SUPREME COURT OF THE UNITED STATES

No. 92–97

NORTHWEST AIRLINES, INC., ET AL., PETITIONERS *v.* COUNTY OF KENT, MICHIGAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[January 24, 1994]

JUSTICE GINSBURG delivered the opinion of the Court.

Seven commercial airlines, petitioners in this case, assert that certain airport user fees charged to them are unreasonable and discriminatory, in violation of the federal Anti-Head Tax Act (AHTA), 49 U. S. C. App. §1513, and the Commerce Clause. Because the record, as it now stands, does not warrant a judicial determination that the fees in question are unreasonable or unlawfully discriminatory, we affirm the judgment of the Court of Appeals.

The user fees contested in this case are charged by the Kent County International Airport in Grand Rapids, Michigan. The Airport is owned by respondent Kent County and operated by respondents Kent County Board of Aeronautics and Kent County Department of Aeronautics (collectively, the Airport). Petitioners are seven commercial airlines serving the Airport (the Airlines).

The Airport collects rent and fees from three groups of users: (1) commercial airlines, including petitioners; (2) "general aviation," *i.e.*, corporate and privately owned aircraft not used for commercial, passenger, cargo, or military service; and (3) nonaeronautical concessionaires,

including car rental agencies, the parking lot, restaurants, gift shops, "rent-a-cart" facilities, and other small vendors. Since 1968, the Airport has allocated its costs and set charges to aircraft operators pursuant to a "cost of service" accounting system known as the "Buckley methodology."[1] This system is designed to charge the Airlines only for the cost of providing the particular facilities and services they use.[2]

Under its accounting system, the Airport first determines the costs of operating the airfield and the passenger terminal, and allocates these costs among the users of the facilities. Costs associated with airfield operations (*e.g.*, maintaining the runways and navigational facilities) are allocated to the Airlines and general aviation in proportion to their use of the airfield. No portion of these costs is allocated to the concessions. Costs associated with maintaining the airport terminal are allocated among the terminal tenants—the Airlines and the concessions—in proportion to each tenant's square footage.[3]

The Airport then establishes fees and rates for each user group. It charges the Airlines 100% of the costs allocated to them, in the form of aircraft landing and parking fees (for use of the airfield), and rent (for the terminal space the Airlines occupy).[4] General aviation, however, is charged at a lower rate. The

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[1]See James C. Buckley, Rental Fee Recommendations (Feb. 1969), App. 223–275.

[2]In contrast, "residual cost" accounting systems base rates and fees on the total cost of operating the airport. See Brief for City of Los Angeles as *Amicus Curiae* 5.

[3]The parking lot is owned and operated by the Airport itself and is not material to this dispute.

[4]The airlines are also charged for the cost of providing "crash, fire, and rescue" services, and amortization fees for assets acquired by the Airport.

Airport recovers from that user group a per gallon fuel flowage fee for local aircraft and a landing fee for aircraft based elsewhere. These fees account for only 20% of the airfield costs allocated to general aviation.

In relation to costs, the Airport thus "undercharges" general aviation. At the same time, measured by allocated costs, the Airport vastly "overcharges" the concessions. The Airlines pay a cost-based per square foot rate for their terminal space. The concessions, however, pay market rates for their space.[5] Market rates substantially exceed the concessions' allocated costs and yield a sizable surplus.[6] The surplus offsets the general aviation shortfall of approximately $525,000 per year, and has swelled the Airport's reserve fund by more than $1 million per year.

Using the "Buckley methodology" just described, the Airlines and the Airport periodically negotiated and agreed upon fees to be charged through December 31, 1986. Following a new rate study made in 1986, the Airport proposed increased fees beginning January 1, 1987. App. 193 (Plaintiffs' Exh. 6). The Airlines objected to the higher fees and failed to reach an agreement with the Airport. Ultimately, the County Board of Aeronautics adopted an ordinance unilaterally increasing the fees.[7] On the

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[5]Most concessions pay 10% of their gross receipts as rent for space.

[6]For example, the Airport's annual net revenues from 1987 to 1989 ranged from approximately $1.6 million to $1.9 million. App. 278–279 (Plaintiffs' Exhs. 301 and 355).

