



# Everybody Wants to Rule the World: Federal vs. State Power to Regulate Drones

By Mark J. Connot and Jason J. Zummo



**T**he U.S. Constitution established a unique form of government involving a division of powers between the federal government and the states. The advent of new technologies, however, has challenged the allocation of regulatory power between federal and state governments. A litany

of groundbreaking technologies—steamboats, railroads, airplanes, automobiles, telecommunications, the Internet—has raised tough questions about a long-standing debate: whether a single national body of federal law or a mix of differing state laws would better advance the public interest. Now, drone technology is poised to be one of the fastest growing industries in U.S. history, with the potential to revolutionize commercial activity as well as the public's perspective of robotics and autonomous systems. In doing so, drones raise similar questions about the appropriate balance between federal and state regulation.

As commercial uses of drones continue to develop, their popularity is skyrocketing. Studies estimate that during the first decade following drone integration into the national airspace system (NAS), the industry will create more than 100,000 high-paying jobs and contribute nearly \$100 billion to the nation's economy.<sup>1</sup> The proliferation of this remarkable technology is being impeded, however, by a muddled legal and regulatory framework that is the product of old controversies over federal and state power. Numerous state and local laws regulating drones conflict with both the Federal Aviation Administration's (FAA's) assertion of exclusive authority over the national airspace and its resolve to establish a single national policy for drones.<sup>2</sup>

In 2012, Congress passed the FAA Modernization and Reform Act (FMRA), which required the FAA to integrate drones into the NAS.<sup>3</sup> At the time of the FMRA's passage, public concern about domestic drone use was at an all-time high. The media portrayed drones as having military applications, and the controversy surrounding the National Security Agency (NSA) collecting data on U.S. citizens was exposed.<sup>4</sup> In reaction, many states and cities passed laws directly targeting drones, including laws that regulate or prohibit persons from operating, weaponizing, or using drones for spying.<sup>5</sup>

In 2015, legislatures in 45 states considered 168 bills affecting drones, while 20 states enacted 26 laws regulating drone use.<sup>6</sup> Yet many of those laws may encroach

on the sovereignty of the federal government. Whether federal law and regulation will preempt state and local laws vis-à-vis drones is an emerging issue.<sup>7</sup>

This article first describes how federal preemption currently applies in the aviation context, and then analyzes the potentially fraught relationship between the interests of federal, state, and local governments in regulating drones. The article next highlights a recently introduced federal legislative measure that could provide a path to reconciling those regulatory interests. The article concludes that state and local authorities should regulate drone uses with restraint, recognizing the need to encourage, not suffocate, the burgeoning drone industry and the breadth of federal regulatory authority over aviation.

## Aviation and Federal Preemption

The doctrine of preemption derives from the Supremacy Clause of the U.S. Constitution, which states: "This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land . . . anything in the Constitution or laws of any State to the contrary notwithstanding."<sup>8</sup> Congressional intent to preempt state law can be either express or implied—that is, explicitly stated in a statute's language or implicitly contained in its structure and purpose.<sup>9</sup> When a court determines that federal law preempts state law, the state law must yield;<sup>10</sup> at its core, the question is one of statutory intent.<sup>11</sup>

The U.S. Supreme Court recognizes three types of preemption: (1) express preemption, (2) implied conflict preemption, and (3) implied field preemption. Express preemption is when the language of the federal statute explicitly demonstrates Congress's intent to preempt state law.<sup>12</sup> The FMRA does not contain an express preemption clause. In fact, within the aviation arena, statutes containing express preemption provisions are rare, the most notable of which being the Airline Deregulation Act of 1978. That Act prohibits states from enacting laws "related to a price, route, or service of an air carrier that may provide air transportation."<sup>13</sup> In addition, Congress has expressly asserted "exclusive sovereignty of airspace of the United States," and placed "exclusive authority for regulating the airspace above the United States with the [FAA]."<sup>14</sup> Although that clause seems to show Congress's intent to preempt all state laws, courts have held that there is no general express preemption in the field of aviation.<sup>15</sup> Instead, courts may infer intent either through a conflict between a federal law and a state law, or by finding that Congress has occupied the "field."<sup>16</sup>

