NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

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

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

No. 92–97. Argued November 29, 1993—Decided January 24, 1994

Respondents, the owner and operators of Michigan's Kent County International Airport (collectively, the Airport), collect rent and fees from three groups of Airport users: commercial airlines, including petitioners (Airlines); general aviation; and concessionaires such as car rental agencies and gift shops. The Airport allocates its air-operations costs—*e.g.,* maintaining runways—to the Airlines and general aviation in proportion to their airfield use, and its terminal maintenance costs to the Airlines and concessions in proportion to each tenant's square footage. It charges the Airlines 100% of their allocated costs, but general aviation only 20% of its costs. The concessions' rates substantially exceed their allocated costs, yielding a sizable surplus that offsets the general aviation shortfall and has swelled the Airport's reserve fund by more than $1 million per year. After the County Board of Aeronautics unilaterally increased the Airlines' fees, they challenged the new rates, attacking (1) the Airport's failure to allocate any airfield costs to the concessions, (2) the surplus generated by the fee structure, and (3) the Airport's failure to charge general aviation 100% of its allocated costs. They alleged that these features made the fees unreasonable and thus unlawful under the Anti-Head Tax Act (AHTA)—which prohibits States and their subdivisions from collecting user fees, 49 U. S. C. App. §1513(a), other than ``reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities,'' §1513(b)—and under the Airport and Airway Improvement Act of 1982 (AAIA). 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. The District Court held, *inter alia,* that the Airlines have an implied right of action under the AHTA, but not the AAIA, and no cause of action under the Commerce Clause, and that the challenged fees are not unreasonable under the AHTA. The Court of Appeals affirmed in principal part, but held that the Airport had misallocated fees for the cost of providing ``crash, fire, and rescue'' (CFR) services.

NORTHWEST AIRLINES, INC. *v.* COUNTY OF KENT

Syllabus

Held:

1. The Court declines to decide whether there is a private right of action under the AHTA but assumes, for purposes of this case, that the right exists. A prevailing party may defend a judgment on any ground properly raised below, without filing a cross-petition, so long as that party seeks to preserve, and not to change, the judgment. The Airport did not cross-petition on the CFR issue it lost below, and resolving the private right of action issue in its favor would alter that portion of the judgment. Pp. 7–8.

2. The Airport's fees have not been shown to be unreasonable under the AHTA. Pp. 8–16.

(a) The AHTA sets no standards for determining a fee's reasonableness. In the absence of guidance from the Secretary of Transportation, the Court adopts the parties' suggestion to resolve the reasonableness issue using the standards stated in *Evansville-Vanderburgh Airport Authority Dist.* v. *Delta Air Lines, Inc.,* 405 U. S. 707, for determining reasonableness under the Commerce Clause. Although Congress enacted the AHTA because it found unsatisfactory the end result in *Evansville*—the validation of ``head'' taxes—§1513(b) permits ``reasonable'' charges and the *Evansville* formulation has been used to determine ``reasonableness'' in related contexts, see, *e.g., American Trucking Assns., Inc.* v. *Scheiner,* 483 U. S. 266, 289–290. Thus, the levy here is reasonable if it (1) is based on some fair approximation of the facilities' use, (2) is not excessive in relation to the benefits conferred, and (3) does not discriminate against interstate commerce. *Evansville,* 405 U. S., at 716–717. Pp. 8–12.

(b) The Airport's decision to allocate air-operations costs to the Airlines and general aviation, but not to the concessions, appears to ``reflect a fair, if imperfect, approximation of the use of facilities for whose benefit they are imposed.'' *Ibid.* While those operations generate the concessions' customer flow and, thus, benefit the concessions, only the Airlines and general aviation actually use the runways and navigational facilities. Accepting the District Court's finding that the Airlines were charged only the break-even costs, the Court concludes that the fees in question were not ``excessive in comparison with the governmental benefit conferred.'' *Id.,* at 717. Nor is the Airport's methodology unlawful because it generates large surpluses. Since §1513(b) applies only to fees charged to ``aircraft operators,'' it does not authorize judicial inquiry focused on the surplus generated from the concessions' fees. The Court rejects the Airlines' argument that it should take into account concession revenues, as the Seventh Circuit did in a 1984 decision, when deciding whether the Airlines' fees are

Syllabus

reasonable. The Seventh Circuit overlooked the Department of Transportation's regulatory authority regarding the federal aviation laws. In view of the Department's authority, there is no cause for courts to offer a substitute for conventional public utility regulation. While the AAIA directly addresses the use of airport revenues, the Airlines do not suggest that the Airport has misused the funds in violation of that Act and did not seek review of the lower courts' ruling that they had no AAIA cause of action. Finally, the record in this case does not support the Airlines' argument that the lower general aviation fees discriminate against interstate commerce and travel. There is no proof that the large and diverse general aviation population served by the Airport travels typically intrastate and seldom ventures beyond Michigan's borders. Pp. 12–16.

3. The fees do not violate the ``dormant'' Commerce Clause. Even if the AHTA's express permission for States' imposition of reasonable fees were insufficiently clear to rule out dormant Commerce Clause analysis, the Court has already found the challenged fees reasonable under the AHTA using a standard taken directly from the Court's dormant Commerce Clause jurisprudence. Pp. 16–17.

955 F. 2d 1054, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined. THOMAS, J., filed a dissenting opinion. BLACKMUN, J., took no part in the consideration or decision of the case.