[7]The ordinance increased aircraft landing fees by $.20 per thousand pounds, and increased terminal rent charges by $6.67 per square foot for prime heated and air-conditioned space, $.59 per square foot for nonprime air-conditioned space, and $1.84 per square

effective date of the ordinance, April 1, 1988, the Airlines sued the Airport, primarily challenging post-December 31, 1986 rates. The Airlines attacked (1) the Airport's failure to allocate to the concessions a portion of the airfield costs, (2) the surplus generated by the Airport's fee structure, and (3) the Airport's failure to charge general aviation 100% of its allocated airfield costs. These features, the Airlines alleged, made the fees imposed on them unreasonable and thus unlawful under the AHTA, 49 U. S. C. App. §1513, and the Airport and Airway Improvement Act of 1982 (AAIA), 49 U. S. C. App. §2210. The Airlines also asserted that the Airport's treatment of general aviation discriminates against interstate commerce in favor of primarily local traffic, in violation of the Commerce Clause, U. S. Const., Art. I, §8, cl. 3.

The parties filed cross-motions for summary judgment. In the first of three opinions, the District Court denied the motions, holding that the Airport's cost methodology is not *per se* unreasonable. App. to Pet. for Cert. 57. In its second opinion, the District Court held that the Airlines have an implied right of action to challenge the fees under the AHTA but not under the AAIA, and that the Airlines have no cause of action under the Commerce Clause. *Id.*, at 42–46. Following a bench trial, the District Court issued its third and final opinion, concluding that the challenged fees are not unreasonable under the AHTA. 738 F. Supp. 1112 (WD Mich. 1990).

The Court of Appeals for the Sixth Circuit affirmed the District Court's judgment in principal part. 955 F. 2d 1054 (1992). In accord with the District Court, the Court of Appeals held that the AHTA impliedly confers

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foot for nonprime, heated, non-air-conditioned space. The ordinance also decreased aircraft parking fees by $.12 per thousand pounds. 738 F. Supp. 1112, 1115 (WD Mich. 1990).

a private right of action on the Airlines, but the AAIA does not. *Id*., at 1058. On the merits, the Court of Appeals (1) upheld as reasonable under the AHTA the bulk of the charges that the Airport imposes on the Airlines, and (2) rejected the Airlines' dormant Commerce Clause claim on the ground that the AHTA regulates the area. *Id*., at 1060–1064.

On one matter, however, the Court of Appeals reversed the District Court's judgment and remanded the case. The District Court had upheld as reasonable under the AHTA the Airport's decision to allocate to the Airlines 100% of the costs of providing "crash, fire, and rescue" (CFR) services. 738 F. Supp., at 1119. Emphasizing that the CFR facilities service all aircraft, not just the Airlines, the Court of Appeals held that the Airport must allocate CFR costs between the Airlines and general aviation. 955 F. 2d, at 1062–1063, 1064.

Petitioning for this Court's review, the Airlines challenged the Court of Appeals' adverse rulings on the AHTA and Commerce Clause issues. The Airport did not cross-petition for review of the Sixth Circuit's judgment to the extent that it favored the Airlines; specifically, the Airport did not petition for review of the remand to the District Court for allocation of the costs of CFR services between the Airlines and general aviation. We granted certiorari, 508 U. S. ___ (1993), to resolve a conflict between the decision under review and a decision of the Court of Appeals for the Seventh Circuit, *Indianapolis Airport Authority* v. *American Airlines, Inc.*, 733 F. 2d 1262 (1984), which declared key parts of a similar fee structure unreasonable under the AHTA.

In *Evansville-Vanderburgh Airport Authority Dist.* v. *Delta Air Lines, Inc.*, 405 U. S. 707 (1972), this Court held that the Commerce Clause does not prohibit States or municipalities from charging commercial

airlines a "head tax" on passengers boarding flights at airports within the jurisdiction, to defray the costs of airport construction and maintenance. We stated in *Evansville:* "At least so long as the toll is based on some fair approximation of use or privilege for use, . . . and is neither discriminatory against interstate commerce nor excessive in comparison with the governmental benefit conferred, it will pass constitutional muster, even though some other formula might reflect more exactly the relative use of the state facilities by individual users." *Id*., at 716–717.