Under implied conflict preemption, state law is preempted to the extent that it actually conflicts with federal law.<sup>17</sup> This occurs when it is physically impossible for a private party to comply with both state and federal requirements,<sup>18</sup> or where state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”<sup>19</sup> Under the physical impossibility doctrine, even if one sovereign’s law intends to give a person a right to engage in behavior that the other sovereign’s law intends to forbid, the U.S. Supreme Court has made clear that preemption does not ipso facto result.<sup>20</sup> This is so because a person could comply with both federal and state law simply by abstaining from the behavior.<sup>21</sup> Hence, when federal and state laws are mutually inconsistent, it is physically possible to comply with both *unless* federal law requires what state law forbids (or vice versa).<sup>22</sup> Simply put, the physical impossibility doctrine is “vanishingly narrow” and rarely applied by courts.<sup>23</sup>

Under the frustration of purpose doctrine, any state law that “stands as an obstacle” to the accomplishment of a federal statute’s objective would be preempted.<sup>24</sup> The FMRA’s objective is to integrate civil drones into the NAS.<sup>25</sup> Suppose a state law banned the civil use of drones entirely. That law would be subject to preemption: private sector drone use has risen considerably, and any such ban would only hinder the FAA’s efforts to integrate drones.<sup>26</sup> In contrast, state laws prohibiting persons from weaponizing drones or using drones for voyeurism arguably would not be preempted.<sup>27</sup> Those laws do not ban the operation of drones, restrict flight altitude and flight paths, or regulate navigable airspace. Nor do those laws conflict with current federal law. Thus, they would not “stand as an obstacle” to the “accomplishment and execution” of the federal objectives. In effect, states can place some restrictions in “areas that impact aviation as long as they do not prevent the [FMRA] from accomplishing its purpose.”<sup>28</sup> Further, any threat of conflict preemption may be assuaged by certain exceptions in state laws that specifically allow FAA integration of drones into the national airspace while addressing concerns for privacy or safety.<sup>29</sup>

Under implied field preemption, state law is preempted where it regulates conduct in a field that Congress intended the federal government to occupy alone.<sup>30</sup> That intent—typically determined on a case-by-case basis—may be inferred from a “scheme of federal regulation . . . so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,” or where an act of Congress “touch[es]

a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.”<sup>31</sup> Although the breadth of federal laws and regulations in aviation is extensive, courts have routinely held that states may enact laws within aviation subfields.<sup>32</sup>

At the same time, any attempt by states to regulate certain subfields within aviation, including noise control and safety, will almost certainly be preempted.<sup>33</sup> Likewise, any law restricting—directly or indirectly—flight altitude and flight paths, operational bans, or any regulation of navigable airspace could be preempted.<sup>34</sup> In fact, the FAA has stated that it has sole “authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source.”<sup>35</sup> Thus, the FAA considers any state operational drone restrictions on flight altitude, flight paths, or airspace to infringe on its authority. On the other hand, if the state narrowly targets a highly localized area of drone operations and relates it to matters of traditional state concern generally not subject to or addressed by federal regulation—such as land use, zoning, privacy, or trespass—preemption is less likely and the state law may survive.

### Preemption and Drones

The FAA recently issued final regulations (14 C.F.R. part 107) allowing for the commercial use of drones weighing less than 55 pounds.<sup>36</sup> Part 107, however, did not include a preemption provision. Addressing concerns about part 107’s lack of a preemption provision, the FAA noted that preemption issues involving drones necessitate a case-specific analysis that is not appropriate in a rule of general applicability.<sup>37</sup> Additionally, the FAA conceded that certain legal aspects concerning drone use may be best addressed at the state or local level. For example, state law and other legal protections for individual privacy may provide recourse for a person whose privacy may be affected by another person’s use of a drone.<sup>38</sup>

Whether it is better to have a single federal law or a variety of state and local laws is open to debate. The FAA contends that attempts by state and local governments to regulate the operation or flight of aircraft raise substantial air safety issues.<sup>39</sup> According to the FAA, if a significant number of states and cities enact laws regulating drone operations, fractionalized control of the navigable airspace could result.<sup>40</sup> The FAA argues that this patchwork of differing restrictions conflicts with its jurisdiction and could severely limit its flexibility in controlling airspace and flight patterns to ensure safety and an efficient air traffic flow.<sup>41</sup> From the FAA’s perspective, a navigable airspace free from inconsistent state and local restrictions is necessary to maintain a safe air transportation system.<sup>42</sup>

