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Court sides with ARSA on small business issue while upholding new FAA drug and alcohol rule

Washington, D.C.- In a lawsuit initiated in March 2006, the Aeronautical Repair Station Association (ARSA) challenged the Federal Aviation Administration (FAA) mandate that anti-drug and alcohol testing programs apply to aviation maintenance contractors "at any tier." In a two-to-one decision, the U.S. Court of Appeals for the District of Columbia Circuit agreed with ARSA that the FAA violated the Regulatory Flexibility Act (RFA) by not properly considering the impact of its rule on small businesses. While the Court upheld the agency's new testing requirements, it remanded the rule, directing the FAA to conduct the proper RFA analysis. The opinion was issued on July 17, 2007.

The FAA had determined that repair stations and their subcontractors were not directly affected by the rule and, therefore, the Administration did not need to complete the RFA analysis. The Court disagreed; it ruled that contractors are directly regulated, entitled to the protections of the RFA and it instructed the FAA to conduct the required analysis. In the meantime, the Court allowed the FAA to enforce the final rule even against small businesses. "We plan to keep the agency's feet to the fire on the Court mandated economic-impact analysis to protect small businesses from undue burdens," promised Sarah MacLeod, the Association's Executive Director.

In a dissenting opinion, Judge David B. Sentelle echoed ARSA's central contention that employees of subcontractors are not "other air carrier employees" and therefore the FAA's new testing requirements should be set aside. Judge Sentelle agreed with ARSA's reasoning that the FAA exceeded its statutory authority under the Federal Aviation Act.

"One of three judges fully embraced our core point that the new rule exceeds the FAA's legal authority," said attorney Al Givray. "If we had convinced one more judge, the 2-1 decision would have gone completely in our favor, and the new rule would have been set aside. As it is, we are very pleased that we persuaded the Court that the FAA erred in disregarding the Regulatory Flexibility Act."

ARSA is an international trade association for aviation production, design, and maintenance companies. Its diverse membership includes family-owned repair stations that perform highly-specialized maintenance tasks; large, international maintenance firms; airlines; manufacturers; and businesses that provide services to those industry partners.

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