Concerned that our decision in *Evansville* might prompt a proliferation of local taxes burdensome to interstate air transportation, Congress enacted the AHTA. See *Aloha Airlines, Inc.* v. *Director of Taxation of Haw.*, 464 U. S. 7, 9–10 (1983) (summarizing history of AHTA's enactment); S. Rep. No. 93–12, p. 4 (1973) (Congress intended AHTA to "ensure . . . that local `head' taxes will not be permitted to inhibit the flow of interstate commerce"); *id*., at 17 ("The head tax . . . cuts against the grain of the traditional American right to travel among the States.").

The AHTA provides in pertinent part:

> "(a) Prohibition; exemption
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> "No State (or political subdivision thereof . . .) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom . . . .
>
> "(b) Permissible State taxes and fees
>
> "[N]othing in this section shall prohibit a State (or political subdivision thereof . . .) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes,

> franchise taxes, and sales or use taxes on the sale of goods or services; and nothing in this section shall prohibit a State (or political subdivision thereof . . .) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities." 49 U. S. C. App. §1513.

Primarily, the Airlines urge that the Airport's fees overcharge them in violation of the AHTA. Before reaching that issue, however, we face a threshold question. The United States as *amicus curiae* and, less strenuously, the Airport, urge that the Airlines have no right to enforce the AHTA through a private action commenced in a federal court of first instance. Instead, they maintain, complaints under the AHTA must be pursued initially in administrative proceedings before the Secretary of Transportation, subject to judicial review in the courts of appeals.

The threshold question is substantial: If Congress intended no right of immediate access to a federal court under the AHTA, then the Airlines' AHTA claim should have been dismissed, not adjudicated on the merits as it was, indeed in part favorably to the Airlines. However, the Airport filed no cross-petition for certiorari seeking to upset the judgment to the extent that it rejected the Airport's CFR cost allocation (100% to the Airlines) as inconsonant with the AHTA. For that reason, we decline to resolve the private right of action question in this case.

A prevailing party need not cross-petition to defend a judgment on any ground properly raised below, so long as that party seeks to preserve, and not to change, the judgment. *See, e.g.*, *Thigpen* v. *Roberts*, 468 U. S. 27, 29–30 (1984). A cross-petition is required, however, when the respondent seeks to alter the judgment below. *See, e.g.*, *Trans World Airlines, Inc.* v. *Thurston*, 469 U. S. 111, 119, n. 14 (1985); *United States* v. *New York Telephone Co.*, 434

U. S. 159, 166, n. 8 (1977); *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U. S. 548, 560, n. 11 (1976); *United States* v. *ITT Continental Baking Co.*, 420 U. S. 223, 226–227, n. 2 (1975). Alteration would be in order if the private right of action question were resolved in favor of the Airport. For then, the entire judgment would be undone, including the portion remanding for reallocation of CFR costs between the Airlines and general aviation. The Airport's failure to file a cross-petition on the CFR issue—the issue on which it was a judgment *loser*—thus leads us to resist the plea to declare the AHTA claim unfit for district court adjudication.[8]

The question whether a federal statute creates a claim for relief is not jurisdictional. See *Air Courier Conference* v. *American Postal Workers Union*, 498 U. S. 517, 523, n. 3 (1991); *Burks* v. *Lasker*, 441 U. S. 471, 476,
n. 5 (1979); *Mt. Healthy City Bd. of Ed.* v. *Doyle*, 429 U. S. 274, 278–279 (1977); *Bell* v. *Hood*, 327 U. S. 678, 682 (1946). Accordingly, we shall assume, solely for purposes of this case, that the alleged AHTA private right of action exists.

The AHTA prohibits States and their subdivisions

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[8]*Berkemer* v. *McCarty*, 468 U. S. 420, 435, n. 23 (1984), is not to the contrary. There the Court of Appeals had reversed the respondent's criminal conviction, holding postarrest incriminating statements inadmissible under *Miranda* v. *Arizona*, 384 U. S. 436 (1966). Because he prevailed in the Court of Appeals, obtaining a judgment entirely in his favor, respondent could not have filed a cross-petition. Accordingly, his contention that certain prearrest statements (whose admissibility the Court of Appeals had left ambiguous) were inadmissible was a permissible argument in defense of the judgment below.

from levying a "fee" or "other charge" "directly or indirectly" on "persons traveling in air commerce or on the carriage of persons traveling in air commerce." 49 U. S. C. §1513(a). Landing fees, terminal charges, and other airport user fees of the sort here challenged fit §1513(a)'s description. As we confirmed in an opinion invalidating a State tax on airlines' gross receipts, §1513(a)'s compass is not limited to direct "head" taxes. *Aloha Airlines*, 464 U. S., at 12–13.