Advocates of federal preemption of drone

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operations contend that a patchwork of state and local laws would not only cause “confusion about where commercial [drone] operators could fly,” but also “may erode, rather than enhance, safety.”<sup>43</sup> This leitmotif echoes U.S. Supreme Court case law such as *City of Burbank v. Lockheed Air Terminal, Inc.* That case involved a local city ordinance that prohibited planes from taking off from the airport during certain hours of the day.<sup>44</sup> The Supreme Court struck down that ordinance as preempted by the federal regulatory scheme.<sup>45</sup> Expressing its fear regarding local control of airspace, the Court stated, “If we were to uphold the Burbank ordinance and a significant number of municipalities followed suit, . . . fractionalized control . . . 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.”<sup>46</sup>

Those advocates also argue that it is unnecessary for state or local governments to enact drone-specific legislation because existing state laws on privacy, harassment, and trespassing already cover unlawful acts committed with drones. For example, some are concerned about the use of drones to commit physical intrusions that capture photography in inappropriate locations or to advance voyeuristic interests. But existing state laws already address many of the public’s privacy-related concerns, such as unlawful surveillance, trespassing, voyeurism, and stalking.<sup>47</sup> If anything, the invasion of someone’s privacy via a camera attached to a drone is just as offensive as if achieved by a person holding a zoom telescope, and is likely already prohibited. A technology-neutral approach that incorporates drone use in existing laws would alleviate the need for new laws and not undermine the potential for numerous beneficial uses of drones.

Opponents of federal preemption of laws regulating drone operations argue that a patchwork of state and local laws is not necessarily a bad thing. They note that most commercial drone activity takes place at limited altitudes close to the ground and within short horizontal ranges—typically no more than one mile. Further, any safety hazards from operating commercial drones are inherently local to proximate persons or property. They contend that drone operations directly affect the health and welfare of persons in their local communities. These quality-of-life matters are typically subject to regulation under state and local police powers. Generally, consideration under “the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law.”<sup>48</sup> Thus, if a state enacts legislation for the protection and maintenance of the health, safety, or general welfare of its citizens in fields that the states have traditionally occupied—land use, zoning, privacy, trespass, and law enforcement operations—such laws fall within the historic concept of a state’s police power.<sup>49</sup> These “police powers of the States [are]

not to be [preempted] unless that was the clear and manifest purpose of Congress.”<sup>50</sup> Therefore, unless that intent is clear, courts must not “invalidate state and local legislation.”<sup>51</sup> In sum, opponents argue that states and cities—not the federal government—are in a better position to balance safety and economic productivity to regulate drones.

Similarly, FAA data pertaining to national drone incidents show that reckless drone use varies significantly from state to state and city to city.<sup>52</sup> Indeed, almost one in five incidents of reckless drone use nationwide has occurred in densely populated areas with critical infrastructure. And not only does each state and city have its own topographic characteristics, but operating a drone in an urban area as opposed to a rural setting also differs and each poses unique risks. The federal government’s “one size fits all” approach for every state, city, county, park, and school in the country is not practical. Hence, opponents argue that states need flexibility to enact rules that address their unique challenges.

### Reconciling the Federal/State Tension over Regulating Drones

A bill recently introduced in the U.S. Senate included a proposal to address this inherent tension between federal and state regulation of drone operations. The bill, titled the FAA Reauthorization Act of 2016 (FRA), specifically addressed federal preemption in the area of drone operations. Section 2142(a) of the FRA proposed to establish federal preemption of state and local laws relating to (1) the design, manufacture, testing, licensing, registration, certification, operation, or maintenance of a drone, including airspace, altitude, flight paths, equipment, or technology requirements; (2) the purpose of operations; and (3) pilot, operator, and observer qualifications, training, and certification.<sup>53</sup> Yet under section 2142(b), state or local laws—including common-law causes of action—relating to nuisance, voyeurism, harassment, reckless endangerment, wrongful death, personal injury, property damage, or other illegal acts arising from the use of drones would not be preempted if they did not specifically relate to the use of a drone.<sup>54</sup>

Congress ultimately did not pass the FRA.<sup>55</sup> Nonetheless, the FRA’s preemption framework is important because it attempts to establish a single national policy for drones by explicitly granting the FAA supremacy over all laws seeking to regulate drone operations.

