

# **Bond Case Briefs**

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## **AIRPORT AUTHORITIES - DISTRICT OF COLUMBIA**

### **Kerpen v. Metropolitan Washington Airports Authority**

**United States Court of Appeals, Fourth Circuit - October 22, 2018 - F.3d - 2018 WL 5117169**

Users who paid tolls on airport toll road brought putative class action under § 1983 against Metropolitan Washington Airport Authority (MWAA), which leased two commercial airports from federal government, District of Columbia, Secretary of Transportation, and Department of Transportation, alleging violation of the Compact Clause, separation of powers, the Due Process Clause, Metropolitan Washington Airports Act, terms of lease, and Administrative Procedure Act (APA).

The United States District Court dismissed for failure to state claim. Users appealed.

The Court of Appeals, Wilkinson held that:

- MWAA was not created by federal government, and therefore it was not federal instrumentality exercising federal power in violation of Appointments Clause;
- Federal government did not control MWAA, and therefore MWAA was not federal instrumentality exercising federal power in violation Appointments Clause;
- MWAA had not been delegated “legislative power” from federal government by Congress’ passage of Transfer Act;
- Policymaking discretion wielded by MWAA, if any, from federal government was delegated by “intelligible principle,” as required to comply with non-delegation principle;
- MWAA, as interstate compact constituted by states, was public body that lawfully could exercise governmental power;
- MWAA did not deny republican form of government, in violation of Guarantee Clause, to people of Virginia, Washington, Maryland, or any other state or subdivision; and
- Use of toll road funds by MWAA to build metro service to Dulles airport did not violate command to spend funds only on “capital and operating costs of the Metropolitan Washington Airports.”