But §1513(a) does not stand alone. That subsection's prohibition is immediately modified by §1513(b)'s permission. See *Wardair Canada Inc.* v. *Florida Dept. of Revenue*, 477 U. S. 1, 15–16 (1986) (Burger, C. J., concurring in part and concurring in judgment) (§1513(b)'s saving clause was enacted in response to the States' concern that §1513(a)'s "sweeping provision would prohibit even unobjectionable taxes such as landing fees . . ."). Sections 1513(a) and (b) together instruct that airport user fees are permissible only if, and to the extent that, they fall within §1513(b)'s saving clause, which removes from §1513(a)'s ban "reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities."[9]

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[9]The Airport's argument, accepted by the dissent, that user fees are entirely outside the scope of the AHTA because they are not "head" taxes, advances an untenable reading of the statute. We note, in this regard, §1513(b)'s recognition, in its first clause, of "taxes *other than those enumerated in subsection (a) of this section*, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services" (emphasis supplied). Unlike the property and income taxes listed in the first clause of §1513(b), the airport user fees listed in §1513(b)'s second clause are *not* described as taxes "other than those enumerated in subsection (a)." The

While §1513(b) allows only "*reasonable* rental charges, landing fees, and other service charges," the AHTA does not set standards for assessing reasonableness. Courts, we recognize, are scarcely equipped to oversee, without the initial superintendence of a regulatory agency, rate structures and practices. See *Colorado Interstate Co.* v. *FPC*, 324 U. S. 581, 589 (1945) ("Rate-making is essentially a legislative function."); cf. *Far East Conference* v. *United States*, 342 U. S. 570, 574 (1952) ("in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over").[10] The Secretary of Transportation is charged with administering the federal aviation laws, including the AHTA.[11] His

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statute, in sum, is hardly ambiguous on this matter: user fees are covered by §1513(a), but may be saved by §1513(b).

[10]The reasonableness of the Airport's rates might have been referred, prior to any court's consideration, to the Department of Transportation under the primary jurisdiction doctrine. That doctrine is "specifically applicable to claims properly cognizable in court that contain some issue within the special competence of an administrative agency" and permits courts to make a "`referral' to the agency, staying further proceedings so as to give the parties reasonable opportunity to seek an administrative ruling." *Reiter* v. *Cooper*, 507 U. S. ___, ___ (1993) (slip op., at 9). However, as the parties have not briefed or argued this question, we decline to invoke the doctrine here.

[11]The Federal Aviation Act, which encompasses the AHTA, authorizes the Secretary of Transportation to conduct investigations, issue orders, and promulgate regulations necessary to implement the statute. See

Department is equipped, as courts are not, to survey the field nationwide, and to regulate based on a full view of the relevant facts and circumstances. If we had the benefit of the Secretary's reasoned decision concerning the AHTA's permission for the charges in question, we would accord that decision substantial deference. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–845 (1984). Lacking guidance from the Secretary, however, and compelled to give effect to the statute's use of "reasonable," we must look elsewhere.

The parties point to the standards this Court employs to measure the reasonableness of fees under the Commerce Clause, as stated in the *Evansville* case, see *supra*, at 5–6; they invite our use of the *Evansville* standards as baselines for determining the reasonableness of fees under the AHTA.[12] We accept the parties' suggestions.

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49 U. S. C. App. §1354(a). The Act provides a mechanism for administrative adjudication, subject to judicial review in the Courts of Appeals, of alleged violations. See §1482(a) ("[a]ny person may file with the Secretary of Transportation . . . a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provisions of [the Act], or of any requirement established pursuant thereto"); §1486 (judicial review provision). The Secretary has established procedures for adjudicating such complaints through the Federal Aviation Administration, see 14 CFR pt. 13 (1993), and the FAA has entertained challenges to the reasonableness of airport landing fees under the AHTA. See *New England Legal Foundation* v. *Massachusetts Port Authority*, 883 F. 2d 157, 159–166 (CA1 1989).