### Conclusion

While certain laws enacted by various states are susceptible to preemption, until litigated in court or repealed by the legislature, there will continue to be legal ambiguity. With the FAA’s final regulations for commercial use of small drones having gone into effect in August 2016, several variables will greatly influence

the degree and scope of preemption. These include: (1) a reviewing court's analysis of the breadth and pervasiveness of these regulations; (2) whether the FAA has previously regulated a particular subject matter within the relevant aviation subfield; (3) the nature of the state regulations, including whether the subject matter regulated by the state or city involves an issue within or related to matters of traditional state and local police powers; and (4) the degree of conflict between federal and state regulations on a subject.

In addition to the tension with federal authority, states must confront the confusing regulatory environment that arises when numerous local authorities seek to restrict drone operations. Concerned that individual political subdivisions in a state will pass separate and varying laws regulating the ownership or operation of drones, some states have enacted statutes barring local governments from doing so—in essence, preempting local governments from regulating drones. For example, statutes in Arizona, Maryland, Oregon, and Virginia prevent local governments from enacting more restrictive drone regulations.<sup>56</sup> Each of these laws aims to strike a balance between the safety and privacy concerns of citizens and commercial interests, and to have a uniform, reasonable policy.

The surge in drone technology has tremendous economic potential for states that have a favorable regulatory environment for this burgeoning industry. Therefore, state lawmakers must exercise caution to avoid enacting reactionary, burdensome, and restrictive laws specifically directed toward drone operations. Those laws risk alienating the drone industry and impeding economic development. Instead, state lawmakers should strike a balance that allows the use of drones for commercial and recreational purposes while addressing citizen concerns in a narrowly tailored manner, recognizing that overreaching state laws may be preempted.

## Endnotes

1. ASS'N FOR UNMANNED VEHICLE SYS. INT'L (AUVSI), THE ECONOMIC IMPACT OF UNMANNED AIRCRAFT SYSTEMS INTEGRATION IN THE UNITED STATES 1, 3 (2013), <http://www.auvsi.org/auvsiresources/economicreport>; see also John Villasenor, *Observations from Above: Unmanned Aircraft Systems and Privacy*, 36 HARV. J.L. PUB. POL'Y 457, 466 (2013).
2. See 2016 State Unmanned Systems Legislation, ASS'N FOR UNMANNED VEHICLE SYS. INT'L, <http://cqrcengage.com/auvsi/statelegmap>; see also IDAHO CODE ANN. § 21-213; NEV. REV. STAT. §§ 493.100, .106; OR. REV. STAT. §§ 837.310, .380, .995; TENN. CODE ANN. § 39-13-609; TEX. GOV'T CODE ANN. §§ 423.003, .0045.
3. Pub. L. No. 112-95, 126 Stat. 11 (2012).
4. See Adam Taylor, *The U.S. Keeps Killing Americans in Drone Strikes, Mostly by Accident*, WASH. POST, Apr. 23, 2015, <https://www.washingtonpost.com/news/worldviews/wp/2015/04/23/>

the-u-s-keeps-killing-americans-in-drone-strikes-mostly-by-accident/; see also Peter Finn & Ellen Nakashima, *Obama Defends NSA Collection of Citizens' Data*, WASH. POST, June 8, 2013, <http://www.pressreader.com/usa/the-washington-post/20130608/281487863901205/TextView>.

5. See *supra* note 2; see also Margot E. Kaminski, *Drone Federalism: Civilian Drones and the Things They Carry*, 4 CALIF. L. REV. CIRCUIT 57, 57-58 (2013); Geoffrey Christopher Rapp, *Unmanned Aerial Exposure: Civil Liability Concerns Arising from Domestic Law Enforcement Employment of Unmanned Aerial Systems*, 85 N.D. L. REV. 623, 627, 641-42 (2009).

6. See *Current Unmanned Aircraft State Law Landscape*, NAT'L CONF. OF ST. LEGISLATURES, <http://www.ncsl.org/research/transportation/current-unmanned-aircraft-state-law-landscape.aspx> (last updated July 7, 2016) (noting that in 2015, 20 states—Arkansas, California, Florida, Hawaii, Illinois, Louisiana, Maine, Maryland, Michigan, Mississippi, Nevada, New Hampshire, North Carolina, North Dakota, Oregon, Tennessee, Texas, Utah, Virginia, and West Virginia—passed 26 pieces of legislation; five other states—Alaska, Georgia, New Mexico, Pennsylvania, and Rhode Island—adopted resolutions related to drones).

