

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X Docket No.  
XIZMO MEDIA PRODUCTIONS LLC

Plaintiff,

-against-

**COMPLAINT**

CITY OF NEW YORK,

Defendant.

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Plaintiff Xizmo Media Productions LLC, by and through its undersigned counsel, Muchmore & Associates PLLC, as and for its Complaint herein against Defendant City of New York, alleges the following:

**Introduction**

1. The instant action presents a challenge, *prima facie* and as applied, to the constitutionality of section 10-126(c) of the New York City Avigation Law (N.Y.C. Administrative Code 10-126, *et seq.*, hereinafter, the "Avigation Law") under Article VI, clause 2 of the United States Constitution and the First Amendment to the United States Constitution. Section 10-126(c) of the Avigation Law (hereinafter, the "UAV Ban") effectively imposes a complete ban on the operation of unmanned aerial vehicles ("UAV's" or "drones") within the limits of New York City. Plaintiff maintains a film support business in New York City, which would use drones for purposes of filming pursuant to permits and/or waivers granted by the Federal Aviation Administration, were it not for conflicting provisions of the Avigation Law, which fail to recognize federally granted waivers and permits. This action seeks declaratory and injunctive relief determining the UAV Ban to be unconstitutional and enjoining further enforcement of the UAV Ban in circumstances where the Federal Aviation Administration has authorization a drone launch.

### **Jurisdiction**

2. This Court has subject matter jurisdiction of this dispute pursuant to 28 U.S.C. Sec. 1331 and 1343(3) and (4), as this action concerns rights afforded under the United States Constitution. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. 2201 and 2202 and Fed. R. Civ. Proc. 57.

### **Venue**

3. Venue is proper in the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. 1391(b)(2) on the basis that a substantial part of the events or omissions giving rise to the claim occurred in Kings County, New York.

### **Parties**

4. Plaintiff Xizmo Media Productions LLC ("Xizmo" of "Plaintiff") is a domestic limited liability company organized and existing under the laws of the State of New York, with its principal place of business located at 67 West Street, Suite 714, Brooklyn, New York 11222.

5. Defendant City of New York is a municipal corporation organized and existing under the laws of the State of New York and the New York City Charter.

### **General Provisions of the Avigation Law**

6. The Avigation Law defines an "aircraft" as "any contrivance, now or hereafter invented for avigation or flight in the air, including a captive balloon, except a parachute or other contrivance designed for use, and carried primarily as safety equipment." N.Y.C. Admin Code Sec. 10-126(a)(1).

7. The Avigation Law defines a "place of landing" as "any authorized airport, aircraft landing site, sky port or seaplane base in the port of New York or in the limits of the city." N.Y.C. Admin Code Sec. 10-126(a)(2).

8. The Avigation Law defines "limits of the city" as "the water, waterways and land under the jurisdiction of the city and the air space above same." N.Y.C. Admin Code Sec. 10-126(a)(3).

9. The Avigation law defines "avigate" as "to pilot, steer, direct, fly or manage an aircraft in or through the air, whether controlled from the ground or otherwise." N.Y.C. Admin Code Sec. 10-126(a)(4).

10. The Avigation Law defines a "person" as "a natural person, co-partnership, firm, company, association, joint stock association, corporation or other like organization." N.Y.C. Admin Code Sec. 10-126(a)(6).

11. The Avigation Law at N.Y.C. Admin Code 10-126(c) provides:

Take offs and landings. It shall be unlawful for any person avigating an aircraft to take off or land, except in an emergency, at any place within the limits of the city other than places of landing designated by the department of transportation or the port of New York authority.

12. Section 10-126(c) of the N.Y.C. Administrative Code does not provide a permitting process for commercial UAV operation nor does it purport to recognize any permits or waivers issued by the Federal Aviation Administration for federally licensed professionals to operate such vehicles.

13. Section 10-126(c) of the N.Y.C. Administrative Code is, for all practical purposes, a complete and total prohibition on the operation of UAV's at any location within the limits of New York City for any purposes whatsoever. Accordingly, Plaintiffs refer to this section of the Avigation Law as the "UAV Ban".