[12]See Brief for Petitioners 20, 22–23; Reply Brief for Petitioners 3–4; Brief for Respondents 32; see also Brief for United States as *Amicus Curiae* 23–29

Although Congress enacted the AHTA because it found unsatisfactory the end result of our Commerce Clause analysis in *Evansville*—the validation of "head" taxes—Congress specifically permitted, through §1513(b)'s saving clause, "reasonable rental charges, landing fees, and other services charges."[13] The formulation in *Evansville* has been used to determine "reasonableness" in related contexts. See, *e.g.*, *American Trucking Assns., Inc.* v. *Scheiner*, 483 U. S. 266, 289–290 (1987) (applying *Evansville* test to assess validity under Commerce Clause of state taxes applied to interstate motor carrier); *Massachusetts* v. *United States*, 435 U. S. 444, 466–467 (1978) (applying *Evansville* test to determine constitutionality of tax under intergovernmental immunity doctrine). It will suffice for the purpose at hand.[14]

(arguing that *Evansville* reasonableness test is satisfied without explicitly endorsing its application).

[13]Contrary to the dissent's suggestion, applying *Evansville*'s standards to determine whether airport fees are "reasonable" under §1513(b) would not permit airports "to impos[e] a modest per passenger fee on airlines as a service charge for use of airport facilities." *Post*, at 7. Section 1513(a)'s prohibition is written broadly, whereas §1513(b) is narrow, saving only "reasonable rental charges, landing fees, and other service charges." A per passenger service charge would be an impermissible "head charge" under §1513(a), and does not fit into any of the three categories saved by §1513(b). The user fees challenged here, by contrast, are "rental charges, landing fees, and other service charges," §1513(b), that would be prohibited as "fee[s]" or "other charge[s]" under §1513(a), unless they are "reasonable." See *supra*, at 8–9.

[14]It remains open to the Secretary, utilizing his Department's capacity to comprehend the details of airport operations across the country, and the

To recapitulate, a levy is reasonable under *Evansville* if it (1) is based on some fair approximation of use of the facilities, (2) is not excessive in relation to the benefits conferred, and (3) does not discriminate against interstate commerce. 405 U. S., at 716–717. The Airlines contend that the Airport's fee structure fails the *Evansville* test on three main counts. We consider each contention in turn.

As noted above, the Airport allocates its air operations costs between the Airlines and general aviation; the concessions in fact supply the lion's share of the Airport's revenues, see *supra*, at 3, but are allocated none of these costs. The Airlines contend that the concessions benefit substantially, albeit indirectly, from air operations, because those operations generate the concessions' customer flow. Therefore, the Airlines urge, the Airport's failure to allocate to the concessions any of the airfield-associated costs violates *Evansville*'s requirement that user fees be "based on some fair approximation of use or privilege for use." 405 U. S., at 716–717. The cost reallocation sought by the Airlines would not change the market-based rent paid by the concessions, see *supra*, at 3, but it would lower the charges imposed on the Airlines.

We see no obvious conflict with *Evansville* in the Airport's allocation of the costs of air operations to the Airlines and general aviation, but not to the concessions. Only the Airlines and general aviation

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economics of the air transportation industry, to apply some other formula (including one that entails more rigorous scrutiny) for determining whether fees are "reasonable" within the meaning of the AHTA; his exposition will merit judicial approbation so long as it represents "a permissible construction of the statute." *Chevron*, 467 U. S., at 843.

actually use the runways and navigational facilities of the Airport; the concessions use only the terminal facilities. The Airport's decision to allocate costs according to a formula that accounts for this distinction appears to "reflect a fair, if imperfect, approximation of the use of facilities for whose benefit they are imposed." 405 U. S., at 716–717.[15]

The District Court found that (with one minor exception[16]) the Airport charged the Airlines "the break-even costs for the areas they use." 738 F. Supp., at 1119.[17] In this light, we cannot conclude that the