7. Although beyond the scope of this article, state and local rules that address privacy concerns by limiting a person's ability to use drones to capture data in public airspace—that is, conduct surveillance—may be vulnerable to First Amendment challenges.

8. U.S. CONST. art. VI, cl. 2; see also *Hillsborough Cnty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 715-16 (1985) (finding that federal supremacy applies equally to issues involving agency regulations as well as federal statutes).

9. See *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947).

10. *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981).

11. *Morales*, 504 U.S. at 383.

12. See *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990); *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982).

13. See 49 U.S.C. § 41713(b); *id.* § 40102(a)(2), (5), (25); see also *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232 (1995).

14. See 49 U.S.C. § 40103(a), (b); *Riggs v. Burson*, 941 S.W.2d 44, 49 (Tenn. 1997).

15. See *Braniff Airways, Inc. v. Neb. State Bd. of Equalization & Assessment*, 347 U.S. 590, 594-95 (1954); *Montalvo v. Spirit Airlines*, 508 F.3d 464, 470 (9th Cir. 2007).

16. See *Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363, 367 (3d Cir. 1999).

17. *English*, 496 U.S. at 79.

18. See, e.g., *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963).

19. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); see also *Maryland v. Louisiana*, 451 U.S. 725, 747 (1981).

20. See Caleb Nelson, *Preemption*, 86 VA. L. REV. 225, 228 n.15 (2000).

21. *Id.*

22. *Id.*; see also *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25, 31 (1996); *Mich. Cannery & Freezers Ass'n v. Agric. Mktg. & Bargaining Bd.*, 467 U.S. 461, 478 n.21 (1984).

23. See *supra* note 22; see also Mary J. Davis, *Unmasking the Presumption in Favor of Preemption*, 53 S.C. L. REV. 967, 984 n.96 (2002); Christopher H. Schroeder, *Supreme Court Preemption Doctrine, in PREEMPTION CHOICE: THE THEORY, LAW, AND REALITY OF FEDERALISM'S CORE QUESTION* 119, 131 (William W. Buzbee ed., 2009).

24. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000).

25. See FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, § 332(a)(1), 126 Stat. 11, 73.

26. See *supra* note 1.

27. See generally ALISSA M. DOLAN & RICHARD M. THOMPSON II, CONG. RESEARCH SERV., R42940, INTEGRATION OF DRONES INTO DOMESTIC AIRSPACE: SELECTED LEGAL ISSUES (2013); Ray Carver, *State Drone Laws: A Legitimate Answer to State Concerns or a Violation of Federal Sovereignty*, 31 GA. ST. U. L. REV. 377, 393-94 (2015).

28. Carver, *supra* note 27, at 393.

29. See, e.g., NEV. REV. STAT. § 493.103(2)(d)(1); TEX. GOV'T CODE ANN. § 423.002(a)(1).

30. *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990).

31. *Id.* (alteration in original).

32. See, e.g., *Nw. Airlines, Inc. v. Minnesota*, 322 U.S. 292 (1944); *Martin ex rel. Heckman v. Midwest Express Holdings, Inc.*, 555 F.3d 806, 811 (9th Cir. 2009); *Greene v. B.F. Goodrich Avionics Sys., Inc.*, 409 F.3d 784, 788 (6th Cir. 2005); *Gustafson v. City of Lake Angelus*, 76 F.3d 778, 783 (6th Cir. 1996); *Pub. Health Trust of Dade Cnty., Fla. v. Lake Aircraft, Inc.*, 992 F.2d 291, 295 (11th Cir. 1993); *Cleveland ex rel. Cleveland v. Piper Aircraft Corp.*, 985 F.2d 1438 (10th Cir. 1993); *Garden State Farms, Inc. v. Bay*, 390 A.2d 1177, 1180 (N.J. 1978).

