment of the FAA [Act] helped generate this intent. The FAA [Act] was drafted in response to a series of fatal air crashes between civil and military aircraft operating under separate flight rules .... In discussing the impetus for the FAA [Act], the Supreme Court has also noted that regulating the aviation industry requires a delicate balance between safety and efficiency. It is precisely because of 'the interdependence of these factors' that Congress enacted 'a uniform and exclusive system of federal regulation.'" *Montalvo v. Spirit Airlines,* 508 F.3d 464, 471 (9th Cir. 2007), citing *City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 638-39 (1973).

- "[W]hen we look to the historical impetus for the FAA, its legislative history, and the language of the [FAA] Act, it is clear that Congress intended to invest the Administrator of the Federal Aviation Administration with the authority to enact exclusive air safety standards. Moreover, the Administrator has chosen to exercise this authority by issuing such pervasive regulations that we can infer a preemptive intent to displace all state law on the subject of air safety." *Montalvo* at 472.

- "We similarly hold that federal law occupies the entire field of aviation safety. Congress' intent to displace state law is implicit in the pervasiveness of the federal regulations, the dominance of the federal interest in this area, and the legislative goal of establishing a single, uniform system of control over air safety. This holding is fully consistent with our decision in *Skysign International, Inc. v. Honolulu*, 276 F.3d 1109 (9th Cir. 2002), where we considered whether federal law preempted state regulation of aerial advertising that was distracting and potentially dangerous to persons on the ground. In upholding the state regulations, we held that federal law has not 'preempt[ed] altogether any state regulation purporting to reach into the navigable airspace.' *Skysign* at 1116. While Congress may not have acted to occupy exclusively all of air commerce, it has clearly indicated its intent to be the sole regulator of aviation safety. The FAA, together with federal air safety regulations, establish complete and thorough safety standards for interstate and international air transportation that are not subject to supplementation by, or variation among, states." *Montalvo* at 473-474.

- "[W]e remark the Supreme Court's reasoning regarding the need for uniformity [concerning] the regulation of aviation noise, see *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973), and suggest that the same rationale applies here. In *Burbank*, the Court struck down a municipal anti-noise ordinance placing a curfew on jet flights from a regional airport. Citing the 'pervasive nature of the scheme of federal

regulation,' the majority ruled that aircraft noise was wholly subject to federal hegemony, thereby preempting state or local enactments in the field. In our view, the pervasiveness of the federal web is as apparent in the matter of pilot qualification as in the matter of aircraft noise. If we upheld the Rhode Island statute as applied to airline pilots, 'and a significant number of [states] followed suit, it is obvious that fractionalized control ... would severely limit the flexibility of the F.A.A ....' [citing *Burbank*] Moreover, a patchwork of state laws in this airspace, some in conflict with each other, would create a crazyquilt effect ... The regulation of interstate flight-and flyers-must of necessity be monolithic. Its very nature permits no other conclusion. In the area of pilot fitness as in the area of aviation noise, the [FAA] Act as we read it 'leave[s] no room for ... local controls.' [citing *Burbank*]. *French v. Pan Am Express, Inc.*, 869 F.2d 1, 6 (1st Cir. 1989).