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[15]See also 405 U. S., at 718–719 (airports may lawfully distinguish among classes of users, including aircraft operators and concessions, based on their differing uses of airport facilities); *Denver* v. *Continental Air Lines, Inc.*, 712 F. Supp. 834, 838, 839 (Colo. 1989) (rejecting a similar argument, noting: "Nothing in the history and purpose of the Anti-Head Tax Act indicates that Congress intended the courts to act as a public utility commission and intervene in the setting of airport rates and charges through the adoption or rejection of any particular type of cost accounting methodology. Denver's division of costs and revenues between airlines and concessionaires is facially a reasonable approach to establishing rental charges, terminal rates, landing fees and other service charges which are collected from the users of the facilities at Stapleton [Airport].").

[16]The District Court found that the Airport overcharged the Airlines for aircraft parking and ordered the Airport "to recalculate this fee to result in a true break-even charge." 738 F. Supp., at 1120. The Airport did not appeal this order.

[17]The Airlines do not dispute that they are charged only their allocated share of the airfield and terminal costs. They assert, however, that the Airport has allocated to them excessive "carrying charges" or amortization fees for capital improvements. The

Airlines were charged fees "excessive in comparison with the governmental benefit conferred." *Evansville*, *supra*, at 717. See also Brief for United States as *Amicus Curiae* 25 ("As long as an airport's charges to air carriers do not result in revenues that exceed by more than a reasonable margin the costs of servicing those carriers, the Secretary would normally sustain those charges as reasonable under federal law.") (citing Federal Aviation Administration, *Airport Compliance Requirements*, Order No. 5190.6A §§4–13, 4–14, pp. 20–22 (Oct. 2, 1989), and 14 CFR §399.110(f) (1993)).

The Airlines also contend that the Airport's fee methodology is unlawful because, by imposing on the Airlines virtually all of the air-operations costs, and exacting fees from the concessions far in excess of their allocated costs, the methodology generates huge surpluses. The AHTA, however, does not authorize judicial inquiry focused on the amount of the Airport's surplus. The statute requires only that an airport's fees not "be excessive in relation to costs incurred by the taxing authorities" for benefits conferred on the user. *Evansville*, *supra*, at 719. As we have explained, the Airlines are charged only for the costs of benefits they receive. The Airport's surplus is generated from fees charged to concessions, and the amounts of those fees are not at issue. As the Court of Appeals pointed out, §1513(b) applies only to fees charged to "aircraft

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Court of Appeals specifically addressed and rejected this contention, concluding that the rate charged "is reasonable and should not result in a net present value which exceeds the initial cost of the [capital improvements] project." 955 F. 2d 1054, 1063 (CA6 1992). We have no cause to disturb that determination.

operators." 955 F. 2d, at 1060.

The Airlines urge us to consider the effect of the concession revenues when deciding whether the fees charged the Airlines are reasonable, pointing to the Seventh Circuit's analysis in *Indianapolis Airport* v. *American Airlines, Inc.*, 733 F. 2d, at 1268 (invalidating the Indianapolis Airport's fee structure on the ground, *inter alia*, that the Airport's generation of a surplus from the concession fees indirectly raises the costs of air travel). The Seventh Circuit, however, overlooked a key factor. It reasoned explicitly from the incorrect premise that "[n]o agency has regulatory authority over the rate practices of the Indianapolis Airport Authority." *Ibid*. The Seventh Circuit panel believed that "the duty of regulation [fell] to the courts in the enforcement of the state and federal statutes forbidding unreasonable rates." *Ibid*. That court thought it necessary to "imagine [itself] in the role of a regulatory agency." *Ibid*. In contrast, our opinion in this case emphasizes that the Department of Transportation has regulatory authority to enforce the federal aviation laws, including the AHTA and the AAIA, see *supra*, at 10, and n. 11, so there is no cause for courts to offer a substitute for "conventional public utility regulation," 733 F. 2d, at 1268.