14. The "zero-tolerance" nature of the UAV Ban is clearly articulated on the Official Website of the City of New York, which provides:

Call 911 to report a drone use in New York City.  
It is illegal to fly them [drones] in New York City.

### **History and Relevant Provisions of Federal Law**

15. The United States Government has exercised continual and exclusive sovereignty over the national airspace since the passage of the Air Commerce Act of 1926. *See* 49 U.S.C. 40103(a)(1).

16. The Federal Aviation Act was enacted in 1958 to "provide for the regulation and promotion of civil aviation in such manner as to best foster its development and safety, and to provide for the safe and efficient use of airspace by civil and military aircraft..." 48 U.S.C. 1301.

17. The Federal Aviation Act of 1958 created the Federal Aviation Administration ("FAA") to carry out the policy objectives of the legislation. The FAA has since exercised pervasive authority over the national airspace and the use of aircraft. The FAA is responsible for prescribing regulations for "navigating, protecting, and identifying aircraft", "protecting individuals and property on the ground", and "using the navigable airspace efficiently." 49 U.S.C. 40103(b)(2).

18. 49 U.S.C. 40103(a)(1) states clearly: "The United States Government has exclusive sovereignty of airspace of the United States." (emphasis added)

19. 49 U.S.C. 40103(a)(2) provides: "A citizen of the United States has a public right of transit through the navigable airspace." The public right of navigation derives from the Commerce Clause<sup>1</sup> and is firmly rooted in the Nation's history, traditions, and constitutional jurisprudence. 20. The United States Congress has responded to the proliferation of UAV technology, passing the FAA Modernization and Reform Act of 2012 ("FMRA") to regulate and integrate recent advancements in aviation.

21. Section 332 of the FMRA, entitled "Integration of Civil Unmanned Aircraft Systems Into National Airspace System", directed the FAA to develop a plan for "the safe

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<sup>1</sup> *See e.g. United States v. Appalachian Electric Power Co.*, 311 U.S. 377 (1940).

integration of civil unmanned aircraft systems into the national airspace as soon as practicable, but not later than September 30, 2015." Section 332(3).

22. Section 332(1)(G) of the FMRA directed the FAA to develop a plan with recommendations for the "establishment of a process to develop certification, flight standards, and air traffic requirements for civil unmanned aircraft systems..."

23. The FAA responded with regulations, *inter alia*, for small, unmanned aircraft, including 14 CFR Part 107.

24. 14 CFR Part 107, Subpart C sets forth a rigid and comprehensive application process by which qualified individuals can obtain permits for the limited operation of small, unmanned aircraft systems<sup>2</sup> (hereinafter, "FAA Permit"). FAA Permit applicants must demonstrate their aeronautical knowledge by passing an initial aeronautical knowledge test covering twelve distinct areas of knowledge related to the safe operation of UAV's. 14 CFR Part 107.73(a). Thereafter, FAA permit holders are required to complete a recurrent aeronautical knowledge test every 24 months. 14 CFR Part 107.65. 25. FAA regulations at 14 CFR 107.200 also establish a waiver policy whereby the FAA "may issue a certificate of waiver authorizing a deviation from any regulation specified in 107.205 if the Administrator finds that a proposed small UAS operation can be safely conducted under the terms of that certificate of waiver." 14 CFR 107.200(a).

26. In addition to the foregoing, the FAA regulations at 14 CFR 107.200 prescribe regulations concerning every facet of UAV operation, evincing an intent on the part of Congress to fully occupy the field of UAV regulation.

27. Such FAA regulations are rigorously enforced by the federal government. In 2017,

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<sup>2</sup> FAA regulations define "small unmanned aircraft" as "an unmanned aircraft weighing less than 55 pounds..." 14 CFR 107.3. The instant action is intended to apply only to such. For purposes of this pleading, "UAV's" or "drones" are synonymous with "small unmanned aircraft" as such term is defined by federal law.

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