33. See *Nw. Airlines*, 322 U.S. at 303 (Jackson, J., concurring) ("Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds."); see also *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 628 (1973) (noise emissions from planes); *Montalvo v. Spirit Airlines*, 508 F.3d 464, 471 (9th Cir. 2007) (aviation safety); *Skysign Int'l, Inc. v. City & Cnty. of Honolulu*, 276 F.3d 1109, 1118 (9th Cir. 2002) (navigable airspace); *Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363, 367 (3d Cir. 1999) (aviation safety); *Allegheny Airlines, Inc. v. Vill. of Cedarhurst*, 238 F.2d 812, 815 (2d Cir. 1956) (flight altitudes); *Cnty. of Cook v. Priester*, 318 N.E.2d 327, 331-32 (Ill. App. Ct. 1974), *aff'd*, 342 N.E.2d 41 (Ill. 1976) (aircraft flight weight); DOLAN & THOMPSON, *supra* note 27. But see *Cleveland ex rel. Cleveland*, 985 F.2d at 1444; *Ward v. State*, 374 A.2d 1118, 1125 (Md. 1977).

34. See *Skysign Int'l*, 276 F.3d at 1117 (noting the forbidden, exclusively federal areas: flight paths, hours, and altitudes). Imagine a state law banning the operating of a drone within the airspace of the city or within certain distances of a pipeline or water treatment facility. See, e.g., NEV. REV. STAT. § 493.109; TEX. GOV'T CODE ANN. § 423.0045.

35. FAA Office of the Chief Counsel, *State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet*, FAA 1 (Dec. 17, 2015), [http://www.faa.gov/uas/resources/uas\\_regulations\\_policy/media/uas\\_fact\\_sheet\\_final.pdf](http://www.faa.gov/uas/resources/uas_regulations_policy/media/uas_fact_sheet_final.pdf)

[hereinafter *UAS Fact Sheet*].

36. See Operation and Certification of Small Unmanned Aircraft Systems, 81 Fed. Reg. 42,064 (June 28, 2016) (to be codified at 14 C.F.R. pt. 107).

37. *Id.* at 42,194.

38. *Id.*

39. *UAS Fact Sheet, supra* note 35, at 2-3.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Up in the Air: Examining the Commercial Applications of Unmanned Aircraft for Small Businesses: Hearing before the S. Comm. on Small Bus. & Entrepreneurship*, 114th Cong. (2016) (statement of Brian Wynne, President and CEO, AUVSI).

44. *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 625 (1973).

45. *Id.* at 640.

46. *Id.* at 639 (footnote omitted); see also *Nw. Airlines v. Minnesota*, 322 U.S. 292, 302 (1944) (holding that any authorization of local burdens on our national air commerce will lead to their multiplication in this country); *Montalvo v. Spirit Airlines*, 508 F.3d 464, 473 (9th Cir. 2007) ("[A] patchwork of state laws [for passenger warnings] in this airspace . . . would create a crazyquilt effect.").

47. See, e.g., NEV. REV. STAT. §§ 200.571 (harassment), 200.575 (stalking), 200.603 (peering, peeping, or spying through window, door, or other opening of dwelling of another), 200.604 (capturing image of private area of another person), 206.140 (nuisance; trespass).

48. *Bldg. & Constr. Trades Council v. Associated Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218, 224 (1993).

49. *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926); *Fla. E. Coast Ry. v. City of W. Palm Beach*, 266 F.3d 1324, 1328 (11th Cir. 2001).

50. *City of Burbank*, 411 U.S. at 643.

51. *Id.*

52. See *FAA Releases Pilot UAS Reports*, FAA (Aug. 21, 2015), <https://www.faa.gov/news/updates/?newsId=83544>; see also Press Release, Sen. Dianne Feinstein, Amendment Introduced to Protect California's Ability to Oversee Drone Use (Apr. 8, 2016), <http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=B8088E0B-2E88-4A6F-B587-4D57136CF457>.

53. FAA Reauthorization Act of 2016, S. 2658, 114th Cong. § 2142(a) (as passed by Senate, Apr. 19, 2016).

54. *Id.* § 2142(b).

55. In lieu of passing a long-term reauthorization of the FAA, Congress passed a 14-month funding extension of the FAA's programs and the taxes that will fund those programs titled the FAA Extension, Safety, and Security Act of 2016, H.R. 636, 114th Cong. While that law also seeks to provide important aviation safety, security, and time-sensitive improvements for air travelers, it does not contain a federal preemption clause.

56. ARIZ. REV. STAT. ANN. § 13-3729; MD. CODE ANN., ECON. DEV. § 14-301; OR. REV. STAT. § 837.385; VA. CODE ANN. § 15.2-926.3.