We resist inferring a limit on airport surpluses from the AHTA for a further reason. That measure does not mention surplus accumulation, but another statute, the AAIA, directly addresses the use of airport revenues. The AAIA requires that "*all* revenues generated by the airport . . . be expended for the capital or operating costs of the airport . . . ." 49 U. S. C. App. §2210(a)(12) (emphasis supplied). The Airlines do not suggest that the Airport is using its surplus for any purpose other than Airport-related expenses, nor did they seek review of the lower courts' holding that they had no right of action under the AAIA. 955 F. 2d, at 1058–1059. For these

reasons, even if the AAIA is read to impose a limit on the accumulation of surplus revenues, see Brief for United States as *Amicus Curiae* 26–27, the question whether the Airport's surpluses are excessive is not properly before us.

Finally, the Airlines contend that the Airport's fees discriminate against them in favor of general aviation, in violation of *Evansville*'s instruction that airport tolls be nondiscriminatory regarding interstate commerce and travel. As earlier recounted, see *supra*, at 2–3, the Airlines pay 100% of their allocated costs while general aviation users are assessed fees covering only 20% of their allocated costs.

We need not consider whether the Airlines would have a compelling point had they established that general aviation is properly categorized as intrastate commerce. Cf., *e.g.*, *Chemical Waste Management, Inc.* v. *Hunt*, 504 U. S. ___, ___ (1992) (slip op., at 4–13) (invalidating state fee on hazardous wastes generated outside, but disposed of inside, the State, because it discriminated against interstate commerce); *American Trucking Assns., Inc.* v. *Scheiner*, 483 U. S., at 268–269 (invalidating state highway use taxes because they discriminated against interstate motor carriers). The record in this case, it suffices to say, does not support the Airlines' argument. We cannot assume, in the total absence of proof, that the large and diverse general aviation population served by the Airport travels typically intrastate and seldom ventures beyond Michigan's borders.[18]

[18]The Airlines suggest that they had no opportunity to develop a record demonstrating discrimination in favor of intrastate carriers, because the District Court granted summary judgment for respondents on the Commerce Clause question. See Reply Brief for Petitioners 9–10, n. 14. This argument does not fly.

The Airlines assert that, even if the Airport's user fees are not unreasonable under the AHTA, they violate the "dormant" Commerce Clause. Even if we considered the AHTA's express permission for States' imposition of "reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities," 49 U. S. C. App. §1513(b), insufficiently clear[19] to rule out judicial dormant Commerce Clause analysis,[20] petitioners'

The case did proceed to trial on the AHTA claim. The Airlines have asserted that *Evansville*'s standard governs AHTA reasonableness. Thus, under their own theory, they had to demonstrate the equivalent of a violation of the dormant Commerce Clause—*i.e.*, discrimination against interstate commerce—in order to prevail at the AHTA trial. The Airlines' belated suggestion—which contradicts their endorsement of *Evansville*, see Brief for Petitioners 22–23—that discrimination in favor of intrastate commerce is relevant under the Commerce Clause, but not under the AHTA, is unimpressive. The AHTA was a direct response to *Evansville;* Congress' principal concern in enacting the measure was to proscribe fees that unduly burden interstate commerce. See, *e.g.*, S. Rep. No. 93–12, p. 17 (1973). Covered fees, as we have emphasized, include, but are not limited to, head taxes. See *supra*, at 8–9, and n. 9.

[19]See, *e.g.*, *Wyoming* v. *Oklahoma*, 502 U. S. ___, ___ (1992) (slip op., at 19) (requiring that Congress "manifest its unambiguous intent before a federal statute will be read to permit" state regulation discriminating against interstate commerce).

[20]See, *e.g.*, *Merrion* v. *Jicarilla Apache Tribe*, 455 U. S. 130, 154 (1982) ("Once Congress acts, courts are not free to review state taxes or other regulations under the dormant Commerce Clause. When Congress has struck the balance it deems appropriate, the courts

argument would fail. We have already found the challenged fees reasonable under the AHTA through the lens of *Evansville*—that is, under a reasonableness standard taken directly from our dormant Commerce Clause jurisprudence.

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are no longer needed to prevent States from burdening commerce, and it matters not that the courts would invalidate the state tax or regulation under the Commerce Clause in the absence of congressional action.").

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For the reasons stated, and without prejudging the outcome of any eventual proceeding before or regulation by the Secretary of Transportation, we affirm the judgment of the Court of Appeals.

It is so ordered.

JUSTICE BLACKMUN took no part in the consideration or decision of this case.